

(2005) 05 CAL CK 0048
In the Calcutta High Court
Case No : W.P.T.T. No. 12 of 2004

Palriwal Hydrocarbons and Chemicals Private Limited and
Another

APPELLANT

Vs

Assistant Commissioner, Commercial Taxes, Kharagpur Range
and Others

RESPONDENT

Date of Decision : 20-05-2005

Acts Referred:

Constitution of India, 1950 — Article 226
West Bengal Sales Tax Act, 1994 — Section 68, 70
West Bengal Sales Tax Rules, 1995 — Rule 210, 210(1), 210(2), 211, 212
West Bengal Taxation Tribunal Act, 1987 — Section 8

Citation : (2005) 142 STC 336

Hon'ble Judges : S.P. Talukdar, J;Aloke Chakrabarti, J

Bench : Division Bench

Advocate : Chakraborty, for the Appellant;

Final Decision : Dismissed

Judgement

S.P. Talukdar, J.—The present application under Article 226 of the Constitution is directed against the order dated September 21, 2004 passed by the West Bengal Taxation Tribunal, hereinafter referred to as "the Tribunal", in R.N. 384 of 2004.

2. The grievance of the petitioner may briefly be stated as follows:

The petitioner No. 1 is a company within the meaning of the Companies Act, 1956. The said petitioner purchased two Tata Diesel Vehicles under two invoices, both dated August 10, 2004, at a price of Rs. 9,76,456 each. M/s. Citicorp Finance (India) Ltd. was the financier for the purchase of the said two vehicles. The said two vehicles were delivered by delivery challans, both dated August 10, 2004 and two sales certificates, both dated August 10, 2004 by M/s. Mithila Motors Ltd. Temporary certificate of registration was granted in respect of the said two vehicles as required under the Motor Vehicles Act. The petitioners fixed two second hand tankers on the said two vehicles for using the same for

transporting goods. This was followed by permanent registration with the Motor Vehicle Authority of Jharkhand. Two permanent registration Nos. JH-01J/0934 and JH-01J/0933 were allotted to the said two vehicles. Certificates of fitness were also issued for temporary period from August 28, 2004 to August 27, 2005. Temporary permits were issued in respect of the said two vehicles for plying within the State of Jharkhand for the period from September 2, 2004 to December 30, 2004. Another temporary permit was subsequently issued for plying the vehicles from Ranchi to Calcutta for the period from September 5, 2004 to October 2, 2004. Temporary tax tokens were also issued. The said two tankers were insured with the United India Assurance Co. Ltd. The financier issued two separate letters, both dated August 11, 2004, to the petitioner No. 1 giving details for repayment of the loan amount in respect of purchase of the said two vehicles. Within a short time the tankers were found to be defective having leakages. Those were, thus, required to be replaced.

3. On September 9, 2004 the said two trucks reached Kharagpur Range Office. The respondent No. 2, being Commercial Tax Officer, intercepted the said two trucks and directed the drivers to produce documents for bringing the said two trucks within the State of West Bengal. The drivers produced permanent registration certificates. It was submitted before the State authority that the trucks, being permanently registered, no way-bill is required for entering into the State of West Bengal. But by order dated September 9, 2004 the said respondent seized the two trucks alleging that the tankers have been removed though the trucks have been registered as tankers and there is no way-bills in respect of the said two vehicles. The respondent No. 2, in absence of any endorsed waybill, was of the view that the drivers had mala fide intention to evade payment of tax. After seizure, two seizure receipts were given to the drivers of the said two vehicles. Being aggrieved with such seizure, applications u/s 8 of the West Bengal Taxation Tribunal Act was filed before the Tribunal. The matter came up for hearing before the Tribunal on September 9, 2004. The Tribunal held that the seizure of the two vehicles is lawful and directed that the penalty proceeding arising out of such seizure may proceed and the authority concerned had been directed to pass a reasoned order in respect of the same.

4. Being aggrieved by the said order, the petitioners have preferred the instant application. Heard learned counsel appearing for the petitioners, who referring to Section 68 of the West Bengal Sales Tax Act, 1994 submitted that Section 68 was introduced to ensure that there is no evasion of tax. In the present case, the seized vehicles were permanently registered as tanker and those were purchased on August 10, 2004. Those vehicles were brought to West Bengal for fixing tanker on the same. He has submitted that the said vehicles having been permanently registered in the name of petitioner No. 1, it would be second hand trucks in case those are to be sold again. According to him, no person by purchasing a vehicle in the month of August can sell the same at a lower price by making loss within one month. It has been contended that in absence of any remote question of evasion of tax, Section 68 of the 1994 Act could not have any

manner of applicability. Mr. Chakraborty, learned counsel appearing for the petitioners, has further submitted that the seizure made u/s 70 of the 1994 Act is, thus, bad in law.

5. Mr. Chakraborty has also submitted that authority concerned cannot be "justified to ask for any way-bill in respect of a permanently registered vehicle for entering into the State of West Bengal. He sought to explain the circumstances by pointing out that if any person enters into West Bengal with his own registered vehicle, he does not have any need to obtain a way-bill. Similarly no such way-bill could be demanded in respect of the two vehicles in question. It has also been pointed out that both the vehicles were hypothecated to the financier and as such, there could be little scope for evasion of tax in respect of the same.

6. On the other hand, the learned counsel for the State authorities has submitted that the vehicles in question are two chassis without any tanker fitted on it. The learned counsel for the State authorities has drawn attention of the Court to the documents referred to by the petitioners and has sought to assail each one of them. It is the categorical assertions of the learned counsel for the State authorities that the vehicles in question, which are chassis, are goods within the meaning of the 1994 Act and as such, for entry of the same within the State of West Bengal, there was need for production of way-bill and in absence of such way-bill, the authority concerned is justified in seizing the same.

7. After hearing the learned counsel for the parties and taking into consideration the relevant facts and materials it appears that two chassis were purchased at Jharkhand and were being brought to the State of West Bengal with valid temporary route permit. The learned counsel Mr. Chakraborty has referred to various supporting documents like registration certificates, insurance certificates, etc. It is his clear stand that entry of chassis, in the backdrop of the facts and circumstances of the present case, cannot require way-bill and so, question of production of the same could not have arisen. He adds that it is preposterous to think that whenever a private car enters within the State, irrespective of the fact that it is for personal use and even if it is duly registered, will require such way-bill. On the other hand, as indicated earlier, it is the emphatic assertion on behalf of the State authorities that "chassis" is included within the definition of "goods". The learned counsel for the State authorities has contended that copies of documents sought to have been relied upon by the petitioners would reveal that within a few days of purchase, those were being brought to the State of West Bengal, thereby giving rise to reasonable apprehension that those were being brought for the purpose of sale.

8. Rule 210 of the West Bengal Sales Tax Rules, 1995 deals with restriction on transport of any consignment of goods despatched from any place outside West Bengal. The Explanation to the said rule provides that "for the purpose of Sub-rule (1) "goods" shall mean goods (other than those goods sales of which are tax-free u/s 24) and raw jute, specified in Schedule I, purchases of which are

liable to tax u/s 12". Sub-rule (2) of Rule 210 clearly indicates that the provisions of Rule 211, 212 or 213 shall not apply to a consignment of goods, where such consignment of goods being transported by any person or on his account in his personal effects. Sub-rule (6) of Rule 212 authorises the Assistant Commissioner or the Commercial Tax Officer to seize the consignment goods u/s 70 of course, after recording reason, if the driver or the person-in-charge of the vehicle fails to present duly endorsed waybill along with other document referred to in Sub-rule (7). The law also authorises the Commercial Tax Officer as well as other superior authorities to verify the correctness of the way bill and other documents relating to the consignment of goods being transported in respect of description, quantity, weight or value of such consignment goods.

9. Thus, after due consideration of all the relevant aspects it transpires that law certainly empowers the authorities, being the Assistant Commissioner, Commercial Tax or the Commercial Tax Officer and others to intercept a vehicle and demand necessary documents as there is essential statutory requirement of production of way-bill upon entry within the State of West Bengal. Personal effects, of course, may stand on different footing. It cannot be denied that the drivers of the vehicles in question on being asked after the interception could not produce any valid document. There can be no escape and when such failure results in initiation of proceeding, it cannot be grudged.

10. The facts and materials of the present case when analysed in the context of the aforesaid legal position clearly reveal that the two chassis in question, which were seized after being intercepted when entering within the State of West Bengal, were not having any way-bill and the failure on the part of the drivers to produce such way-bills when demanded, inevitably resulted in seizure of the said vehicles and initiation of penalty proceeding.

11. The learned Tribunal seems to be perfectly justified in passing the impugned order, which, in our view, does not suffer from any infirmity justifying any interference.

12. It may be mentioned that the Tribunal while disposing of the matter gave the liberty to the petitioners to pray for reduction in the amount of penalty. No further grievance has been ventilated before us in this context.

13. Accordingly, the present application being W.P.T.T. No. 12 of 2004 be dismissed on contest. Impugned order dated September 21, 2004 passed by the Tribunal in R.N. 385 of 2004 stands affirmed. In the nature and background of this case, there is no order as to costs.

14. Xerox certified copy, if applied for, be given to the parties on priority basis, of course, after due compliance with the necessary formalities.

Aloke Chakrabarti, J.

15. I agree.