(1997) 04 AP CK 0069

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6846 of 1997

Patel Angadia and Co. APPELLANT

Vs

Asst. Commercial Tax Officer and Another RESPONDENT

Date of Decision : 22-04-1997

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 27, 29B
Andhra Pradesh General Sales Tax Rules, 1957 — Rule 46A(1)

Citation : (1997) 3 ALD 682 : (1997) 3 ALT 353

Hon'ble Judges : V. Bhaskara Rao, J;Lingaraja Rath, J

Bench : Division Bench

Advocate : S. Ravi, for the Appellant; Special Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Lingaraja Rath, J.—The petitioner has come before this Court assailing the detention order passed by the Assistant Commercial Tax Officer, Integrated Check Post, Purushottampuram, Srikakulam District. It is the case of the petitioner that one M.M. Exports, Calcutta had entrusted the goods to the petitioner which is a Carrier for transporting the goods to Karnataka. The petitioner arranged the lorry and despatched the goods with documents showing itself as Consignor and also as the Consignee. The goods travelled through the States of Orissa wherein Way Bill had also been issued in form 32 on 15-3-1997. The vehicle on being checked at Purushottampuram check gate was detained by the learned Officer. It is the submission of Mr. S. Ravi, learned Counsel for the petitioner that the detention is unauthorised and beyond the powers of the Checking Officer under the provisions of the Sales Tax Act and the Rules. The learned Special Government Pleader for Taxes submits of the detention being proper as the lorry driver could not produce any document of the goods having been handed over by M.M. Exports to the petitioner for transport.

2. Section 27 of the A.P.G.S.T. Act requires the owner or other person in-charge

of a goods vehicle to carry with him (i) bill of sale or delivery note; (ii) goods vehicle record or trip sheet, and (iii) such other documents as may be prescribed. Section 29-B of the Act requires the driver of a vehicle, which comes from any place outside the State and bound to any place outside the State, to obtain a transit pass from the Officer-in-charge of the first check-post or barrier after his entry into the State of Andhra Pradesh and deliver it to the Officer-in-charge of the last check-post or barrier before his exit from the State, failing which it shall be presumed that the goods carried had been sold within the State. Rule 46-A (1) is the relevant Rule which stipulates that to enable to obtain a transit pass u/s 29-B, the person in-charge of the goods vehicle is to submit a declaration in Form XXXIII-A to the Officer-in-charge of the first check-post and shall also furnish if so required, any other information that may be relevant and necessary. The office-in-charge after examining the documents and after making such enquiries as he deems necessary, has to make out a transit pass in form XXXIII-B in triplicate and issue the original and duplicate thereof duly signed by him to the driver or the person-in-charge of the goods vehicle. Form XXXIII-A in its annexure, stipulates the owner or driver of the vehicle to give intimation regarding the description of the goods, quantity etc. The detention order passed by the respondent No. 1 shows the driver to have produced before him (i) Road challan dated 14-3-1997 prepared on letter head of M.M Exports, Calcutta; (ii) form XXXII-F form of Way bill bearing No. A83 5947, dated 15-3-1997 issued under the Orissa Sales Tax Act; (iii) Challan No. 1, dated 14-3-1997 of Shree Karnataka Transport Company, Calcutta; (iv) Consignment Note 15510, dt. 14-3-1997 of the above transport; (v) Lorry Challan bearing No. 1, dated 14-3-1997 of Patel Angadia Company, Bangalore i.e., the petitioner.

3. The objection taken by the learned Government Pleader is that the documents handed over by the driver of the vehicle do not contain any document to show that the goods had been delivered by M.M. Exports to the petitioner for transport from Calcutta to Karnataka for which reason the respondent No. 1 detained the goods.

4. The provisions of Section 27, 29-B and Rule 46-A (1) are only to safeguard the interests of the State so far as evasion of Sales-tax is concerned. There is a Constitutional guarantee of inter-State trade with free movement of the goods between State to State. The authority of the State is to check the transport of goods while they are inside the State so as to assure itself that no attempt is made for clandestine sale inside the State and tax is avoided . Once there is no scope for doubt that the goods are in fact being transported from outside the State to outside the State, there would not be any jurisdiction in the Office of the State to detain the goods. Of course if there is a reasonable doubt entertained that the transport is actually camouflaged affair so as to evade payment of tax inside the State, the Officer would be duty bound to detain the vehicle. However the doubt to be entertained must be a reasonable doubt relatable to the concrete facts. Form XXXIII-A nowhere says either in its text or in its annexures that the party who delivers the goods to the carrier must be disclosed or that a delivery

note by such party must be an accompanying document. The learned Govt. Pleader submits that as per Serial No. 7 of the annexures to the Form XXXIII-A, delivery note is necessary to be enclosed for obtaining transit pass. In the detention order, the consignor is shown as Patel Angadia & Company, Calcutta and the consignee is shown as Patel Angadia & Company, Bangalore. The learned Counsel for the petitioner submits that there is no particular form of delivery note and when the name of the consignor and consignee are disclosed that itself forms the delivery note. There is in fact a note in the Letter-head of M.M. Exports as Road Challan for 29 Bales 20/22 raw silk china weighing 1740 Kgs., saying that the goods are meant for export weaving and not for local sale. But it is the objection of the learned Government Pleader that though the road challan is written in the letter-head of M.M. Exports, Calcutta, yet it is only written in hand that the signature is not identifiable and hence it does not appear to be a genuine document. Whether the document is to be relied upon or not is not a matter which we think is relevant as other documents covering the transport are clearly available. The lorry challan bearing No. 1 dated 14-3-1997 was issued by the Patel Angadia Company showing itself as consignor as also the consignee, lorry number, receipt numbers, description of the goods, number of packages, weight in Kgs. This document has been checked at the check gate at Balasore in Orissa State. the consignment note dated 14-3-1997 has already been referred to by us earlier. The lorry challan No. 1, dt. 14-3-1997 of Karnataka Transport Company shows that the goods are to be delivered at Patel Angadia Company at Bangalore and it was also signed by the Officer. Further the way bill issued by the Orissa Sales Tax authorities under Form XXXII was also produced. In view of such documents, there could not be any doubt properly raised. There were overwhelming documents that the goods are in fact to be transported from Calcutta to Bangalore.

5. In this view of the facts, we are of the opinion that the detention was done without authority. It is hence quashed. The respondent No. 1 is directed to release the goods and issue transit pass within a week, for passage of the goods to its destination. The writ petition is accordingly allowed.

