(1995) 05 RAJ CK 0047

In the Rajasthan High Court

Case No : CWrit Petition No''s. 4523 and 4935 of 1994 and 13 of 1995

Rajdhani Express and Transport Co. and Others — APPELLANT

Vs

State of Raj. and Others — RESPONDENT

Date of Decision : 04-05-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 193

Citation : (1996) WLC 517 : (1995) 2 WLN 242

Hon'ble Judges : N.K. Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.K. Jain, J.—Since all the writ petitions raise a common question of law and fact they are being disposed of by this common order. Brief facts of said writ petitions are as follows:

S.B. Writ Petition No. 13/95.

2. By this writ petition, the petitioner seeks a direction to be issued to the respondent no. 2 to release the vehicle no. RJ-14-G-1588 along with the goods and documents seized on 28.12.1994 and prays that the respondent no. 2 be directed not to impose any penalty under Section. 22A(7) of the Rajasthan Sales Tax Act and quash such penalty order if passed during the pendency of the writ petition. It has also been prayed that may be held that the respondents are not entailed to intercept and seize the vehicle and goods which are merely passing through the State of Rajasthan and guidelines may be laid down for the authorities of the Commercial Taxes Department for exercise of their powers u/s 22A of the Rajasthan Sales Tax Act.

3. The petitioner''s case is that on 28.12.1994 when the truck No. RJ-14-G-1588 of the petitioner was coming from Delhi on its way to Bombay, the respondent no. 2 intercepted the said truck at Sahjhanpur check-post and seized the vehicle

along with the goods vide Anx. 1 dt. 28112.1994 which is lying at Kar Bhawan, Jaipur. It his alleged that the said truck was merely passing through the State of Rajasthan on its way to Bombay and all the goods except 270 Kgs. under one of the challans out of two was to be unloaded at Jaipur. The petitioner has been served with a notice dt. 28.12.1994 (Anx. 3), and reply to the notice has also been filed vide Anx. 4. Being aggrieved with the seizure of the vehicle along with the goods, the petitioner has approached this Court under Article 226.

4. Reply has been filed on behalf of the respondents along with documents Ex. R-1 to R-22 stating that at the time of checking the Driver Ashok Kumar who is incharge of the vehicle and goods was having challan no. 1682 dt. 27.12.1994 of M/s. Rajdhani Express Transport Co. Jaipur showing the transportation of goods from Delhi to Jaipur and was also having three goods receipt showing the names of the consignors and consignees of Delhi and Jaipur respectively. It has been stated that the Driver was also having challan no. 1681 dt. 27.12.1994 of M/s. Rajdhani Express Transport Co. Jaipur showing the transportation of goods from Delhi to Bombay showing the names of the consignors and consignees of Delhi and Bombay respectively and was having sales voucher /bills of the sellers. It has been stated that the writ petition is not maintainable on the ground that the goods were transported on the basis of false and bogus documents and that the petitioner has misstated the facts. It has also been stated that the petitioner is using his transport business for evasion.of the sales tax which is prima facie apparent from the documents produced with the reply.

S.B.C.W. Petition No. 4935/94

5. This writ petition has been filed by Om Prakash, Driver of Vehicle No. RJ-14-G/1588 and M/s. Rajdhani Express for issuing a direction to the respondent no. 2 to release the tuck No. RJ-14-G/1588 along with goods loaded therein. It has been prayed that the respondent no. 2 be restrained from passing any penalty order u/s 22A(7) of the Act against the petitioners.

The petitioners case is that while their truck No. RJ-14-G/1588 was coming from Delhi on its way to Hyderabad, the respondent no. 2 intercepted it near the Vishva Karma Industrial Area, Jaipur on 21.9.94 and seized the said vehicle and goods. It is alleged that out of 8 bilties, four bilties were meant for Jaipur.

6. On 19.10.94, this Court while directing Mr. Mehta to accept notice ordered to release the goods and the truck on furnishing the solvent security.

7. The respondents filed reply along with the documents Anx. R-1 to R-25 stating that no indulgence should be granted rather the petitioner should be punished for cheating and fabricating forged documents and for concealing material facts. It has been stated that the petitioners also filed writ petition no. 4914/94, 4915/94 as also S.B.C.W. Petition No. 4372/94 at Jaipur Bench which has been dismissed on 10.8.94 Vide Ex. R. 24. The petitioner has now approached this Court. The respondents have denied the allegation of the petitioner regarding entry of documents at Shahjahanpur Check Post. It has also been stated that the

authorities of Hyderabad have denied the registration of the parties as alleged by the petitioner vide Ex. R-17. It has been further stated that the material furnished is insufficient and all the particulars of the parties viz. address etc. are not mentioned, rather carrying on its business on bogus and fictitious documents to evade tax and under the circumstances after giving opportunity penalty order Ex. R-25 has rightly been passed by the respondents.

S.B.C.W. Petition No. 4600/94

8. By this writ petition, the petitioner seeks to quash Anxs. 2 to 6 and prays that it may be held that the provisions of Section 22A(7) of the Rajasthan Sales Tax Act are not attracted. It has also been prayed that the truck No. RJ-14-G-1601 may be ordered to be released along with goods.

9. As alleged by the petitioner its truck No. RJ-14-G-1601 intercepted at Shahjahanpur Check Post on 6.8.94 and truck with goods were seized. It is alleged that some of the bilties were to be unloaded and delivered to various consignees of Jaipur.

10. The respondents have filed reply along with the documents Ex.R-1 to R-ll. It has been stated that the petitioner did not furnish solvent security before 12.10.94 and ultimately the goods and truck were released in compliance of the order of this Court on 28.10.94 but original documents were not furnished. It has been stated that the authorities of Hyderabad have informed vide Ex.R-9 that the dealers mentioned by the petitioner are not registered there. It has been stated that the petitioner also filed writ petition wherein the detention of the goods were challenged but the same was dismissed vide order dt. 10.8.94. It has been further stated that the petitioner should be prosecuted under Section. 193 Cr.P.C. The respondents have also stated that after a detailed enquiry penalty order has been passed and under the facts of given case, the respondents are entitled to impose penalty.

11. Mr. Kothari, learned Counsel for the petitioners has mainly contended that while the goods are in transit the sales tax authorities can only check the documents but no sales tax or penalty can be levied unless a taxable sale takes place within the State of Rajasthan. He has also contended that guidelines may be issued so that the authorities may not harass the transporters in the garb of Section 22 A(7) of the Rajasthan sales Tax Act, who has nothing to do with the sale. He has relied on M/s Chawla Highway Carriers v. State S.B.C.W. Petition No. 4022/94 decided on 25.8.1994.

12. Mr. Mehta, learned Counsel for the respondents has submitted that the authorities of the Department has suspicion and reason to believe about the evasion of tax by the petitioner as on enquiry from the concerning authorities of Delhi and Bombay about the dealers mentioned in the bilties and bills submitted by the driver of the petitioner, it has come to the notice that none of the dealers is registered with Delhi Sales Tax Department or Bombay Sales Tax Department or with Hyderabad authorities which is clear from the documents placed on

record. He has submitted that the documents furnished by the petitioner are not proper and without address rather the petitioner is conducting business in the garb of bogus and fake parties. He has also submitted that the petitioner is a habitual tax evader. Mr. Mehta has contended that one of its matter has already been dismissed by the Jaipur Bench and now the petitioner has filed writ petition at Jodhpur. He has further submitted that this Court should not grant any indulgence to such tax evaders. According to him the writ petitions should be dismissed as they suffer from the vice of misstatement of facts, concealment of material facts and further there is alternative remedy available to the petitioners which can be availed. He has relied on M/s. Gaurav Saurabh Enterprises v. State S.B.C.W.Pet. No 102/95 decided on 23.2.95, M/s. Mohta Road Carrier, Delhi v. State STI 1995 Raj. H.C.-1 and M/s. Maruti Agency, Sumerpur v. ACTO S.B.C.W. Pet. No. 4916/94 decided on 13.2.95.

13. I have heard learned Counsel for the parties and perused the material on record as well as the case law cited at Bar and the provisions of law.

14. Undoubtedly, while the goods are in transit penalty is not leviable if the same is only passes through the State but the authorities are competent to investigate and examine the documents at any time particularly at check post to see the genuineness of the documents so as to ensure that there is no evasion of tax. If the authorities are satisfied that the documents are genuine disclosing sufficient information regarding consignee and consignor and the goods are not to be sold within the State, one should not be harassed by the authorities unless there is definite information with reason to belive that the goods are likely to de delivered/sold with in the State, and false documents are prepared to evade the tax, so as to avoid the tax liability then, the authorities can certainly probe into the matter u/s 22A(7) of the Rajasthan Sales Tax Act after giving opportunity, to the Driver/Carrier so also to the consignee and consignor.

15. The petitioner is only a transporter as alleged by him and his duty is just to deliver the goods to the consignee, if the petitioner satisfies the authorities about the correct identity of the consignee and consignor, he is not liable to face any penal action, otherwise the respondents can proceed against such transporte. In the instant case, the respondents have specifically come out with a case that the documents Ex. R-1 to R-17 in C.W. Pet. No. 13/95, R-1 to R-25 filed along with the S.B.C.W.Pet. No. 4935/94 and Ex. R-1 to R-11 filed in W. Petition No. 4523/94 clearly show that all the documents of the petitioner Transport Company i.e. goods receipts etc. appear to be false find bogus and the goods in question are being carried or transported with false declaration. Since, the petitioners have not been able to establish identity of the consignee and consignor prima facie rather on enquiry from the concerning Department of the other state on the basis of registration number furnished by the petitioners of the consignee, it has been informed that no such certificate has been issued to the concerned dealers mentioned by the petitioner under the Central Sales Tax Act. It was also mentioned that full report can be furnished on getting full addresses and place of

business of the concerned persons. The petitioner cannot take advantage that they have asked to probe into the matter on receiving information which admittedly has not been supplied by the petitioner. Therefore it can''t be said that the respondents have seized the vehicle along with goods only with a view to harass petitioner at this stage. The petitioner being a transport Company owner is supposed to have knowledge of the person who has consigned the goods or where it is to be delivered. On seizure if the sales tax authorities are not satisfied about the genuineness he could have informed the consignee or consignor to get the goods released showing the genuineness of the documents. In case the sales tax authorities are satisfied about the bonafide accountability of the goods, they will pass appropriate order as provided under the Rajasthan Sales Tax Act. Having given my earnest consideration to the rival contentions of the learned Counsel for the parties and having gone through the material on record, I am of the opinion that no case for interference in the extra ordinary jurisdiction of this Court under Article 226 of the Constitution, is made out. Under the facts of the given case, the petitioner cannot take advantage of Single Bench decision of this Court rendered in M/s. Chawla High Way Carriers v. State S.B.C.W.Petition No. 4022/94 decided on 25.8.94 and further a general direction to release goods and to issue a circular to all officers-incharge, Sales-tax Outposts of Rajasthan to act in such situation, given in said M/s. Chawla High Way''s case has been set aside by a Division Bench of this Court in Sate v. M/s. Chawala High way Carriers D.B.C.Special Appeal No. 743/94 decided on 6.1.1995 holding that the authorities will proceed according to law and rules on the subject.

16. It has been contended that the respondents have initiated proceedings u/s 22A(7) against the petitioner with malafides and the provisions of Section 22A(7)are not attracted. Mr. Mehta has emphatically refuted the submission stating that the action has been taken against the petitioner as he has failed to furnish relevant informations and particulars about the consignee and consignor rather on enquiry it has been found that the names registration number furnished by the petitioners are not correct but fake and bogus and, therefore, they cannot allege malafides for the fault committed by them. In view of this, the argument that Section 22A(7) cannot be attracted and the allegation of malafides is baseless.

17. So far as the contention of Mr. Kothari that the authorities can only regulate the movement of goods to the extent of verification of the fact that the goods are actually gone out of the State or not so that chances of possibility of evasion of tax by the transport consignor are ruled out, is concerned, the same has not been disputed but in the instant case the petitioner has not been able to establish the identity of the consignee and consignor as already stated and, therefore, he cannot take any advantage out of it.

18. Counsel for the petitioner has further contended that the burden lies on the respondents to establish that a taxable sale has taken place and till then no sales tax can be levied for which there cannot be any dispute but this stage comes

after the transporter/ petitioners establish the identity of the consignee and consignor and thereafter if the respondents intend to levy sales tax then of course sales tax authorities will have to prove that a taxable sale has taken place within the state of Rajasthan. As stated above, the petitioner who are alleged to be transporter has not been able to prima facie perform his part of duty, therefore, the contention of Mr. Kothari is of no avail at this stage.

19. Mr. Mehta has tiled to show the conduct of the petitioner by producing orders passed by the Jaipur Bench in the matters of the petitioner dismissing its claim as also the orders of the Rajasthan Sales Tax Tribunal and submitted that the petitioner is a habitual tax evader and rather conducting business on fake and bogus documents. He has also submitted that the petitioner in the garb of transport business carrying on the business of goods without paying any tax which finds support from the fact that the petitioner who is only transporter not only got released the vehicles under the orders of this Court but also got the goods released on number of occasions with which it cannot have any concern and the only concerned patties might be the consignee or consignor but none of such party has come forward to claim the goods which is sufficient and justify the penalty orders, therefore,no interference is called for in these matters. Though each case depends upon the facts of its own and this Court while exercising writ jurisdiction generally does not go into these allegations. However, it may be stated that when the vehicle as well as the goods have been released, nothing survives in these writ petitions particularly when there exists a statutory alternative remedy and the petitioner for redressal of grievance after passing of the order u/s 22A(7) can avail the remedy of appeal under Section. 13 of the Rajasthan Sales Tax Act. The petitioners were also asked by this Court to produce the list of consignee and consignor which has not been submitted but no enquiry can be made by this Court. However, the respondents while proceedings in the matter will consider these documents also, so also the claim of such genuine persons at appropriate stage.

20. No other point has been pressed before me.

21. Before parting with the case it may be mentioned that while complying with the provisions, the persons and officers of the Department will see that the transporter should not unnecessarily be harassed while passing through the vehicle within their jurisdiction if they have required documents according to law as they are simply carriers but at the same time transporter who has nothing to do with the goods should also ensure that the accompanied challan papers, bills and documents contain full particulars with addresses and respective sales tax numbers of the parties in strict compliance of the rules and if the authorities have any suspicion about the genuineness of the documents, they can enquire from the respective concerned person as per rules within a reasonable time so that unnecessary harassment and undue liability of the transporter of payment of penalty may be avoided otherwise may impose penalty as per law. At the same time persons who are really indulging in such activities of evading tax by way of

fake and bogus documents should be taken to task according to law.

22. As already discussed, no relief can be granted in all the three writ petitions. Thee writ petitions are dismissed with cost of Rs. 1000/-cach. A copy of this order be placed in each file.