(1957) 03 AHC CK 0021

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 748 of 1957

Rama Transport Co. (Private) Ltd. APPELLANT

Vs

State of Uttar Pradesh and Others RESPONDENT

Date of Decision : 07-03-1957

Acts Referred:

Constitution of India, 1950 — Article 14, 304
Uttar Pradesh Sales Tax Act, 1948 — Section 14, 28, 28(1)
Uttar Pradesh Sales Tax Rules, 1948 — Rule 83

Citation : AIR 1957 All 448 : (1957) 8 STC 725

Hon'ble Judges : M.L. Chaturvedi, J

Bench : Single Bench

Advocate : S.N. Kacker, for the Appellant;

Final Decision : Dismissed

Judgement

M.L. Chaturvedi, J.—This is a petition under Article 220 of the Constitution praying for the issue of a writ of certiorari quashing certain Notifications issued by the respondents, and for the issue of a writ of mandamus directing the respondents not to enforce the provisions contained in Section 16 of the U.P. Sales Tax (Amendment) Act XIX of 1956 and also the provisions contained in Rule 83 of the U. P. Sales Tax Rules.

2. The petitioner is a transport company which transports goods for hire between Delhi and certain towns in the State of Uttar Pradesh. While coming from Delhi, its vehicles have to pass in some cases through Ghaziabad in the district of Meerut and in other cases through Kosi Kalan in the district of Mathura. The original Sales Tax Act did not contain any provision for setting of check barriers at places where the vehicles entered the State, of Uttar Pradesh. The State Legislature passed the U. P. Sales Tax (Amendment) Act, 1956, adding Section 28 to the U. P. Sales Tax Act, 1948.

3. Sub-section (1) of Section 28 provides that the State Government may set up and erect, in such manner as may be prescribed, check posts and barriers at any

place in the State with a view to prevent evasion of Sales Tax and other dues payable under this Act. Sub-section (2) then casts a duty on every person transporting such goods to file before an officer a declaration in such form and in such manner as may be prescribed. Subsection (3) authorises the officer concerned to intercept end search any vehicle for the purpose of satisfying himself that the correct declaration under Sub-section (2) has been given. After the enactment of the above section, Rule 83 was added to the Rules and this rule lays down the details for the establishment of the check posts. The petitioner appears to dislike the provisions of the section and the rule. Hence this petition.

4. The first point urged by the learned counsel for the petitioner is that the new section and the rule are void because they are inconsistent with Article 14 of the Constitution. The argument is that no such check posts have been created in respect of the goods transported by the railway company, whereas the check posts have been created in respect of the goods transported otherwise. It is argued that this is an advantage to the railway company over other transport systems and this section is therefore not enforceable,

I do not agree with this contention of the learned counsel because so far as the railways are concerned there is a railway receipt granted, which gives the description of the goods and also mentions the name of the consignor and the consignee. In the case of transport of goods by the railway company it is unthinkable that the railway company may transport more goods than are shown in the receipt. The railway administration is a Public concern and it is run according to the rules framed under the Railways Act, which clearly provide that all the goods transported should be properly weighed and described.

In the case of transport by railways there is no ground for any apprehension that a less quantity of goods will be shown as having been consigned, whereas in the case of private motor transport an apprehension was felt by the Legislature, and it clearly stated in Sub-section (1) of Section 28 that the check posts may be set up with a view to prevent the evasion of sales tax and other dues payable under the Sales Tax Act. I think this is a permissible classification which has been made by the Legislature. The classification is quite a reasonable one and it relates to the object of the enactment. The practices which may be resorted to by private motor and other transports are not thinkable in the case of railways.

5. The next point argued is that the erection of check posts is an interference with interstate trade and is inconsistent with Article 304 of the Constitution. I do not think that this contention has any force either. No check has been imposed on the trade carried on by the petitioner and he can ply his buses for hire in the two states. So far as Section 28 of the U. P. Sales Tax Act is concerned, the only requirement is that he should file a declaration in such form and in such manner as may be prescribed with respect to the goods transported. Under Rule 83 it is provided that a declaration in form No. 17 shall be filled in and signed and this form has to be signed in triplicate.

Learned counsel has handed over to me a copy of the printed form No. 17. A reading of it shows that the carrier or the operator has to fill in the name of the person who has consigned the goods and his registration number and also the name of the consignee and his registration number, the place from where the goods are brought and the place to which it would be carried, the kind of the goods, it quantity, weight, price, the name of the owner, of the goods and the number of the receipt of the goods. The declaration also provides for the filling in of the name of the transport operator and the number of the vehicle, the description of the animal or the carriage by which the goods are carried, the name of the driver and the name also of the person, if any, who is in charge of the goods.

I do not find that there would be any difficulty in filling in a form like this and handing it over at the check post. It is open to the officer incharge of the check post to search the vehicle if he suspects that the form has not been correctly filled in, otherwise the vehicle can pass after handing over the form in triplicate. I do not think that the filling in of a form like this can in any way restrict the business of transport which is being carried on by the petitioner. It has only created a check in a way so as to enable the sales tax authorities to find out whether proper return has been submitted by the purchaser in Uttar Pradesh or not. It cannot be said that filling in a form of this nature imposed any restriction on the business of the petitioner. As such Article 304 of the Constitution has nothing to do with it.

6. The last point argued is that neither Section 28 nor Rule 83 empowers the imposition of fine, in case the section and the rule have not been obeyed by the transport operator; but in the Notification dated October 4, 1956, it has been said that in case of disobedience of the section and the rule fine up to a sum of Rs. 1,000/- may be imposed. The argument of the learned counsel is that this provision of the imposition of fine has been made without any authority in the notification. Here again, I find it difficult to agree with the learned counsel. It is neither Section 28 nor Rule 83 nor the Notification which creates an offence and provides a penalty.

The case really comes u/s 14, Clause (e) of the U. P. Sales Tax Act, which is to the effect that any person who wilfully acts in contravention of any of the provisions of the Act or the rules, framed under this Act, shall on conviction by a magistrate of the first class, be liable to a fine which may extend to Rs. 1,000/-. The above clause has made punishable every contravention of the provisions of the Act and the rules and the Notification of the 4th of October 1956 merely points out that if there is a contravention Of the above provisions, the person contravening would be liable to a sentence of fine which may extend to Rs. 1,000/-. This is exactly what Section 14 of the Act provides and no new offence or punishment has been created by the Notification.

7. I do not see any force in this petition. It is accordingly rejected.

