

(1997) 05 PAT CK 0025

In the Patna High Court

Case No : Criminal W.J.C. No"s. 517 and 518 of 1992

Magadh Agencies

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 15-05-1997

Acts Referred:

Bihar Finance Act, 1981 — Section 31(2), 31(3)
Constitution of India, 1950 — Article 301, 304

Citation : (1997) 2 PLJR 296

Hon'ble Judges : N.K. Sinha, J

Bench : Single Bench

Advocate : S.D. Sanjay and Rakesh Kumar Singh, for the Appellant; T.N. Maitin and Manoj Kumar Sinha, for the Respondent

Final Decision : Allowed

Judgement

Naresh Kumar Sinha, J.—Both the writ applications in between the same Petitioner and Respondents which raise common question of law and facts have been heard together and are being disposed of by this common judgment.

2. The Petitioner M/s. Magadh Agencies is a proprietorship firm having its place of business at Bajaj Kutir at Rajendra Nagar, Patna and its proprietor is Anand Bajaj. The firm is a consignee agent of Reliance Petro Chemicals Limited, Bombay (hereinafter the "Company") a company manufacturing PVC Reon products used as a raw material for manufacture of PVC pipes and various other PVC products. The Company from time to time transfers its stock from its place of manufacture situated at Hazira in the State of Maharashtra and the Petitioner firm on the receipt of the consignment effects its sale in Bihar on behalf of the company on payment of tax at the rate provided under the Bihar Finance Act. Two such consignments on two trucks bearing registration Nos. HNQ 8531 and HB-05/A-6645 each carrying 360 bags of PVC Reon 6701 which were being transported from Hazira to Patna were intercepted on 6.6.92 by the Commercial Taxes Officer, Saran Anchal, Chapra (Respondent No. 3) and the consignment along

with the trucks were seized vide seizure list (Annexure- 2) for violation of the provisions of Section 31(2)(b) of the Bihar Finance Act, A notice (Annexure-3) was issued to the driver to show cause why penalty be not imposed for the aforesaid violation. Respondent No. 3, however, issued the demand notice (Annexure-4) imposing panalty of tax amounting to Rs. 85,332.35 paise in each case. The Petitioner seeks quashing of Annexures 2, 3 and 4 in both the writ applications, one (Cr.W.J.C. No. 317/92) in respect of truck No. HNQ 8531 and the other (Cr.W.J.C. No. 318/92) in respect of truck No. HP-05/A-6645.

3. Sri S.D. Sanjay learned Counsel appearing for the Petitioner very fairly stated at the very outset that he was not pressing the application on the ground that the provisions of Section 31(2a) of the Act were ultra virus the Constitution of India in view of the decision of the Apex Court upholding its constitutional validity. He, however, challenged the impugned orders of seizure of the vehicles and consignment as also the imposition of penalty on the ground that the consignment sent by the company from its place of manufacture at Hazira (Maharashtra) to the Petitioner firm-its consignee agent, was not in the nature of sale but is merely a stock transfer on which there is no liability of tax. It was pointed out that there was no liability for payment of tax as such and a liability would arise only on the sale of the aforesaid product. The Petitioner is a registered dealer under the provisions of the Act as well as the Central Sales Tax Act and obtains declaration from XXVIII-B and after filling its columns 1 to 5 sends a bunch of 25 declarations to the company and subsequently the company while despatching the consignment along with transfer Chalan, excise gate pass and other documents. The Petitioners have filed a copy of their letter dated 5.5.92 as Annexure-1 which they had sent to the company along with a bunch of 25 declarations in form No. XXVIII-B beginning from serial No. 343476 to 343500. It appears that the trucks in question on being intercepted were taken to the office of the Assistant Commissioner of Commercial Taxes, Saran Anchal, Chapra (Respondent No. 2) where a detailed inspection report was prepared and show cause was handed over to the driver of each of the two trucks vide Annexure-2. Both the seizure list Annexure-2 and the inspection report Annexure-3 referred to a number of documents which were produced by the truck driver. They included form of road permit in form XXVIII-B bearing No. 343478 and No. 343484 in respect of the two trucks. As mentioned in the inspection report (Annexure-3) column Nos. 6, 7, 8, 9 and 10 were left completely blank in the form. Learned Counsel for the Petitioner argued that the necessary documents the details of which were to be incorporated in the blank columns of the form mentioned above were produced by the truck drivers and had been seized by Respondent No. 3 as is evident from the contents of both Annexure-2 and Annexure-3. On the basis of the contents of the inspection report (Annexure-3) it was argued that the driver had produced all the required papers in respect of the consignment which included the stock transfer Chalan from the company to the Petitioner which is consignee agent which itself shows that it was not a sale but stock transfer and therefore there was no tax liability

on the aforesaid transaction which the Petitioner sought to escape. It is mentioned in the application and also reiterated at the bar that both Annexure-2 and 3 left no room for doubt that the documents produced by the driver also included excise goods pass issued by the excise authority at the gate of place of manufacture at Hazira which were sufficient to prove that the aforesaid consignment was entered in the books of the company on which the company had to produce form "F" to be exempted from the liability of the Central Sales Tax. The form "F" was to be issued at the instance of the Petitioner after obtaining it from the Respondent Sales Tax department where the Petitioner is registered as a dealer and therefore, there was absolutely no chance that in the absence of filling up of all the columns in the proforma there was any attempt on the part of either the Petitioner or the company to escape any sales tax liability. In the circumstances it was argued that the penalty imposed is wholly unwarranted in law, illegal and without jurisdiction.

4. Section 31(2a) of the Act provides inter alia that a person transporting goods shall carry a declaration in such form as may be prescribed by the Commissioner supported by either a cash memo, bill or challan, in case the movement is otherwise than as a result of sale, in respect of goods which is being transported on a goods carrier, or a vessel and will produce such challan, cash memo or bill along with the aforesaid form of declaration on demand before the prescribed authority. Sub-section (2b) of the Section provides that the prescribed authority may in order to verify that the transportation of goods is being made according to Sub-section (2a) intercept, detain a carrier or vehicle and may search and if the said officer is satisfied on such verification that the transportation of goods is being made in contravention of the provisions of Sub-section (2a) in a manner likely to deprive of the taxes payable he may, notwithstanding anything contained in this part, seize the goods or carrier or the vehicle with the goods and impound the documents. Sub-section (3) then provides among other things that if any clearing, booking of forwarding agent or Dalal or person transporting goods contravenes the provisions of Sub-section (1) or (2a) in a manner which is likely to lead to evasion of any tax payable under this part, the prescribed authority may, after giving the person concerned an opportunity of being heard in the manner prescribed direct him to pay by way of penalty, an amount which shall be equal to three times the amount of tax calculated on the value of goods in respect of which no particulars or information or incorrect particular or information has been furnished or no cash memo or bill or challan and the prescribed declaration by the Commissioner under Sub-section (2a) has been produced before the prescribed authority. Learned Counsel for the Petitioner argued that since all the relevant documents were being carried by the truck driver and which had been produced before the Respondent- authority and which find mention in Annexure-2 and Annexure-3, the mere failure to fill up some of the columns of form XXVIII-B did not and could not have authorised Respondent No. 2 to pass the impugned orders within the meaning of the provisions of the Act mentioned above. The contention put forward on behalf of the Petitioner that

the document seized by the Respondent contained all the information which required to be filled up in columns 6, 7, 8, 9 and 10 of the declaration form could not be seriously disputed on behalf of the State. It was argued on behalf of the Petitioners that the driver should have been permitted to fill up the blank columns even after the truck and the consignment had been intercepted.

5. Learned Counsel for the Petitioners in support of his above contention referred to a decision of the Apex Court in *State of Bihar and Others Vs. Harihar Prasad Debuka and Others*, . The Court was hearing the appeals by special leave from a Full Bench judgment of this Court allowing two writ petitions and quashing Bihar Government notification No. S.S. 1432 dated 28th December, 1985, as violative of Articles 301 and 304 of the Constitution of India. By the said notification the Commissioner in exercise of the powers conferred by Sub-section "2a" of Section 31 of the Bihar Finance Act, 1981 had adopted forms XXVIII-A and XXVIII-B as the declaration for the purpose of aforesaid Sub-section which a person shall carry in respect of goods being transported for the purposes of verification and assessment of tax payable and prescribed the manner in which such permit shall be utilised for verification and assessment of tax payable under part 1 of the said Act. While allowing the appeals and setting aside the impugned judgment of this Court the Apex Court noticed the information required under different columns of form XXVIII-B. Learned Counsel referred to that part of the judgment of the Apex Court in which the following observations were made, to quote:

It should, however, be noted that the notification has been issued and the Forms have been adopted by the State of Bihar and would be enforced in that State. There is nothing to indicate that the carrier would be penalised for not having filled up Forms XXVIII A or XXVIII B, as the case may be, while the goods were being carried through other States. They are to be filled up only when the carrier is within the territory of the State of Bihar. There is no provision to the effect that those who had not filled up the appropriate form at the earlier stages of the transit would not be allowed to fill up within the State. The particulars required are not such as would be impossible or difficult for the carrier to furnish.

As already observed earlier all the necessary papers were being carried by the carrier which contained the necessary particulars which were required to be filled up against the blank columns of the declaration form. Learned Counsel emphasised the above observations of the Apex Court that they are to be filled up only when the carrier is within the territory of the State of Bihar and there is no provision to the effect that those who had not filled up the appropriate form at the earlier stages of the transit would not be allowed to fill up within the State. On the basis of all this it was argued that Respondent No. 3 should have allowed the drivers of both trucks to (sic) up the particulars, in the blank columns of the form XXVIII-B and by no stretch of imagination Respondent No. 3 had the necessary jurisdiction to either seize the consignment and the carrier within the meaning of Sub-section (2b) or impose the penalty within the meaning of Sub-section (3) of Section 31 of the Act. In short the argument is that on the

materials already brought on the record and which were available before Respondent No. 3 there was no suspicion much less proof that the transportation of goods was being made in a manner likely to deprive the axes payable or such transportation of goods was being made in contravention of the provisions of Sub-section (2a) which was likely to lead to evasion of any tax. The impugned order seizing the consignment and the vehicles as also the order imposing penalty are therefore described is in excess of the jurisdiction of the Respondent-authority.

6. Learned Counsel for the Petitioners also referred to a Division Bench decision of this Court in Ziauddin and Others Vs. The State of Bihar and Others, in which the Petitioner had impugned an order imposing penalty on the Petitioner for violation of Section 31(2a) of the Act. In that case the road permit did not mention the date of cash memo. The cash memos were, however, produced and there was no difficulty in ascertaining the date of cash memos although not mentioned in road permit. The Court allowed the application and held that non-mention of the date of cash memo in column 9 of the road permit in the circumstances was highly technical and the omission could not attract the provision of penalty. Reference was also made to a Division Bench judgment of this Court disposing of a batch of writ applications in O.C. Corporation and Others Vs. State of Bihar and Others, . The Petitioner had challenged the validity of the provisions of Sub-section (2a) and Sub-section (2b) of Section 31 of the Bihar Finance Act. Learned Counsel for the Petitioner referred to paragraph 20 of the judgment in which it was observed that the learned Advocate General had fairly conceded that mere contravention of the provisions of Sub-section (2a) of Section 31 of the Act may not attract penal action as contemplated under Sub-section (2b) and Sub-section (3) of Section 31 of the Act.

7. Learned Counsel for the Petitioner had argued and in my opinion for very goods reasons that the content of the inspection report (Annexure-3) leaves no room for doubt that the Petitioner was held to have violated the provisions of the Act inviting seizure of the consignment and vehicles as also imposition of penalty only on the ground that column Nos. 6, 7, 8, 9 and 10 of the road permit in form No. XXVIII-B had not been filled up. As already observed earlier all relevant documents were being carried by the truck driver and they contained all the materials required to be filled up in the blank columns of the form. The Apex Court in Harihar Prasad's case (supra) has already held that there is no provision to the effect that those who had not filled up the appropriate form at the earlier stages of transit could not be allowed to fill up within the State. The truck drivers would have been allowed by Respondent No. 3 to fill up the blank columns of the form by incorporating the particulars therein which were easily available in the other documents and papers seized along with the trucks, In such circumstances the mere failure to fill up the blank columns of form No. XXVIII-B could not have been made the basis for passing the impugned orders under the Act and they deserve to be quashed as illegal and without jurisdiction.

8. In the result the writ applications are allowed and the order of seizure

(Annexure-2), notice to show cause (Annexure-3) and demand notice (Annexure-4) in both the writ applications are hereby quashed.