(2004) 08 P&H CK 0137

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 6229 of 1987

Narender Kumar APPELLANT

Vs

The State of Haryana and Others RESPONDENT

Date of Decision : 04-08-2004

Acts Referred:
Haryana General Sales Tax Act, 1973 — Section 37(6)

Citation : (2004) 138 PLR 579

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : None, for the Appellant; Vijay Dahiya, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

Swantanter Kumar, J.—Nobody was present on behalf of the petitioner even on 21.05.2003 when the Court directed the matter to be adjourned in the interest of justice and an intimation to be sent to the counsel for the petitioner. As per report of the Registry letter was sent to the counsel. Despite that nobody is present on behalf of the petitioner. It may be noticed that even on earlier occasions no body has ap-peared. There is no alternative before the Court except to proceed with the matter in ac-cordance with law.

2. Challenge in this petition under Article 226 of the Constitution of India is to the amendment in the Haryana Sales Tax Act by Amending Act No. 3 of 1983 regarding amendment of Section 37 and Section 2(9) of the Haryana General Sales Tax Act, 1973 and for quashment of imposition of penalty upon the petitioner vide impugned order dated 12.08.1987 Annexure P/2 to the writ petition.

3. It has been noticed in the impugned order that on 12.08.1987 while the staff of the Sales Tax Department was conducting a checking near Dimple Cinema, Jagadhri, a three wheeler No. HNA-3842 was detected carrying nine bags of Aluminium and Brass utensils. The incharge of the goods Roshan Lal disclosed

that he had loaded the goods from within the Jagadhri Municipal limits and had no documents of sale except one summary No. 7 of Railway Out Agency Yamuna Nagar covering the above goods. All the nine bags were bearing railway R.R. No. and weight of the goods. The petitioner claimed that the goods were covered by the railway R.R. and were property of the railwaysand could not be checked by the department. In fact the petitioner also declined to disclose the name of the owner of the goods. The authorities while holding herein after imposed the penalty of Rs.2500/- upon the petitioner u/s 37(6) of the Act :-

"The weight is 3 qtls. 65 kgs. (2.66 Qtl. Brass and 99 Kgs. Aim. Utensils). The assertion of Shri Narinder Kumar and Shri Roshan Lal is not tenable in view of the fact that he is authorised by the Northern Railway to book goods from and to Yamuna Nagar limit which comprises of Yamuna Nagar Municipal limits. Further more he is not authorised to issue R.R. at the business premises of the dealer while the goods are still in the custody of the dealer. He is authorised to book the goods and issue R.R. in respect of goods which come to his business premises, i.e. Railway Out Agency, Y/Nagar. The goods moved from Jagadhri to the Out Agency Y/Nagar are very much within the ambit of the H.G.S.T. Act and is no way the railway property. If such goods are found to be not covered with proper and genuine documents, penalty UnderSection 37(6) of the H.G.S.T. Act is attracted.

Keeping in view the above facts and legal position, a penalty of Rs. 2500/- is imposed u/s 37(6) of the H.G.S.T. Act. T.I. to release the goods on receipt of payment. Issue copy of order to Shri Roshan Lal, Incharge of the goods C/o N.R. Out-agency, Yamuna Nagar."

4.Even if the petitioner was holding agency for out-booking on behalf of the railways,yet he was expected to produce due explanation with regard to six bags. The petitioner was notin possession of any documents in relation to those articles. The petitioner has referred to the various clauses of the Manual relating to control of business of outgoing agencies. An out-agency is an office opened in place situated away from the railway station, in order to facilitate the booking of traffic directly to or/from such places in conjunction with the railway over which such traffic is to be carried. The booking has to be from the out-agency. As such the goods which otherwise are not covered by the R.R. and have no documentation to support the same, cannot be stated to be excluded from the operation of the Act

5. I find no merit in this case, Consequently, the writ petition is dismissed leaving the parties to bear their own costs.

