(2015) 02 TP CK 0032

In the Tripura High Court

Case No : Writ Petition (C) No. 191 of 2014

Reckiti Benckiser (India) Ltd. APPELLANT

Vs

State of Tripura and Others RESPONDENT

Date of Decision : 19-02-2015

Acts Referred:
Tripura Value Added Tax Act, 2004 — Section 67, 67(4)

Citation : (2015) 80 VST 121

Hon'ble Judges : Deepak Gupta, C.J;Utpalendu Bikas Saha, J

Bench : Division Bench

Advocate : R. Jawaharlal and D.J. Saha, for the Appellant; S. Chakraborty, Additional Government Advocate, Advocates for the Respondent

Judgement

Deepak Gupta, C.J—By means of this petition, the petitioner has challenged the action of respondent No. 3, the Superintendent of Taxes, Churaibari, Charge-VII, whereby he seized certain goods of the petitioner on the ground of mis-declaration. The undisputed facts of the case are that the petitioner, Reckitt Benckiser (India) Ltd., is a company incorporated under the Indian Companies Act, 1956 and continues to be a company existing under the Indian Companies Act, 2013. The petitioner-company manufactures a large range of products and one of such products is Dettol Antiseptic Liquid commonly referred to as Dettol. At the outset, we may state that in these proceedings we are not deciding the question whether Dettol Antiseptic Liquid is a drug or a cosmetic and under which entry of the Schedule to the Tripura Value Added Tax Act, 2004 (hereinafter in short, "the TVAT Act") it will flail. That is a question to be decided by the assessing authority.

2. The issue before us is whether respondent No. 3 had any authority to seize the goods in question. The stand of the company is that Dettol Antiseptic Liquid is manufactured either in Mysore (Karnataka) or in Baddi (Himachal Pradesh) and from there such goods are transported to the main warehouse in Guwahati from where supplies are made to the other States in the north-east. The case of the

petitioner is that the goods which are the subject-matter of the invoice had not been sold but were subject-matter of a stock transfer between the warehouse at Guwahati to its branch office at Agartala. It is contended that no sale was involved. We make it clear that we are not deciding this question also in these proceedings.

3. The goods in question were admittedly being transferred along with many other goods in truck No. AS01 T 4717 belonging to one Sri R. Debnath. There was an invoice with the driver of the truck. That invoice shows that a large number of items were being transferred to Agartala in the said truck. All these goods belonged to the petitioner-company. Dettol Antiseptic Liquid was also being transported in the truck.

4. The dispute is whether there was some mis-declaration with regard to the entry in the Schedule under which Dettol Antiseptic Liquid fell and accordingly, the entire consignment of Dettol was seized at the check-post. This seizure has been challenged on the ground that the officer-in-charge of the check-post had no jurisdiction to seize these goods.

5. Section 67 of the TVAT Act deals with the establishment of check-post for inspection of goods in transport and reads as follows :

"67. Establishment of check-posts for inspection of goods in transport.-(1) The Government may, with a view to prevent or check avoidance or evasion of tax, by notification in the official gazette, direct the establishment of the check-post or barrier at such places as may be specified in the notification and every officer who exercises powers and discharges his duties at such check-post by way of inspection of documents produced and goods being moved, shall be in-charge.

(2) The driver or person in-charge of vehicle or carrier of goods in movement shall:--

(a) carry with him the records of the goods including challan, bills of sale or dispatch memos and prescribed declaration form duly filled in and signed by the consignee or transporter of goods carried;

(b) stop the vehicle or carrier at every check-post set up under sub-section (1) or at any other place by an officer authorized by the Commissioner in this behalf;

(c) produce all the documents including the prescribed forms relating to the goods before the officer-in-charge of the check-post or the authorized officer;

(d) give all the information in his possession relating to the goods;

(e) allow the inspection of the goods for search of the vehicle by the officer-in-charge of the check-post or any authorized officer.

(3) Where any goods are in movement within the territory of the State of Tripura, an officer empowered by the State Government in this behalf may stop the vehicle or the carrier or the person carrying such goods, for inspection, at

any place within his jurisdiction and provisions of sub-section (2) shall mutatis mutandis apply.

(4) Where any goods in movement are without documents, or are not supported by documents as referred to in sub-section (2), or documents produced appeared to be false or forged, the officer-in-charge of the check-post or the officer empowered under sub-section (3), may--

(a) direct the driver or the person in-charge of the vehicle or carrier or of the goods not to part with the goods in any manner including by transporting or re-booking, till a verification is done or an enquiry is made, which shall not take more than seven days;

(b) seize the goods for reasons to be recorded in writing and shall give receipt of the goods to the person from whose possession or control they are seized.

(5) The officer-in-charge of the check-post or the officer empowered under sub-section (3), after having given the person in-charge of the goods a reasonable opportunity of being heard and after having held such enquiry as he may deem fit, shall impose for possession or movement of goods, whether seized or not, in violation of the provisions of clause (a) of sub-section (2) or for submission of false or forged documents in addition to tax leviable, a penalty equal to double the amount of tax, or rupees one thousand, whichever is higher.

(6) During the pendency of the proceeding under sub-section (5), if anyone prays for being impleaded as a party to the case on the ground of involvement of his interest therein, the said officer-in-charge or the empowered officer on being satisfied, may permit him to be included as a party to the case; and thereafter, all provisions of this section shall mutatis mutandis apply to him.

(7) The officer-in-charge of the check-post or the officer empowered under sub-section (3) may release the goods to the owner of the goods or to any person duly authorized by such owner on payment of the tax and penalty imposed under sub-section (5).

(8) Where the driver or person in charge of the vehicle or the carrier is found guilty for violation of the provisions of sub-section (2), subject to the provisions of clause (a) of sub-section (4), the officer-in-charge of the check-post or the officer empowered under sub-section (3) may detain such vehicle or carrier and affording an opportunity of being heard to such driver or person in charge of the vehicle or the carrier, may, impose a penalty not exceeding ten thousand rupees.

(9) Where a transporter, while transporting goods, is found to be in collusion with dealer to avoid or evade tax, the officer-in-charge of the check-post or the officer empowered under sub-section (3), shall detain the vehicle or carrier of such transporter and after affording him an opportunity of being heard with prior approval in writing of the Commissioner may confiscate such vehicle or carrier."

6. Sub-section (1) of section 67 empowers the Government to establish check-

posts or barriers at such places as it deems fit to prevent and check the avoidance or evasion of tax. Sub-section (2) provides that the person-in-charge of the vehicle or the carrier of goods must carry with him certain documents which include the challan, bills of sale or dispatch memos, etc. There is no dispute that the documents as required were produced before the officer. Sub-section (3) empowers the officer-in-charge of the check-post to stop any vehicle and inspect the same and therefore, the respondent No. 3 was empowered to stop the vehicle of the petitioner and also check the same to ensure that there was no avoidance of tax.

7. It is sub-section (4) which is most important for our purpose. Sub-section (4) empowers the officer-in-charge of the check-post to either direct the driver or any person in charge of the goods not to part with the goods till verification is done or seize the goods. However, sub-section (4) will come into application only under two circumstances, (i) where no documents are produced and (ii) where the documents on the face of it appear to be false or forged. Thereafter, if the documents are not produced or are false or forged, the officer-in-charge of the check-post after assessing the goods can give a hearing and can assess the tax and penalty.

8. This provision of law has been the subject-matter of a decision by this court in Ruchi Soya Industries Ltd. Vs. State of Tripura and Others, (2015) 78 VST 273 , in CRP No. 76 of 2009 wherein after quoting the provisions of section 67(4), (5), (6) and (7) this court held as follows (pages 279 to 282 in 78 VST) :

"10. A bare perusal of the aforesaid provisions shows that under sub-section (4) of section 67 where the goods are being transported without documents or are not supported by documents specifically mentioned in sub-section (2) then the officer-in-charge of the check-post or the officer empowered can seize the goods. Such officer can also seize the goods even when the documents produced appear to be false or forged. It is obvious that the officer in such a case must give reasons as to why he considers the documents to be false or forged. Under clause (a) of sub-section (4) the officer can direct the driver or the person in-charge of the vehicle not to part with the goods by transporting or re-booking till verification is done and this must be done within seven days. Clause (b) of sub-section (4) gives power to the officer to seize the goods for reasons to be recorded in writing and on such seizure the officer has to give receipt of the goods to the person from whose possession or control they are seized.

11. When we read sub-section (4) carefully the power of seizure is only given when the documents are either not produced or the documents produced appear to be false or forged. Sub-section (5) of section 67 empowers the officer-in-charge of the check-post or the officer specifically empowered in this behalf to impose tax and penalty.

...

16. First we shall deal with the issue as to whether the order of seizure in this

case was proper or not. As discussed earlier the power to seize is granted only when the goods are without documents or are not supported by documents mentioned in sub-section (2) or the officer-in-charge of the check-post is of the view that the documents are false or forged. In the present case the documents were there. Admittedly, the documents were not forged but according to the State, the value of the goods given in the documents was incorrect. The reason given by the officer-in-charge of the check-post is that since the maximum retail price was shown to be Rs. 72 per liter the value of the goods worked out to Rs. 11,52,000 as against Rs. 4,80,000. The officer did not at all consider the fact that the petitioner was the manufacturer of the goods and this was in a sense a case of stock transfer. The goods would have been sold to the stockist, then to the wholesaler and then to the retailer. Each of these would be entitled to some profit. We do not understand how the officer-in-charge of the check-post could say with certainty that the goods were undervalued.

17. The Act empowers the officer to take two actions. The first action is, to direct the driver or person in-charge of the vehicle not to part with the goods, in any manner, till verification is done or an inquiry is made. Therefore, if the officer-in-charge of the check-post has some doubt with regard to the value of the goods, he should preferably follow the first rule. Seizure of the goods is a penal action and normally seizure should only be done where the goods are not accompanied by any document or the documents on the face of it are forged. Where the only difference is with regard to the value of the goods, the officer should not normally seize the goods but should direct the driver or the person in-charge not to sell them till verification of the price is made. In many cases, like the present case, where the registered dealers are transporting the goods, it may not be necessary to seize the goods. The value of the goods can be noted down and the goods can be handed over to the driver or the person-in-charge of the vehicle under a surety bond that after they are taken to the destination they shall be produced before the concerned taxation officer. The seizure of goods should be the last resort and not the first action to be taken by the officer-in-charge of the check-post. In the present case action of seizure was based on no evidence and is totally illegal."

9. In the present case, neither in the order under challenge nor in the reply is it stated that the documents are false or forged. The only allegation is that there is mis-declaration and the petitioner-company has wrongly shown the items to fall under a particular entry which entails less payment of tax and have thus mis-declared the goods with a view to evade taxes. As already held by us earlier, we are not going into the question of assessment as that is an order which the assessing officer must pass after hearing the party. However, we are clearly of the view that the officer-in-charge of the check-post did not have the authority to seize the goods since the documents were produced and he has not even prima facie come to the conclusion that the documents are false or forged.

10. According to the assessing officer there is mis-declaration only with regard to

the entry under which Dettol Antiseptic Liquid falls. He has totally lost sight of the fact that as per the invoice it was a stock transfer and if it is a stock transfer then it would not be amenable to tax and there would be no question of assessing tax at that stage. Assuming for the sake of deciding this case, without holding so, that there is mis-declaration then also respondent No. 3 had no authority to assess the tax. He could have at best sent a communication to the assessing officer of the place where the goods were being sent and raised an issue that these goods should be taxed as falling under A entry and not under B entry.

11. We fail to understand, what is the purpose of seizing the goods, when the petitioner-company is a registered dealer and is not going to run away. At best the driver could have been ordered to keep the goods in a godown and within seven days, as indicated above, a decision could have been taken. In fact, we are doubtful whether even that course could have been followed because this is not a case of no documents or forged documents but only a case, even according to the State, of mis-declaration.

12. The stand taken by the State in the reply, to say the least, is quite amusing. According to the State, because various items having the brand name Dettol have been shown as falling under different classifications there is mis-declaration and they should have all fallen under one classification and not under different classifications.

13. The affidavit in support of the reply has been filed by an officer of the rank of Under Secretary to the Government of Tripura in the Finance Department. In this modern age, where multinationals have proliferated, there are certain brand names which axe applicable to different categories of goods. As far as the present case is concerned, soaps are also sold under the brand name Dettol and antiseptic liquid is also sold under the brand name Dettol. This does not mean that only because the brand name Dettol is used both the goods are to be classified under one entry for the purpose of assessing the tax. If this reasoning of the officer was to be accepted, tomorrow if the petitioner-company starts manufacturing cars and starts selling them under the name of Dettol then would the same duty be charged on the cars also ? Obviously, the answer is No. What tax has to be charged on an item depends on the classification of the item and on the entry in which that item or goods falls, regardless of the brand name which it may have.

14. In view of the above discussion, we are clearly of the view that the seizure was totally illegal. Accordingly, the impugned order is set aside and the State is directed to refund the amount recovered from the petitioner to the petitioner within four weeks from today failing which it shall be liable to pay interest at 12 per cent per annum, from the date of deposit of the amount by the petitioner till the date it is refunded to the petitioner.

15. We however, make it clear that it is open to the Revenue to decide whether

Dettol Antiseptic Liquid has been classified properly by the petitioner or not. However, before doing so the petitioner must be given a hearing in accordance with law and only after hearing, the assessing authority shall decide the question as to under which entry of which schedule of the TVAT Act Dettol Antiseptic Liquid would fall. The petition is disposed of in the aforesaid terms. No costs.