(1963) 04 MAD CK 0019

In the Madras High Court

Case No : Tax Case No. 248 of 1962 (Appeal No. 19)

Meenambika Company APPELLANT

Vs

The State of Madras RESPONDENT

Date of Decision : 03-04-1963

Acts Referred:

Citation : (1964) ILR (Mad) 624 : (1963) 14 STC 817

Hon'ble Judges : Venkatadri, J;Srinivasan, J

Bench : Division Bench

Advocate : C.S. Chandrasekhara Sastry, for the Appellant; G. Ramanujam for Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Srinivasan, J.—A lorry carrying 115 bags of toor daal was stopped on the outskirts of Coimbatore by the Special Assistant Commercial

Tax Officer. The driver of the lorry though he had the necessary trip sheets did not have the bill of sale or delivery note. The driver however stated

that the goods belonged to the consignee of a railway consignment and that he was carrying the goods to the premises of the consignee. The driver

was also able to furnish the particulars of the consignor and consignee and to explain how he came to be transporting the goods. He was also

possessed of a letter authorising the consignee''s representatives Meenambika & Co., to pay the charges for the conveyance. The Special

Assistant Commercial Tax Officer, who checked this consignment, immediately proceeded to issue a notice in Form No. 53 of the Madras

General Sales Tax Rules, 1959. This notice called upon the driver of the lorry to pay in lieu of confiscation of the goods, a sum of Rs. 276. The notice did not state what conditions prescribed by the Act or the Rules had been violated but merely stated that the conditions prescribed in Rule

36(1) of the Madras General Sales Tax Rules, 1959, had been violated and that the goods were liable to be confiscated under Rule 36(2) of the

said Rules. It appears that the driver immediately contacted the owner by phone and the owner appeared and paid the money. Thereafter the

owner, Sri Meenambika Company, moved the Appellate Assistant Commissioner by appeal challenging the order levying penalty in lieu of

confiscation. The Appellate Assistant Commissioner went into the matter at some length and with great care, and came to the conclusion that the

entire proceedings had been misconceived and misapplied. He found that before ordering confiscation or demanding payment of any penalty in lieu

of confiscation, the provision of the law and the rules required that notice should be given to the ""person affected"", that is to say, the owner of the

goods; though the driver furnished full particulars of the owner of the goods in this regard, the officer gave no notice whatsoever to the owner but

proceeded to impose the penalty and demand payment of the penalty by the driver. He held that so long as the owner of the goods could be

ascertained, it was not competent for the officer to proceed against a person who was merely in charge of the goods. In this particular case, in the

view of the Appellate Assistant Commissioner, no opportunity had been given by the Special Assistant Commercial Tax Officer, as required by

Section 42 of the Act and the rules thereunder. He accordingly set aside the order levying the penalty and directed the refund of the penalty

collected.

2. The Board of Revenue purporting to act u/s 34 of the Act examined the order of the Special Assistant Commercial Tax Officer and came to the

conclusion that the order of the Appellate Assistant Commissioner that there were any vitiating features in the procedure followed by the Special

Assistant Commercial Tax Officer was incorrect. It, therefore, set aside the order of the appellate authority. It is against this order of the Board of

Revenue that the present appeal has been filed.

3. Section 42 which confers the necessary powers on the authorities to seize and confiscate any goods in so far as it is relevant reads thus :

42 (1)...

(2) ...

(3) The officer in charge of the check post or barrier, or the officer empowered as aforesaid shall have power to seize and confiscate any goods

which are under transport by any vehicle or boat and are not covered by,

(i) a bill of sale or delivery note,

(ii) a Goods Vehicle Record, a Trip Sheet or a Log Book, as the case may be, and

(iii) such other documents as may be prescribed under Sections 43 and 44 :

Provided that before ordering confiscation the officer shall give the person affected an opportunity of being heard and make an inquiry in the

prescribed manner.

Provided further that the officer ordering the confiscation shall give the person affected option to pay in lieu of confiscation....

4. Sections 43 and 44 lay down the particular documents which should be carried by the person in possession of the goods under transport. It is

not necessary to refer to them. In so far as the operative part of Section 42(3) is concerned, the power to confiscate the goods cannot be

exercised unless and until the officer gives the person affected an opportunity of being heard and makes an enquiry into the matter. It is quite

obvious that the enquiry contemplated by the first proviso is intended to ensure that the officer, on the materials before him, reaches the conclusion

that the goods are confiscable for such reasons as are laid down in the section. Before, therefore, any order of confiscation can be passed, there

has to be an enquiry and of this enquiry due notice has to be given to the person affected. If the officer reaches the conclusion that the goods are

liable to be confiscated, he has further to give a notice to the person affected giving him an option to pay monetary penalty in lieu of confiscation. It

will be noticed that both of these provisos are directed towards giving a suitable opportunity to the person affected, obviously a person who would

be affected by the order of confiscation, that is to say, the person having the beneficial interest in the goods. It is not denied by the learned

Additional Government Pleader that at no stage was any notice given to the appellant, the owner of the goods. Such notice, as was given, was

given only to the lorry driver. There appears to have been no enquiry at all as a result of which the officer came to the conclusion that the goods were liable to be confiscated. No such order setting out the reasons, which led the officer to that conclusion, has been placed before us. Nor is it

stated that any such order was either passed or exists in the records. The only order that is available is the order calling upon the driver to pay the

monetary penalty in terms of the second proviso. In the light of the admitted position that particulars regarding the owner of the goods were

furnished by the driver, it is incomprehensible how the officer came to overlook the mandatory requirement found in the section that notice should

be giver to the owner, before even the initial step in the matter of confiscation u/s 42(3) was taken. We are not convinced also of the arguments of

the learned Additional Government Pleader that it would be sufficient, if the owner of the goods was given a notice after the order directing

payment of the penalty was enforced. This aspect of the matter was also considered by the Appellate Assistant Commissioner before whom the

department seems to have represented that notice would be given to the owner affording him an opportunity of being heard if the penalty amount

was not paid ; certainly, a reversal of the procedure contemplated by the Act.

5. Coming now to the order of the Board, the Board purports to rely upon Rule 37 of the Madras General Sales Tax Rules, 1959, that notice

should be given to the owner or the person in charge of the goods and when there is a person in charge of the goods available, it is not necessary

to give any notice to the owner. This observation is also followed by a statement by the Board that there is ""no need to issue a notice to the owner

of the goods when there is no actual confiscation and sale; therefore the issue of notice to and collection of compounding fee from the lorry driver

who was the person in charge of the goods that were transported in the lorry without a delivery note or bill of sale is in accordance with the

provisions of the Act."" We are utterly unable to follow this interpretation of the rules. The very right to make an order confiscating the goods is

conditioned by the requirement that there should be a notice to the person affected and an enquiry into the liability for confiscation made in the

presence of such owner. Rule 35(4) also insists that when the name of the owner of the goods can be ascertained and is ascertained, notice shall

be given to such a person and he shall be given an opportunity of being heard before ordering confiscation. The order imposing the penalty in the instant case certainly did follow an order declaring the goods to be confiscable, that is to say, making an order of confiscation and offering to

release them on payment of penalty. Such an order without giving an opportunity to the person affected is opposed to the plain terms of Section 42

and the rules. We are unable to accept the argument of the learned Additional Government Pleader that Rule 37 supports the view taken by the

Board. Rule 37 deals with the position contemplated by the second proviso to Section 42(3) of the Act, that is to say, the stage at which penalty is

substituted for the order of confiscation. In this case, at no stage of the proceeding was a notice issued to a proper person, that is to say, the

person affected. The view taken by the Appellate Assistant Commissioner is unexceptionable and the setting aside of that order by the Board has

proceeded, to our minds, upon a misunderstanding of the correct legal position.

6. The appeal is allowed and the appellant will be entitled to his costs. Counsel''s fee Rs. 100.

