

(1978) 09 DEL CK 0026

In the Delhi High Court

Case No : Letter Patent Appeal No's. 72, 73 and 123 of 1977

Municipal Corporation

APPELLANT

Vs

M.M. Tuli, Nitco Roadways

RESPONDENT

Date of Decision : 13-09-1978

Acts Referred:

Citation : (1978) 09 DEL CK 0026

Hon'ble Judges : T.V.R. Tatachari, J;N.N. Goswamy, J

Bench : Division Bench

Advocate : Uma Devi, S.T. Desai, R.B. Oatar, Madan Bhatia, Maheshwar Dayal, B.N. Kripal and N.B. Sinha, for the Appellant;

Judgement

T.V.R. Tatachari, J.

(1) Respondents who carried on inter-State transport of goods had their godowns on Delhi- U.P, border line. Parts of the godowns were in U.P. and the other part in Delhi. Trucks entered godowns from U.P. side and soon came into the Delhi side where goods were unloaded, sorted out and then reloaded for being sent out of Delhi. The Terminal Tax officer of M.C.D ordered levy of tax on goods entering Delhi in the godowns owned by Tuli and in possession of transporters and tax (a 2nd time) when goods after sorting out were being taken out of Delhi. The officer also proposed setting up of a tax post at the entrance of land of Tuli. The respondents filed 3 petitions which were allowed I.L.R.. 1977. 1 Delhi 643. Mcd filed 3 LPA's against these.] Para 14 onwards judgment is :-

(2) As already stated, the first prayer in the writ petition was that the orders, dated 23rd May, 1975 and 7th July, 1975, passed by the Terminal Tax Officer of the Municipal Corporation of Delhi be quashed. The learned counsel for the appellants stated before us that, irrespective of the result of the appeals, the appellants, have decided to withdraw the "aid two orders, and, Therefore, did not address any arguments challenging the judgments of H. L. Anan

(3) The second prayer in the writ petitions were that the appellants herein (the

respondents in the writ petitions) be prohibited from establishing any terminal tax post near the entrance to the land/godowns of Manmohan Tuli. As regards this, the learned counsel for the appellants contended that the Corporation was entitled to establish such a post near the entrance to the godowns which very near the border line between U. P. and the Union Territory of Delhi. The learned counsel contended that Section 17S(I) of the Delhi Municipal Corporation Act empowers the levy of terminal tax on all goods carried by railway or road into the Union Territory from any place outside thereof, that the border between U. P. and the Union Territory of Delhi is near the entrance to the land/godowns of Manmohan Tuli, that Rule 2 (3) of the Delhi Terminal Tax Rules, 1958, defines "barrier" as meaning a barrier established under Rule 10 that Rule 2 (16) defines "terminal tax limits" as meaning "the limits of the Union Territory of Delhi, that Rule 10 (b) empowers the Delhi Terminal Tax Agency specified u/s 179 of the Delhi Municipal Corporation Act to establish barriers in the immediate vicinity of the Terminal Tax limits that may from time to time be determined by the Agency as most suitable for intercepting the import of goods for assessment and collection, of the tax, that Rule 7 empowers the Terminal Tax Officer, the Assistant Terminal Tax Officer, any Inspector or such other officer as may be authorised by the Agency in that behalf, to examine goods and demand passes, and that the said Agency of the Corporation was thus entitled to establish a terminal tax post or barrier near the border line between the U.P. and the Union Territory of Delhi which passes through the land of Manmohan Tuli near the aforesaid entrance to it. The contention seems to be unanswerable. It is, however, not necessary to discuss the same as Shri Madan Bhatia, learned counsel for the owners of land/godowns, stated before us that they have no objection to the establishment of a terminal tax post or barrier on the land of Manmohan Tuli near the entrance thereto, and that they will also provide such facilities as may be necessary for the Corporation to establish such a post. We, therefore, give a direction to the owner of the land/godowns as well as the transport companies not to raise any objection to the establishment of a terminal tax post or barrier on the land and near the entrance thereto.

(4) The third prayer was that the appellants be prohibited from levying, demanding or imposing any terminal tax in respect of the goods brought into the land/godowns for the purpose of only sorting and transhipping them to various destinations. As regards this prayer, the learned counsel for the appellant? pointed out that the appellants had clearly stated in their counter-affidavits that no terminal tax was being charged on the goods which were meant for immediate export and a procedure has been laid down for obtaining transit passes for such goods, and that it was not. Therefore, necessary for the learned single Judges to go into the question as to whether terminal tax was payable in the instant case, we understand from the counsel for the respondents herein that the Corporation took the stand before the learned single Judges that terminal tax was payable for goods brought into the land/godowns in question, as they were being unloaded at that place, and that the tax would be so livable even if the goods were in

transit and were being unloaded only for the purpose of sorting and transshipping them into other trucks going to different destinations. Be it as it may, the stand taken by the learned counsel for the appellants before us is the same as what was set out in the counter-affidavits, namely, that no terminal tax was being charged on the goods which were intended for immediate export and a procedure has been laid down for obtaining transit passes for such goods in transit. It is Therefore, sufficient for us to consider the legal position as regards goods which are in transit and are brought into the land/godowns in question and are unloaded only for the purpose of sorting and transshipping them into other trucks going to different destinations.

(5) Section 178(1) of the Delhi Municipal Corporation Act, 1257, provides for the levy of terminal tax on all goods carried by rail way or road into the Union Territory of Delhi from any place outside thereof. Section 183 of the said Act confers power on the Central Government to make rules in relation to the levy, assessment and collection of terminal tax under the aforesaid Act. It provides that the Central Government may by such rules prescribe the following among other matters, namdy,- (a) the examination of goods, liable to payment of terminal tax; (b) the inspection, weighing or otherwise examining the contents of any conveyance or package for the purpose of ascertaining whether it contains any goods in respect of which terminal tax is payable : (c) the seizure and confiscation of goods liable to terminal tax in case of refusal to pay such tax ; (d) the measures to prevent evasion of terminal tax ; (e) any other matter which is to be or may be prescribed for the levy, assessment or collection of the terminal tax.

(6) Accordingly, the Delhi Terminal Tax Rules, 1958 were made by the Central Government and they came into force on 7th April, 1958. We may point out here that the virus of Sections 178 and 138 of the Corporation Act and the aforesaid rules has not been questioned before us As stated earlier by us ; the Delhi-U P. Border line passes through the southern portion of the land in question, and A most of the said land lies to the north side of the border lire and only a small strip of it lies to the south of the said line. The trucks carrying goods for various destinations pass along the G.T. Road and move into the land/ godowns in question through an entrance. It is common ground that the goods thus brought into the land whereon the godowns are situated are unloaded for being sorted out, and the goods intended for various destination are re-loaded into the respective trucks going to the said destinations. Thus, the trucks carrying the goods go by the G.-T Road, cross the Delhi U.P. border line and enter the land of Manmohan Tuli which is in the Union Territory of Delhi.

(7) Rule 10 (b) of the aforesaid rules empowers the Delhi Terminal Tax Agency specified in sub section (1) of Section 179 of the Corporation Act to establish a barrier at any place on or in the immediate vicinity of the terminal tax limits that may from time to time be determined by the Agency as most suitable for intercepting the import of goods for assessment and collection of the tax. The

expression "terminal tax limits" is defined in Rule 2 (16) as meaning the limits of the Union Territory of Delhi. Rule 2 (9) defines "import" as meaning of goods by railway or road into the terminal tax limits. In *The Central India Spinning and Weaving and Manufacturing Company, Limited, The Empress Mills, Nagpur Vs. The Municipal Committee, Wardha*, terminal tax" was explained as under (at p. 348 of AIR) :-

"THEREFORE, terminal tax on goods imported or exported is similar in its incidence and is payable on goods on their journey ending within the Municipal limits or commencing there from and not where the goods were merely in transit through the municipal limits and had their terminus elsewhere".

(8) In *Amrit Banaspati Co, Ltd v. Union of India* (1973) 1 Delhi 237 at p. 241 : (1973) Tax Lr 25 6 at p. 2549), it has been pointed out that the words shall be levied on all goods carried by railway or road" in Section 178(I) show clearly that the section imposes terminal tax on the carriage or movement of goods from outside the Union Territory of Delhi into the said territory. It is clear from the above provisions and the decisions that when trucks carrying the goods cross the Delhi U. P. Border line, and enter the land/ godowns in question, they cannot but be said to have carried the goods by road into the Union Territory of Delhi within the meaning of Section 178(1) of the Corporation Act, Consequently, terminal tax becomes livable under the said sub-section.

(9) We may point out here that H. L. An- and J. took the view that the entry of the goods into the land/godowns did not amount to carriage of goods into the Union Territory of Delhi, because (a) the land or godown was not freely accessible from the Union Territory of Delhi and (b) the carriage was into a land or building the access to which was not through the Union Territory of Delhi and part of which was admittedly not in the Union Territory of Delhi, and in the circumstances the building could not be said to be situated within the Union Territory of Delhi. With respect to the learned Judge, we are unable to agree with the said reasoning. As stated already, a substantial part of the land and the godowns thereon are situated in the Union Territory of Delhi. The border line between the Union Territory of Delhi and U. P. runs through the land practically at the southern end, and only a small strip of the land lies to the south of the border line, i.e. in U. P. For the purpose of terminal tax we are concerned with the land and the godowns to the north of the border line, and they are admittedly in the Union Territory of Delhi. Carriage into the Union Territory of Delhi occurs only when the trucks cross the border line and when once they cross and enter the land/godowns, the carriage is clearly into the Union Territory of Delhi from U. P. It is for this reason that we held above that terminal tax becomes livable when the trucks carrying the goods cross the border line and enter the land/godowns in question.

(10) We may also point out that the learned single Judge has taken the view that the levy of terminal tax u/s 178(1) depends upon the ability of the local body to provide necessary civic services to the land/ godowns in question, and that since

the Municipal Corporation of Delhi has not provided and does not claim to be in a position to provide them because of the peculiar location of the land/godowns and the situs of its only entry, the terminal tax is not leviable. In our opinion, this aspect would arise only if the virus of Section 178(1) is challenged. As the said virus has not been challenged, the provision has to be given effect to as it stands. Sec. 178(1) confers the power to levy terminal tax, and does not make it conditional on civic services being rendered. We, Therefore, need not deal with the correctness of the aforesaid view of the learned single Judge, as it does not arise in the present case.

(11) However, though the goods thus brought into the land/godowns are liable to the levy of terminal tax by virtue of the provision in Section 178(1) read with Rules 2 (3), 2 (16) and 10 (16) and 10 (b), an exception has been made by the rules in the case of goods brought into the Union Territory of Delhi for immediate export. Part V of the Rules consist of Rules 26 to 29 and they lay down a procedure in respect of the goods ordinarily liable to terminal tax but exempted there from under certain conditions. We are concerned in the present case only with Rules 26 and 27. Rule 26 provides that when the goods liable to terminal tax but exempted there from if exported immediately, are declared to be intended for immediate export, they shall be dealt with under the transit pass system thereafter provided. Rule 27 (1) (a) provides that when such goods intended for immediate export are brought at the barrier of import, the importer shall declare in writing in such form as may be prescribed by the Agency from time to time, that the goods are intended for immediate export. Rule 17 (1) (p) provides that on receipt of such a declaration, the Collecting Officer shall fill up by the carbon process a transit pass in Form T.T. 5, and on payment of a fee of Rs. 2 per vehicle ; handover the foil with both the coupons attached to it to the importer. There , two provisos to sub-rule (b). It is common ground that they are not applicable to the present case. 24. According to the above provisions, if the goods are intended for immediate export, "the importer has to make a declaration at the barrier of import that the goods are intended; for-immediate export. On making such a declaration, the Collecting Officer has to issue a tran,sit pass in Form T.T. 5 on payment of Rs. 2 per vehicle. On receiving the transit pass, the-importer has to act in accordance with the provisions in sub-rules (2) to (6) of Rule 27. these sub-rules provide, inter alia, that the importer shall forthwith take the goods to the barrier of export via such route as may be prescribed by the Agency under sub-rule (4), that the Agency may fix the timings ."at which such goods may leave the banier of import for the barrier of export, that when the goods are brought to the barrier of export, the importer shall present the transit pass granted to him, and the Collecting Officer shall note the time at which it is presented and shall also check the goods with the - particulars given in the transit pass, that if the description or weight of the goods does not tally with the particulars entered in the pass and there is any shortage, the Collecting Officer shall demand payment of the amount of tax payable in respect of such shortage, and that if the time entered in the transit pass had

expired before the pass is presented the Collecting Officer shall demand the full amount of tax ordinarily payable on the goods on import, and thereafter shall proceed as if the charge was a charge on account of goods imported in the ordinary way. They also provide that the Agency shall prescribe the route between every two barriers and the period within which the goods imported through one of them for immediate export shall be exported through the other, that the Terminal Tax Officer may extend the time fixed if he is satisfied that the delay was due to circumstances over which the importer had no control. The transit pass in Form T.T. 5 issued to the importer for goods intended for immediate export contains columns for the various entries to be made as provided in sub-rules (1) to (6), such as date and hour of import, description, weight and particulars of the goods, destination of the goods, barrier by which the goods are to be exported, route via which the goods are to be exported, and the time at which the pass is presented at the export barrier.

(12) Thus, goods brought into the Union Territory of Delhi for immediate export are exempted from being liable for terminal tax, provided the importer makes the declaration, pays a nominal sum of Rs. 2 and acts in accordance with the various provisions of sub-rules (2) to (6) of Rule 27 mentioned above. This is what was pleaded in the counter-affidavit, namely, that in respect of goods intended for immediate export no terminal tax is charged on the goods and a procedure has been laid down for obtaining transit passes turn such goods. If the importer does not make a declaration or does not act in accordance with the procedure set out in sub-rules (2) to (6) of Rule 27, he would be disentitled to claim the exemption, and terminal tax would be leviable, fully or partly, in accordance , with the provisions in the various sub-rules of Rule 27.

(13) In the present case, the goods are admittedly carried into the land/godowns only for the purpose of sorting and transshipping them into the other trucks going to various destinations. That means clearly that they are carried into the Union Territory of Delhi for immediate export. The mere fact that the goods are unloaded and re-loaded does not mean, in our opinion, that they were not carried into the Union Territory for immediate export. The goods are merely in transit through the municipal limits and have their terminus elsewhere. The word "immediate" cannot, in the context of the nature of the import and export, be understood as meaning "without any time gap". The very nature of the operations of import and export is such that there would be some time-gap between the import and the export. It would be too unrealistic if "immediate export" is understood as meaning that the trucks which carry the goods into the Union Territory should leave immediately without any time-gap. In our opinion, the words "immediate export" mean that the goods should be exported within a reasonable time. What would be "reasonable time" would vary from case to case and would depend upon factors like the quantity of the goods and the time that is reasonably necessary for unloading, sorting and re-loading them. the availability of trucks for export and the like. The concerned officer has to determine in each case the time within which the export is to be made taking

into consideration all relevant circumstances like those mentioned above, .

(14) We, Therefore, hold that in the instant cases, when the trucks carrying goods intended for various destinations cross the Delhi-U.P. border line and enter into the land godowns in question, they have to be treated as having carried the goods by road into the Union Territory of Delhi, and the goods would normally be liable to levy of terminal tax. But, if at the time of entrance the importer makes a declaration that some of the goods are intended for immediate export in the form prescribed as per the provision in Rule 27 (1), no terminal tax can be levied on those goods covered by the declaration. The rest of the goods, if any; which are not intended for immediate export would be liable to levy of terminal tax. As regards the goods in respect of which a declaration is made as mentioned above, the importer is entitled to get a transit pass. The officer concerned has to fix a reasonable time for the unloading, sorting and re-loading of the goods into the various trucks going to different destinations, taking into consideration the factors like the quantity of the goods, the time that is reasonably necessary for unloading, sorting and re-loading, the availability of trucks for export and the like. The importer is bound to complete re-loading within time so fixed and act according to stipulations in terminal pass. Any violation of these would render him liable to levy of terminal tax, in full or in part in accordance with Rule 27.