(1989) 05 P&H CK 0041

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1877 of 1988

Monga Road Lines (Regd.) APPELLANT

Vs

State of Haryana and Others RESPONDENT

Date of Decision : 17-05-1989

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 301, 304
Haryana General Sales Tax Act, 1973 — Section 37, 37(4)

Citation : (1990) 77 STC 171

Hon'ble Judges : Sukhdev Singh Kang, J;J.S. Sekhon, J

Bench : Division Bench

Advocate : M.S. Ratta and Baljit Kaur, for the Appellant; S.K. Sood, D.A., for the Respondent

Final Decision : Dismissed

Judgement

Sukhdev Singh Kang, J.—At issue in this bunch of writ petitions (i.e., C.W.P. Nos. 1877,1878,1879,836, 1148 1149, 1920, 2129, 2130, 2131, 2132, 2345, 2693, 2929, 3169, 3170, 8405, 8406, 9356, 10386, 10497, 11381 and 11387 of 1986 and 3572 of 1987), filed by various transporters, is the constitutional validity of Section 37 of the Haryana General Sales Tax Act, 1973 (hereinafter referred to as "the Act"), as amended from time to time. In the alternative, the petitioners contend that the provisions of various sub-sections of Section 37, except the first proviso to Subsection (4), are not applicable to the petitioners.

2. The issues raised are pristinely legal and only a broad-brush factual backdrop will suffice to illumine the contours of the controversy.

3. The petitioners are engaged in the business of carrying goods in their trucks. These vehicles generally move on the national highways for transport of goods from Delhi to Bombay, Punjab or other States and have to pass through the State of Haryana. Similarly, these vehicles bring goods from various States to Delhi. The main thrust of the attack is that while the vehicles carry goods on the inter-State routes, they merely pass through the State of Haryana and do not

unload the goods in the territory of that State. They also do not pick up goods therefrom. Even then these vehicles are stopped at the various check-posts set up by the State of Haryana on its borders and on the pretext of checking and search, the goods are unloaded, the consignments are broken open and many times the contents in the packets are damaged. The authorities seize the goods and documents carried by the trucks. Despite the protest by the drivers of the vehicles who carry all the requisite prescribed documents, relating to the vehicles and the goods carried, with them, the authorities seize the goods or tamper with the consignments and just harass the transporters, keep the vehicles detained at check-posts and barriers for 10 to 12 hours and sometimes for days together. The opening of the consignments causes irreparable loss to the petitioners as consignees refuse to take delivery of the consignments, the packings of which have been broken or tampered with. The petitioners are burdened with a liability of paying damages as bailees of goods. The action of the authorities hinders the free and smooth inter-State trade leading to wastage of time and national resources and inconvenience to the consumers. The provisions are stated to violate Articles 14, 19, 301 and 304 of the Constitution of India.

4. The respondents have resisted these writ petitions and have filed written statements controverting the allegations of harassment. It is averred therein that the barriers have been set up with a view to preventing or checking evasion of sales tax. The owner or person in charge of the goods and, when the goods are carried by a goods carrier, the driver or any other person in charge of the goods carrier, is required to carry with him a goods carrier record, a trip sheet or log-book along with a bill of sale in respect of the goods carried by him or in the goods carrier and is required to produce the same before an officer-in-charge of a check-post or barrier or any other officer of the department not below the rank of an Assistant Excise and Taxation Officer. The driver or in-charge of the goods carrier, when required by any officer above mentioned to stop the goods carrier entering or leaving the limits of the State, shall stop the goods carrier and keep it stationary to allow the officer-in-charge of the check-post or barrier, to examine the goods carried by him or in the goods carrier, by breaking open the package or packages, if necessary and to inspect the records relating to the goods carried. The owner or person in charge of the goods or goods carrier, entering or leaving the limits of the State, is required to furnish (in duplicate) a declaration containing such particulars, as may be prescribed, of the goods carried by him or in his goods carrier, before the officer-in-charge of the check-post or barrier and produce copy of the said declaration duly verified and returned to him by the officer-in-charge of the check-post or barrier before any other officer as mentioned in Sub-section (2) of Section 37 of the Act. The first proviso to Sub-section (4) of Section 37 prescribes that where the owner or person in charge of the goods or the driver or the person in charge of the goods carrier bound for any place outside the State passes through the State, such owner or person shall furnish in duplicate to the officer-in-charge of the check-post or barrier of his entry into the State, a declaration in the prescribed form

and obtain from him a copy thereof duly verified. The person in charge of the goods carrier shall deliver within twenty-four hours the said copy to the officer-in-charge of the check-post or barrier at the point of his exit from the State, failing which he shall be liable to pay a penalty, to be imposed by the officer-in-charge of the check-post or barrier of the entry, not exceeding two thousand rupees or twenty per centum of the value of the goods, whichever is greater.

5. It is pleaded that these provisions are necessary and helpful in detecting evasion of tax payable under the Act, deterring the transporters or owners of goods from evading their liability to pay tax. Sometimes goods in excess of the goods mentioned in the documents are transported and those goods are unloaded in the State of Haryana. Sometimes goods are loaded within the State without documents. These practices lead to evasion of tax. Many cases of attempts at evasion of tax had been detected, where goods were under transport, under documents, which were either not genuine or were incomplete. As a result of checking of goods at various barriers/check-posts established in the State, the State of Haryana is receiving revenue of rupees ten crores (approximately) per annum as direct cash collection. The provisions of Section 37 of the Act and Rule 45 of the Haryana General Sales Tax Rules, 1975 (for short, "the Rules") are perfectly legal and valid.

6. Shri M.S. Ratta, learned counsel for the petitioners, has raised two contentions :

(i) Section 37 of the Act and Rule 45 of the Rules are ultra vires of the Constitution. It is not necessary to examine this submission in detail, because the final court has upheld the vires of Section 37 and Rule 45, ibid, in Writ Petition No. 1744 of 1982 [Delite Carriers (Regd.) v. State of Haryana 1990] 77 STC 170, decided on April 23, 1986, wherein it has been held as under :

"We have explained in Sodhi Transport Co. and others Vs. State of U.P. and others, , decided on March 20, 1986, the object of establishment of check-posts and introducing provisions in the sales tax law of a State which would facilitate inspection of goods which are carried from one State to another through a third State. In the above-mentioned decision we have upheld the provisions of Section 28-B of the U.P. Sales Tax Act, 1948 and the rules made thereunder. For the same reasons we uphold the provisions of Section 37 of the Haryana General Sales Tax Act, 1973, Rule 45 and form Nos. 38 and 39 of the Haryana General Sales Tax Rules, 1975. These writ petitions are disposed of accordingly. There will be no order as to costs."

7. In Sodhi Transport Co. and others Vs. State of U.P. and others, Section 28-B of the U.P. Sales Tax Act, 1948, was held to be intra vires. The provisions therein are analogous to the provisions of Section 37 of the Act. It was held that the provisions to check evasion of tax and to provide machinery for levying tax are not unconstitutional.

8. Mr. Ratta then argued that the provisions of Section 37 [except first proviso to

Sub-section (4) thereof] do not apply to the petitioners.

9. In order to appreciate this submission of Mr. Ratta it will be apposite to read the provisions of Section 37 at this stage :

"37. Establishment of check-post of barriers and inspection of goods in transit.--(1) If with a view to preventing or checking evasion of tax under this Act in any place or places in the State, the State Government, considers it necessary so to do, it may, by notification direct the establishment of a check-post or the erection of a barrier or both, at such place or places as may be notified.

(2) The owner or person in charge of the goods and, when the goods are carried by a goods carrier, the driver or any other person in charge of the goods carrier, shall carry with him a goods carrier record, a trip sheet or log-book, as the case may be, along with a bill of sale in respect of the goods meant for the purpose of trade and are carried by him or in the goods carrier and produce the same before an officer-in-charge of a check-post or barrier or any officer of the department not below the rank of an Assistant Excise and Taxation Officer or such other officer, as the State Government may, by notification, appoint, for checking the goods carrier at any place.

(3) At every check-post or barrier or at any other place, when so required by any officer referred to in Sub-section (2) in this behalf, the owner or person in charge of the goods shall stop and the driver or any other person in charge of the goods carrier, entering or leaving the limits of the State, shall stop the goods carrier and keep it stationary, as long as may reasonably be necessary, and allow the officer-in-charge of the check-post or barrier, or the officer as aforesaid to examine the goods carried by him or in the goods carrier, by breaking open the package or packages, if necessary, and inspect all records relating to the goods carried which are in the possession of such owner or person in charge of the goods or the driver or other person in charge of the goods carrier, who shall also furnish such other information, as may be required by the aforesaid officer, who, if considered necessary, may also search the goods carrier and the driver or other person in charge of the goods carrier or of the goods.

(4) The owner or person in charge of the goods or goods carrier, entering or leaving the limits of the State, shall furnish in duplicate a declaration containing such particulars, as may be prescribed, of the goods carried by him or in such carrier, as the case may be, before the officer-in-charge of the check-post or barrier and shall produce the copy of the said declaration duly verified and returned to him by the officer-in-charge of the check-post or barrier before any other officer as mentioned in Sub-section (2).

Where it is contended by the owner of the goods that the goods were not sold within the State after their import and were either consumed or exported by him or were sold in the course of inter-State trade or commerce or in the course of export out of the territory of India, the Assessing Authority may call for such other information and documents as he thinks fit :

Provided that where the owner or person in charge of the goods or the driver or the person in charge of the goods carrier bound for any place outside the State passes through the State, such owner or person in charge of the goods or the driver or other person in charge of such carrier shall furnish, in duplicate, to the officer-in-charge of the check-post or barrier of his entry into the State, a declaration in the prescribed form and obtain from him a copy thereof duly verified. The owner or person in charge of the goods carrier or the driver or other person in charge of the goods carrier shall deliver within twenty-four hours the said copy to the officer-in-charge of the check-post or barrier at the point of his exit from the State, failing which he shall be liable to pay a penalty, to be imposed by the officer-in-charge of the check-post or barrier of the entry, not exceeding two thousand rupees or twenty per centum of the value of the goods, whichever is greater :

Provided further that no penalty shall be imposed unless the person concerned has been given a reasonable opportunity of being heard :

Provided further that where the owner or person in charge of the goods or the driver or other person in charge of the goods or carrier bound for any place inside the State has to pass through another State, such owner or person or the driver or other person shall furnish, in duplicate, to the officer-in-charge of the check-post or barrier of his exit from the State, a declaration in the prescribed form and obtain from him a copy thereof duly verified and shall deliver the same to the officer-in-charge of the check-post or barrier of his entry into the State, within four hours of his exit from the previous barrier or check-post in the State, failing which he shall be liable to pay a penalty to be imposed by the officer-in-charge of the check-post or barrier of his entry, not exceeding two thousand rupees or twenty per centum of the value of the goods, whichever is greater, unless he explains the time taken in excess to the satisfaction of the officer-in-charge of the entry barrier or check-post.

(5) If the officer-in-charge of the check-post or barrier or other officer as mentioned in Sub-section (2) has reasons to suspect that the goods under transport are not covered by proper and genuine documents as mentioned in Sub-section (2) or Sub-section (4), as the case may be or that the person transporting the goods is attempting to evade payment of the tax due under this Act, he may, for reasons to be recorded in writing, and after hearing the said person, order the unloading and detention of the goods and shall allow the same to be transported only on the owner of the goods, or his representative or the driver or other person in charge of the goods carrier on behalf of the owner of the goods, furnishing to his satisfaction a security, in the prescribed form and manner, for an amount not less than ten per centum and not more than twenty-five per centum of the value of the goods :

Provided that such officer may, if he deems fit, having regard to the nature of the carrier or the goods and other relevant matters, allow such goods to be transported, on the owner of the goods or his representative or the driver or other person in charge of the goods carrier, executing, in a prescribed manner, a bond with or without sureties for securing the amount due as security :

Provided further that where any goods are detained, a report shall be made immediately and in any case within twenty-four hours of the detention of the goods by the officer detaining the goods to the officer-in-charge of the district seeking the latter''s permission for the detention of the goods for a period exceeding twenty-four hours as and when so required and if no intimation to the contrary is received from the latter, the former may assume that his proposal has been accepted.

(6) The officer detaining the goods shall record the statement, if any, given by the owner of the goods or his representative or the driver or other person in charge of the goods carrier and shall require him to produce proper and genuine documents as referred to in Sub-section (2) or Sub-section (4), as the case may be. If, after the enquiry, such officer finds that there has been an attempt to evade the tax due under this Act, he shall, by order, impose on the owner of the goods and in case the owner is not forthcoming or his identity is not disclosed by the person in charge of the goods or the driver or person in charge of the goods carrier, in which goods are being carried, on the person in charge of the goods or the goods carrier or the driver, a penalty of not less than ten per cent and not more than twenty-five per cent of the value of the goods, and in case he finds otherwise, he shall order the release of the goods :

Provided that no penalty shall be imposed unless the owner of the goods or his representative or person in charge of the goods or the goods carrier or the driver has been given a reasonable opportunity of being heard.

(7) If the owner of the goods or his representative or the driver or other person in charge of the goods carrier does not furnish security or execute the bond as required by Sub-section (6) within ten days from the date of detaining the goods or goods carrier, the officer referred to in that sub-section may order further detention of the goods, and in the event of the owner of the goods not paying the penalty imposed under Subsection (6) within twenty days from the date of the order imposing the penalty, the goods detained shall be liable to be sold for the realisation of the penalty in the manner provided in Sub-section (9).

(8) When any goods are detained under Sub-section (7), the officer detaining the goods shall issue to the owner of the goods, if present or, if the owner of the goods is not present, to his representative or the driver or other person in charge of the goods carrier, a receipt specifying the description and quantity of the goods so detained and obtain an acknowledgement from such person or, if such person refuses to give an acknowledgement, record the fact of refusal in the presence of two witnesses.

(9) The goods detained under Sub-section (7) shall be sold, by the officer who imposed the penalty, by public auction in the manner prescribed, and the sale proceeds shall be deposited in the Government treasury.

(10) If the goods detained are of a perishable nature, or subject to speedy and natural decay, or when the expenses of keeping them in custody are likely to exceed their value, the officer-in-charge of the check-post or barrier or any other officer empowered under Sub-section (2), as the case may be, shall immediately sell such goods or otherwise dispose them of and deposit the sale proceeds of such goods, or the amount obtained by the disposal of such goods otherwise than by way of sale, in the Government treasury.

(11) If the order of imposition of penalty under Sub-section (6) or of detention of goods under Sub-section (7) is in the meantime set aside or modified in appeal or other proceedings, the officer detaining the goods and imposing the penalty, as the case may be, shall also pass consequential orders for giving effect to the order in such appeal or other proceedings, as the case may be.

(12) Where the detained goods are sold or otherwise disposed of under this section, the owner thereof shall be liable to pay the expenses and other incidental charges incurred in detaining and disposing of the same.

(13) If the sale proceeds of any goods sold or the amount obtained on the disposal of any goods otherwise than by way of sale under the provisions hereinbefore contained exceeds the penalty imposed in respect of such goods, such excess amount after deducting the expenses, and incidental charges referred to in Sub-section (12) shall be returned by the officer who conducted the sale or otherwise disposed of the goods, to the owner of the goods.

(14) At every station of transport of goods, bus stand or any other station or place of loading or unloading of goods, other than a post office, when so required by the Commissioner or any other person appointed to assist him under Sub-section (1) of Section 3, the owner or person in charge of the goods or the driver or other person in charge of the goods carrier shall produce for examination transport receipts and all other documents and account books concerning the goods carried, transported, loaded, unloaded, consigned or received for transport, to be maintained by him in the prescribed manner and the Commissioner or the person so appointed shall have, for the purpose of examining that such transport receipts and other documents and account books are in respect of the goods carried, transported, loaded, unloaded or consigned or received for transport, the power to break open any package or packages of such goods. If the Commissioner or the person so appointed is satisfied that it is necessary for the purposes of investigation or verification, he may seize the transport receipts, documents or account books so produced for examination or found lying at such a station of transport of goods, bus stand or any other station or place of loading or unloading of goods. The Officer seizing the transport receipts, documents or account books shall forthwith grant a receipt for the same and shall return to the person from whose custody these were seized after examination or completion of investigation or verification within a period of sixty days. Where the transport receipts, documents or account books so seized are required to be retained beyond the aforesaid period of sixty days, the authority

so retaining them shall record the reasons in writing and shall obtain the approval of the Commissioner for so doing.

(15) Except in accordance with such conditions, as may be prescribed, with a view to ensuring that there is no evasion of tax imposed by or under this Act,--

(a) no driver or person in charge of a goods carrier or any person in charge of a place of loading or unloading of goods, other than a post office, shall accept any consignment of such goods for transport or give delivery of any consignment of such goods, other than personal luggage of goods for personal consumption ;

(b) no dealer or any person including a carrier of goods acting on behalf of a dealer, shall take delivery of, or transport from any station of transport of goods, bus stand or any other station or place, of loading or unloading of goods, airport or any other place, whether of similar nature or otherwise other than a post office, any consignment of goods referred to above."

10. It will be seen that the provisions of Section 37 have been devised for the establishment of check-posts or barriers in the State of Haryana and in respect of goods in transit. The object underlying the enactment of these provisions was to prevent or check evasion of sales tax payable under the Act. Sub-section (I) provides for the establishment of check-posts or erection of barriers or both at various places in the State of Haryana. Sub-section (2) enjoins the person in charge of goods or the driver or any other person in charge of the goods carrier, to carry with him a goods carrier record, a trip sheet or log-book, along with a bill of sale in respect of the goods meant for the purposes of trade and carried by him or in the goods carrier and produce the same before an officer-in-charge of a check-post or barrier or any other officer appointed by the State Government. The language of Sub-section (2) is clear and unambiguous. The mandate contained therein is applicable to all the drivers or persons in charge of the goods carriers who happen to enter or pass through the State of Haryana. For the purposes of this sub-section, it is immaterial whether a carrier has brought goods to the State of Haryana or is in the process of carrying goods in the State of Haryana or other State or Union Territory or whether it is only passing through the territory of Haryana. The requirement for carrying the above-mentioned documents cannot be termed to be arbitrary. The driver or the person in charge of the goods carrier can be asked to keep the documents pertaining to the carrier or the goods carried therein in his custody. This will undoubtedly apply to the vehicles which have only to pass through the State of Haryana and have not to unload or load goods therefrom. There is nothing in this sub-section to exclude its application to the vehicles carrying goods which have just to pass through the State of Haryana.

11. Provisions of Sub-section (3) obligate the driver or any other person in charge of the goods carrier entering or leaving the limits of State of Haryana to stop the goods carrier and to keep it stationary as long as it may be reasonably necessary and allow the authorities aforementioned to examine the goods carried

by him or in the goods carriers which have only to pass through the State of Haryana. The same applies to sub" Sections (4) and (5). To facilitate the even flow of goods traffic a procedure has been devised in Sub-section (4). The owner or person in charge of the goods or goods carrier, entering or leaving the limits of the State is required to furnish in duplicate a declaration containing the prescribed particulars of the goods carried by him before the officer-in-charge of the check-post or barrier and to produce a copy of the said declaration duly verified and returned to him by the officer-in-charge of the check-post or barrier before any other officer as mentioned in Subsection (2). This provision facilitates the quick transit of the goods traffic. If the officer-in-charge of a check-post or barrier or the officers concerned have no suspicion that there has been evasion of tax, then they permit the goods carrier to proceed with its onward journey only on the driver or in-charge of the vehicle furnishing a declaration. The first proviso to this sub-section specifically deals with the goods carriers bound for any place outside the State which pass through the State. A facility has been provided for the drivers or in-charge of such goods carriers to furnish in duplicate a declaration in the prescribed form. A copy of this declaration has to be delivered within 24 hours to the officer-in-charge of the check-post or barrier at the point of exit at the pain of penalty prescribed. It is contended by Mr. Ratta that this proviso should be read as an independent sub-section of Section 37 and the goods carriers bound for places outside the State of Haryana passing through this State are covered only by this proviso. The remaining sub-sections of Section 37 are not attracted to this type of goods carriers. We regret our inability to concur in this submission of Mr. Ratta. The language of the proviso aforementioned does not admit of the interpretation sought to be placed on it by the learned counsel. This proviso is an exception to the general principle mentioned in Sub-section (4) and specifically deals with the goods carriers passing through the State of Haryana. They can continue their journey after furnishing the prescribed declaration in duplicate and have to complete that journey within the State within 24 hours. Otherwise, they expose themselves to a penalty. This, however, does not mean that the main provisions of Sub-section (4) or for that matter other sub-sections of Section 37 will not be applicable to the goods carriers passing through the State of Haryana without unloading or loading goods. It is true that the apex Court in Ishverlal Thakorelal Almaula Vs. Motibhai Nagjibhai, , has held that the proper function of a proviso is to except or qualify something enacted in the substantive clause, which but for the proviso would be within that clause. But occasionally in a statute a proviso is unrelated to the subject-matter of the preceding section, or contains matters extraneous to that section, and it may have then to be interpreted as a substantive provision, dealing independently with the matter specified therein, and not as qualifying the main or the preceding section. But, in the present case, the context, the setting, the language employed and the object sought to be achieved negate any inference that the proviso in question was intended to serve as an independent clause unrelated to Sub-section (4) of Section 37. The proviso is clearly meant to qualify what had been enacted in Sub-section (4). It does not contain any matter which is extraneous to that sub-section and thus does not constitute a substantive provision dealing independently with any matter specified therein.

12. So, we do not think that the first proviso to Sub-section (4) of Section 37 is intended to function as a substantive provision dealing solely with respect to the goods carriers which only pass through the State of Haryana without loading or unloading goods therefrom.

13. Learned counsel for the respondents has submitted that the writ petitioners in C.W.P. Nos. 836, 1148, 2132, 1920, 1877, 3170, 4732, 6508, 6307, 8511, 8405, 8406, 10497 of 1988, 3572 of 1987 and 2996 of 1989 had filed writ petitions in the Supreme Court and those writ petitions had been taken up along with Writ Petition No. 1744 of 1982 Delite Carriers (Regd.) v. State of Haryana [1990] 77 STC 170 and disposed of by the same judgment. Mr. Ratta, learned counsel for the petitioners, is not in a position to deny this assertion.

14. If these writ petitioners had raised the question of non-applicability of the various sub-sections of Section 37 except the first proviso to Subsection (4), those pleas have to be taken to have been rejected. However, if these contentions had not been raised, then these petitioners are, because of the principle of constructive res judicata, debarred from raising these pleas.

15. In the result, we find no merit in these writ petitions and dismiss the same.

