(1986) 05 PAT CK 0018

In the Patna High Court

Case No : C.W.J.C. No. 1625 of 1986

Madan Mohan Tiwary and Others — APPELLANT

Vs

State of Bihar and Others — RESPONDENT

Date of Decision : 14-05-1986

Acts Referred:

Constitution of India, 1950 — Article 19

Citation : (1987) 66 STC 172

Hon'ble Judges : S.S. Sandhawalia, C.J;Ashwini Kumar Sinha, J

Bench : Division Bench

Judgement

Ashwini Kumar Sinha, J.—Learned counsel for the petitioners has submitted that the notification dated 28th December, 1985 (annexure 6 to the writ application), is ultra vires and beyond the legislative competence of the State Legislature and also beyond the powers conferred on respondent No. 2 [the Commissioner of Commercial Taxes-cum-Special Secretary to Government, Finance (Commercial Taxes) Department, Bihar, Patna], as it restricts movement of goods pursuant to transactions in the course of inter-State trade and commerce, consequently the learned counsel for the petitioners has also urged that the penalty imposed upon petitioner No. 1 by an order dated 6th February, 1986 (annexure 1), is without any authority of law inasmuch as the petitioners were not liable to pay any tax.

2. The submission with regard to the vires of the notification dated 28th December, 1985 (annexure 6), is linked with Sub-section (2a) and Sub-section (3) of Section 31 of the Bihar Finance Act; 1981 (hereinafter referred to as the Act), as amended by Section 9 of the Bihar Finance Act, 1984.

3. Sub-section (2a) and Sub-section (3) of Section 31 of the Act, as amended by Section 9 of the Bihar Finance Act, 1984, have already been quoted in paragraph 19 of the writ application and hence they are not being reproduced in this order.

4. The only relevant thing to quote is as to what forms XXVIII-A and XXVIII-B (referred to in the impugned annexure 6) are :

Form XXVIII-A Permit (See Rule 42)

No.

I hereby permit the transport of the consignment detailed overleaf. This permit will be valid for one month from the date of issue.

Place... Signature... Date... Designation... Seal Details of consignment permitted to be transported

Description Quantity. Dated signature of the of goods. authority issuing the permit. 1 2 3

Results of checking on the route

Designation and Description Quantity Dated sig- headquarters of of goods. of the nature of the authority by goods ac- the authority whomt ransport tually menioned in of consignment transt- column 1. was checked. ported.

1 2 3

Form XXVIII-B Form of permit [See Rule 42(2) of the Bihar Sales Tax Rules, 1983] (Original-Not transferable)

Serial No.

(To be filled in by the permit-holder before transport of goods)

1. Name of dealer to whom the permit is granted with registration certificate number. 2. Name and address of the consignor. 3. Name and address of the consignee. 4. Place of despatch. 5. Designation. 6. Name of notified railway station/other place, from where delivery is to be taken. 7. Number and date of- (i) Railway receipt (ii) Other document. 8. Description of consignment- Name of goods. Value. Quantity. 9. Seller''s invoice/forwarding note number and date. 10. Mode of transport (vehicle No.) I/We hereby declare that the above statements are correct and complete to the best of my/our knowledge and belief.

Signature of the dealer/declared manager. Date... Results of checking on the route

Designation and Description Quantity of Dated sig- headquarters of of goods. the goods ac- nature of the authority tually trans- the authority by whom the ported. mentioned inc- transport of olumn 1 and the consignment place of chec- was checked. king.

1 2 3 4

Note :-(1) Separate form should be used for each consignment.

(2) (a) In case of transport across or beyond check post, a copy of the form

should accompany the consignment.

(b) In case of delivery of consignment from any notified railway station/ other such place, the original copy of the form shall accompany the consignment in transit and thereafter shall be sent to the appropriate authority of the commercial taxes.

5. Learned counsel for the petitioners, in support of his submission, has relied upon a Supreme Court decision in the case of the Check Post Officer, Coimbatore v. K.P. Abdulla and Bros. reported in [1971] 27 STC 1 (at page 4) and has submitted that if a person carrying his own goods even as personal luggage from one State to another or for consumption, because he is unable to produce the documents/informations as required under the impugned notification (annexure 6), stands in the danger of having its goods forfeited and, in that view of the matter, the provisions of Sub-section (2a) and Sub-section (3) of Section 31 of the Act as well as the impugned notification (annexure 6) could not be said to be ancillary or incidental to the power of the State to legislate for levy of tax.

6. In order to appreciate the submission advanced by the learned counsel for the petitioners, as already stated above, it is most pertinent to state the fact in brief:

Petitioner No. 1 is the driver of truck No. BHA 2464; whereas; petitioner No. 2 is the manager of M/s. Hariyana Transport Company (hereinafter referred to the petitioner-company). The petitioner-company carries on the business of transporting goods for freight. According to the petitioners, they do not sell or purchase any goods and therefore they are not liable to pay any tax under the Act. On petitioners own showing, as stated in paragraph 4 of the writ case, apart from certain goods for transport from Calcutta, Bombay and Delhi to Muzaffarpur in the course of inter-State trade and commerce (total 61 packages), the branch office at Patna also boohed 320 packages for transporting from Patna to Muzaffarpur. All these packages {61 in the course of inter-State trade and commerce and 320 in the course of intra-State, i. e., from Patna to Muzaffarpur) were being carried on the truck in question. The truck in question was checked at Hajipur by respondent No. 3 (the Assistant Commissioner of Commercial Taxes, I/c. Hajipur Circle, Hajipur) for physical verification of the goods loaded; 89 packages only (out of total 381 packages) were seized and a penalty of Rs. 60,209.15 was imposed by annexure 1 to the writ application. At the risk of repetition, it may be stated that on petitioners'' own showing (as stated in paragraph 4 of the writ application) only 61 packages on the truck were in movement in the course of inter-State trade and commerce. Thus, out of 89 packages seized, 28 packages were admittedly in intra-State movement.

7. What is important to be noted is that no tax has been levied; what is imposed is penalty.

8. It cannot possibly be disputed that the prevention of evasion of sales tax is a power incidental and ancillary to the levy of sales tax and falls within entry 54 of List II of the Seventh Schedule of the Constitution. Sub-section (2a) and Sub-

section (3) of Section 31 of the Act (as amended by Section 9 of the Bihar Finance Act, 1984) provide for only levy of penalty, if there is an attempt to evade the tax due under the Act and, therefore, cannot be held to be without constitutional sanction. These provisions have been made with a view to check evasion and for the purpose of securing the revenue due under the Act. While the liability to pay the tax is only on the dealer in order to make that liability effective and realisable, others who are connected with the transaction of the dealer are also required to do certain things. It must be remembered that those acts expected of those connected with the transaction of the dealer are not for themselves, but on behalf of the dealer. In that sense, when a driver fails to carry the documents required to be carried, he exposes himself to the penalty but it is related to the owner of the goods on whom the liability to pay the revenue lies.

9. Sub-section (2a) and Sub-Section (3) of Section 31 of the Act (as amended) deal with furnishing of information by clearing and forwarding agents, etc.

10. Article 19 of the Constitution permits reasonable restrictions to be placed provided they are in public interest. Sub-section (2a) and Sub-section (3) of Section 31 of the Act do not deprive a citizen of the right to dispose or transport the goods purchased by him; it only requires him to carry certain documents in this regard. The requirement of the documents as envisaged in the impugned notification (annexure 6) read with the aforesaid two Sub-sections of Section 31 of the Act cannot be regarded as an unreasonable restriction on the citizens'' right. If the transport of goods by means of conveyance is left uncontrolled, it might seriously hamper the supply of these goods to the public. Thus, the requirement of being in possession of certain documents cannot be said to be an unreasonable restriction on the citizens'' right and, in any sense of the term, it cannot be said to be infringing the right under Article 19 of the Constitution. The requirements, as envisaged under the aforesaid Sub-sections (2a) and (3) of Section 31 of the Act, have been made with the object of checking the evasion of payment of sales tax and therefore these requirements are clearly in public interest and cannot be regarded as unreasonable restriction on the citizens'' fundamental rights.

11. The case The Check Post Officer and Others Vs. K.P. Abdulla and Bros., referred to above and relied upon by the learned counsel for the petitioners in support of his submission is clearly distinguishable. The Supreme Court, in that case, was concerned with the question of the vires of Section 42(3) of the Madras General Sales Tax Act, 1959, which provided for the seizure and confiscation of any goods which were under transportation by any vehicle and were not covered by the prescribed documents. It was held, that the provision for seizure and confiscation was based on the unwarranted assumption that the goods were transported after sale within the State. It was, in that situation, held that the power to seize and confiscate all goods which were carried in a vehicle, whether the goods were sold or not, was not incidental or ancillary to the power

to levy sales tax.

12. In the present case the impugned Sub-sections of Section 31, referred to above, and the notification (annexure 6) prescribe only a condition precedent to the levy of penalty (not tax). In the present case, no tax on the sale or purchase of goods in the course of inter-State trade or commerce has been levied. Prevention of evasion of sales tax is a power incidental or ancillary to the levy of sales tax and squarely falls within entry 54 of List II of the Seventh Schedule of the Constitution of India. The aforesaid two Sub-sections of Section 31 of the Act and the notification (annexure 6) provide only for detention of goods and levy of penalty, if there has been an attempt to evade the tax due under the Act, and therefore cannot be held to be without constitutional sanction. The power to verify the documents is just to ascertain whether there was any evasion of tax and it only ensures bona fide transaction and stops clandestine trade. It is necessary to ascertain the manner in which the goods are being carried by the vehicle. In the case of goods which are sold and are being removed by the vehicle, the carrier has only to satisfy the officer that such goods had been carried in the vehicle under proper documents and that there was no evasion of tax.

13. What has been done in the present case by the officer concerned was only to ascertain that fact. If he failed to do so, he would have failed to discharge his statutory duties. It is, in fact, a verification of that type which was done by the officer concerned in the present case in the discharge of his official duties. In the circumstances, we hold that the submission advanced by the learned counsel for the petitioners (as referred to in the earlier paragraph of this order) is without any substance and has no force.

14. There is one more aspect of the matter. The order levying penalty (annexure 1) is appealable and thus the petitioners have internal remedies available to them. If the petitioners, ultimately, are aggrieved by the appellate order, there is also provision for filing revision under the Act. In the present case we have already held above that the impugned Sub-sections (2a) and (3) of Section 31 of the Act and the notification (annexure 6) embrace only such provisions which prevent the evasion of sales tax and it only ensures bona fide transaction and stops clandestine trade; they are powers only incidental or ancillary to the levy of sales tax and squarely falls within entry 54 of List II of the Seventh Schedule of the Constitution of India and hence cannot be held to be without constitutional sanction. In that view of the matters the petitioners ''should avail the internal remedies available to them under the Act. For the reasons (as above) mentioned in this order we hold that there is no merit in this application and the same is dismissed (at the stage of admission hearing itself).

S.S. Sandhawalia, C.J

15. I agree.