(2006) 04 MP CK 0025

In the Madhya Pradesh High Court

Indian Infrastructure Equipment Ltd. and Another — APPELLANT

Vs

Check-Post Officer, Commercial Tax Department and Others — RESPONDENT

Date of Decision : 12-04-2006

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2006) 2 MPLJ 527 : (2007) 9 VST 453

Hon'ble Judges : S.K. Seth, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Seth, J.

This order shall also govern the disposal of W. P. Nos. 930, 931, 932 and 934 of 2006 as common question of fact and law is involved in this bunch of petitions under article 226/227 of the Constitution of India.

In these petitions, the petitioner is assailing validity of the orders dated January 23, 2006, October 22, 2005 and the demand notice dated October 23, 2005.

The petitioner, a registered company, is in the business of providing equipment running, handling and management services to clients and or for rentals. It purchased earthmoving equipments, viz., "JCBs backhoe loaders" in Jaipur. After obtaining temporary registration certificate from RTO, Jaipur, they were dispatched from Rajasthan to Harda in Madhya Pradesh through transporter, respondent No. 3. On September 3, 2005, trucks carrying JCBs were checked at the border check-post, Dhabla-Jodi, Khilchipur District Rajgarh in Madhya Pradesh. The Check-post Officer found that the documents in relation to JCBs were not in order therefore, it issued the prescribed show cause notice for payment of tax together with penalty under the provisions of the Madhya Pradesh Vanijiya Kar Adhiniyam, 1994 (hereinafter referred to as "the Act of 1994"). The petitioner-company through its counsel appeared before the Check-post Officer and represented that the destination of JCB machines in Harda was for use on rental basis and not for sale and as such there was no attempt to evade the tax. The Check-post Officer did not accept petitioner''s contentions and vide order dated October 22, 2005, he imposed the tax and penalty in respect of each of six JCBs stranded and held up at the check-post. Said order was challenged by the petitioner in six writ petitions in this Court. Those were disposed of by a common order dated December 13, 2005 with the directions that if petitioner-company intervene in the pending revisions preferred by the transporter before the Deputy Commissioner of Commercial Taxes, Ujjain, then after affording opportunity of hearing, revisional authority shall pass order in accordance with law without getting influenced by the order dated December 13, 2005. Pursuant to the said direction, revisional authority has passed the order dated January 23, 2006 repelling the contentions of the petitioner against payment of tax and penalty. Hence this second round of litigation.

After notice respondent Nos. 1, 2 and 5 filed their reply denying relief claimed in the writ petitions and submitted that no interference is warranted in exercise of extraordinary writ jurisdiction conferred by article 226/227 of the Constitution of India. Respondent Nos. 3 and 4, transporter and the driver remained ex parte.

I have heard rival submissions at length and perused material available on record.

Entry 54 of List II of the Seventh Schedule to the Constitution of India provides legislative field to the State Legislature to enact law for levy of sales tax. Pursuant to the said power the State Legislature has enacted the Act of 1994 for levy of commercial tax (sales tax). Taxation laws, whether dealing with the direct or indirect taxes, generally consist of three parts, viz., charging provisions ; machinery provisions ; and provisions providing for recovery of tax and mechanisation as deemed fit to check evasion of tax. Sections 45A to 45D are the machinery measures provided by the State Legislature to check evasion of tax. Under it, barriers, check-posts are set up, the officers are empowered to check any vehicle, seize goods being transported and carried in contravention of any provision of law. It is really for checking the evasion of tax. Through compliance of these it becomes feasible for the revenue authorities to trace out dealers escaping tax, through transporters. Section 45D of the Act deals with power to check goods in transit. It enjoins upon every transporter to carry with him a copy of declaration in respect of notified goods. The transporter must also carry invoice, bill or challan, etc., issued by the consignor of the goods giving the prescribed particulars. The Assistant Commissioner is competent to stop vehicle for expeditious search and inspection of goods and documents relating to it in possession of the transporter/driver with a view to verify that declaration or documents are in order. If the declaration or documents are not in order, then the consequences provided u/s 45A of the Act would ensue for seizure of the goods or vehicle along with goods, imposition of penalty and confiscation, as the case may be. Machinery provisions of the statute give rise to presumption in case of infraction of law that an attempt was being made to facilitate evasion of tax. The presumption is rebuttable and person has the opportunity to discharge the presumption and avoid the consequences provided under the law. A presumption is not in itself evidence but only makes a prima facie case for the party in whose favour it exists. It is a rule concerning evidence. It indicates the person on whom the burden of proof lies. When presumption is conclusive, it obviates the production of any other evidence to dislodge the conclusion to be drawn on proof of certain facts. But when it is rebuttable it only points out the party on whom lies the duty of going forward with evidence on the fact presumed, and when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed the purpose of presumption is over. Then the evidence will determine the true nature of the fact to be established. The rules of presumption are deduced from enlightened human knowledge and experience and are drawn from the connection, relation and coincidence of facts, and circumstances.

From the facts of the case in hand it is clear that JCBs in transit from across the border were stopped for checking at the check-post, and it was found that necessary documents were not available with the transporter/ driver. In absence of documents, the Check-post Officer initiated action provided under the law and passed the orders impugned and raised demand. The petitioner and the transporter were given adequate opportunity to dislodge the presumption that no attempt was being made to facilitate evasion of the tax. The petitioner not only had a chance before the revenue authority but also before the revisional authority by virtue of order of this Court in the earlier round of litigation as pointed out above. Having failed to discharge the burden, now petitioner could not be permitted to turn around. Even otherwise, the petitioner did not stick to the stand that JCBs were stock transferred but shifted to the stand that they were for rental, which makes the case of the petitioner dubious which does not inspire confidence. The revenue authorities having considered the matter in the proper perspective committed no illegality in passing the impugned orders and raising the demand.

In view of the foregoing discussions, in the considered opinion of this Court, there is no merit and substance in the present bunch of writ petitions so as to warrant interference by this Court in exercise of the extraordinary writ jurisdiction.

In the result, all writ petitions fail and accordingly they are dismissed. 9 However, there shall be no orders as to costs.

Let a true and authenticated copy of this order under the seal and 10 signature of the Registrar be kept in record of each connected writ petition.