(1995) 02 RAJ CK 0005

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4916 of 1994

Maruti Agency APPELLANT

Vs

Assistant Commercial Taxes Officer and Another RESPONDENT

Date of Decision : 13-02-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 193

Citation : (1995) 1 RLW 101 : (1996) 1 WLC 383 : (1995) 1 WLN 258

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

Bench : Single Bench

Judgement

N.K. Jain, J.—By this writ petition, the petitioner seeks a direction to be issued to the respondent No. 1 to release the truck No. 4589 alongwith the goods therein, namely 150 tins of Mohak Brand Ghee (15 Kg. each) and 90 cartoons (62 No. of 1 Kg. and 36 Nos. of 1/2 Kg.). It has been prayed that the impugned notice u/s 12A Dated 12.10.1994 may also be quashed. It has also been prayed that the impugned seizure memo Annex. 1 may be quashed and further the respondent No. 1 be restrained from passing any penalty order u/s 22(A)(7) of the Act.

2. Briefly stated the facts of the case as alleged by the petitioner are that the petitioner is duly registered under the provisions of Rajasthan Sales Tax Act and is being regularly assessed under the Sales Tax before the C.T.O. Sumerpur. It is alleged that he purchased the goods from registered dealer Hanuman Traders vide Bill No. 22 dated 10.10.1994 (Anx.3) and while in the way near Banad the respondents intercepted and seized the goods vide Anx. 1 and served a notice Anx. 2. The petitioner has alleged that there was no question of evasion and the truck in question was having relevant documents, therefore, seizure of the vehicle and attraction of Section 22A(7) does not arise.

3. The writ petition was filed on 15.10.1994. This Court directed Mr. Mehta to accept Notice. Mr. Mehta accepted the notice. It was ordered that meanwhile the goods be released on the furnishing of security by the petitioner in respect of the value of the truck as well as the goods in the prescribed form. It was also

ordered that the proceedings may go on but the final order be not passed.

4. Reply to the writ petition has also been filed raising preliminary objections about the maintainability of the writ petition on the ground that the documents are false and bogus and there is misstatement of facts. It has been stated that the petitioner is liable to be prosecuted u/s 193 Cr.PC The non- petitioners have also filed documents Ex. R. 1 to R. 27. Rejoinder has been filed on 1.2.95 & the petitioner also moved application for amendment.

5. I have heard learned Counsel for the parties and perused the material on record.

6. In the instant case, a copy of goods receipt No. 875 dt. 8.10.1994 of M/S. New Agra Bull and Goods Motor Transport Commission Agency, Agra has been produced showing the names of consignor M/s. Ajanta Raj Dairy, Fatehbad Agra and the consignee M/S. Haumnan Traders & General Merchant, Sumerpur disclosing that 600 tins of Deshee Ghee are being transported from Agra to Sumerpur. The A.C.T.O. after perusing all the documents produced by the petitioner suspected evasion of tax and also suspected regarding the genuineness of the said documents produced by the Driver and the statement of Munnalal, Driver of the vehicle was recorded on 11.10.1994 and statements of accountant etc. were also recorded. Thereafter the A.C.T.O. had reason to believe regarding the evasion of tax and regarding the genuineness of the documents, so seized the goods along with the truck vide seizure memo in the prescribed form ST-20, Mr. Mehta submits that the goods never reached to the destination and it was sold at Jodhpur on 9.10.94 as per Ex. R-6 and R-7. He has submitted that Ex. R-l is dt. 8.10.1994 then how the sale has been effected on 10.10.1993 vide Ex. 3. He has also submitted that initially bill Ex. R/15 was of 9.10.94 but later on the date was changed. On the other hand Mr. Kothari has pointed out that there is an endorsement of ACTO/CTO dt. 11.11.1994 on Anx. 3 but that is a matter which requires consideration by the authorities concerned and no advantage can be taken by the petitioner in this Court. Similarly the question regarding evasion of tax and genuieness of the documents can be decided more appropriately by the concerned authorities and it is not necessary for me to go into these questions in writ petition, otherwise it will prejudice the case of the parties. Therefore, without expressing any opinion on the merits of the case, I am not inclined to interfere in this writ petition. That apart admittedly the petitioner has already furnished security and the truck along with goods have already been released, therefore, nothing survives in this petition and the petitioner has already filed reply to the notice. The non-petitioners are free to pass order after considering the explanation and relevant documents of the petitioner and thereafter the petitioner has efficacious and adequate remedy u/s 13 and 14 of the Rajasthan Sales Tax Act, so the interim order restraining the non-petitioners from passing final order cannot be maintained. It is made clear that after making enquiry with regard to Anx. 3 also if it is found that any officer is guilty, then disciplinary enquiry should be initiated against such person and if

the documents are found to be false or bogus, the State will take appropriate action according to law.

7. Mr. Kothari also moved an application challenging the vires of Section 22A(7) of the Act to the extent of quantum of penalty of 30% being unconstitutional. He prays that the amendment application may be allowed and till then the non-petitioners may be restrained from passing final order. In my view, the application cannot be allowed at this stage when the matter has been argued at length, after completion of the pleadings. The prayer for stay cannot be granted in the given facts of the case at this premature stage. However, the petitioner will be free to challenge the vires before the Division Bench as and when occasion arises and, therefore, the amendment application is dismissed at this stage.

8. With the above observations, the writ petition stands dismissed. A copy of this order be sent to the non-petitioner No. 1.

