(2004) 11 AHC CK 0174

In the Allahabad High Court

Case No : Trade Tax Revision No. 2444 of 2004

Rohit Roadlines APPELLANT

Vs

Commissioner, Trade Tax RESPONDENT

Date of Decision : 24-11-2004

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1), 301
Uttar Pradesh Trade Tax Act, 1948 — Section 11, 13A, 28A(1), 28B
Uttar Pradesh Trade Tax Rules, 1948 — Rule 87

Citation : (2004) 11 AHC CK 0174

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : Suyash Agrawal and R.R. Agrawal, for the Appellant;

Final Decision : Allowed

Judgement

Rajes Kumar, J.—Present revision u/s 11 of U.P. Trade Tax Act (hereinafter referred to as ''Act'') is directed against the order of Tribunal dated 8.11.2004 arising from the seizure proceeding u/s 13-A.

2. The brief facts of the case are that the applicant is a Transporter and booked 300 bags of Big Cardamom for transportation from Siliguri to Amritsar. The goods were despatched by M/S P. K. Agrawal Siongtam M. Bazar, Sikkim to M/S Shivam Ditta Mal & Company, Amritsar, Punjab. The goods were sold by M/S P. K. Agarawal, Sikkim against 3 invoices nos. 63, 64 both dated 8.9.2004 and 65 dated 9.9.2004 each for 100 bags weighing 5000 Kg. In respect of 3 invoices, 3 builties nos. 35, 36 dated 8.8.2004 and 37 dated 9.9.2004 were prepared for 100 bags each. A manifest despatch No. RR/139 dated 11.9.2004 was also prepared by the transporter for movement of goods from Siliguri to Amritsar through Vehicle no. HR-38-D/3617 and in respect of the aforesaid 300 bags, driver of the Vehicle obtained Transit Pass no. 1198 dated 14.9.2004 from Tamkuhiraj Check Post as required u/s 28-B of the Act. Transit Pass which is Annexure-4 had to be surrendered at Sarsawa Check Post by 21.9.2004. It

appears that the alleged goods have been found unloaded at Kanpur. On the information being received by the Trade Tax Officials, Kanpur on 16.9.2004 that 300 bags were found unloaded at the premises of M/S Prem Roadways T. P. Nagar, Kanpur, an inspection was made by T. T. O., Mobile Squad, Kanpur. The said goods were taken away to the Trade Tax Office and were subsequently seized on the allegation that the goods were unloaded at the Godown with an intent to sell inside the State of U.P. and a seizure order was passed on 17.9.2004 seizing the entire 300 bags. The seizure order is at Annexure 6. The said goods was subsequently released on furnishing of security at Rs. 7,60,000/- in the form of Bank guarantee on 28.9.2004. The release order is Annexure-3. Applicant explained that the goods were unloaded because they have received information that the driver of Truck may likely appropriate the goods before Amritsar. It is contended that the information about the unloading of goods at Kanpur was verbally given to Asstt. Commissioner (Enforcement), Kanpur and by Telegram on 16.9.2004 to Addl. Commissioner. A copy of telegram information and postal receipt no. 470 dated 16.9.2004 are enclosed as Annexure-5. After release of the said goods on 28.9.2004 at 3.30 , it appears that the same goods were again loaded in the same Vehicle no. HR-38-D/7617 and proceeded to Amritsar. When the Vehicle reached at Sarsawa Check Post on 30.9.20094, the Driver of the Vehicle submitted the said Form 34 for necessary endorsement which was refused and a Show-cause-notice was issued on 30.9.2004 which is Annexure-14 to the revision on the ground that .300 bags of Big Cardamom was unloaded at Kanpur which was seized and subsequently released on furnishing of security and M/S Shivam Ditta Mal & Company, Amritsar, Punjab has refused to purchase in writing and without any declaration of transfer, (Patta) at the Entry Check Post, goods in Vehicle were unloaded at Kanpur and as per the statement given by the Driver freight was settled from Siliguri to Kanpur and on this basis, it was inferred that 300 bags of Big Cardamom was obtained from unknown persons without any bill, challan and builty etc. for delivery to unknown Ex-U.P. dealer with a view to evade central sales tax. Applicant filed reply which was not accepted and the seizure order was passed on 2.10.2004 estimating the value of goods at Rs. 20,00,000/- and demanded security of Rs. 8,00,000/- in cash for the release of goods. Application under the proviso of Section 13-A was rejected by the Deputy Commissioner (Enforcement) vide order dated 14.10.2004. Applicant filed appeal before the Tribunal which has been allowed in part. Tribunal affirmed the seizure of goods but reduced the demand of security to 15% of the value of goods.

3. Heard Counsel for the parties.

4. Learned Counsel for the applicant submitted that on the facts and circumstances of the case, seizure of goods is patently illegal. He submitted that the occasion to draw presumption u/s 28-B that the goods have been sold inside the State arises only when Form 34, is being not surrendered at the Check Post. Prior to that stage, no presumption could be drawn and therefore, detention of goods at Kanpur and subsequent seizure of the goods at Sarsawa Check Post are

patently illegal and against the provison of Section 28-B. In support of his contention, he relied upon the decision of Apex Court in the case of, Sodhi Transport Co. and Anr. v. State of U.P. and Anr. reported in 1986 UPTC 721 and in the case of Madhya Bharat Transport Carrier, Gwalior v. Commissioner of Trade Tax reported in 2003 UPTC 1218. Learned Standing Counsel supported (he order of Tribunal.

5. I have perused the order of Tribunal and the authorities below and the documents annexed alongwith the revision. In my opinion, seizure of the goods is patently illegal and erroneous and against the provisions of the Act. Section 28-B leads as follows:-

Section 28-B- Transit of goods by road through the State and issue of authorization for transit of goods-When a vehicle coming from any place outside the State and bound for any other place outside the State and carrying goods referred to in sub Section (1) of Section 28-A, passes through the State, the driver or other person in-charge of such vehicle shall obtain in the prescribed manner an authorization for transit of goods from the officer in-charge of the first check post of barrier after his entry into the State and deliver it to the officer-in-charge of the last check post of barrier before his exit from the Sate, failing which it shall be presumed that the goods carried thereby have been sold within the State by the owner or person-in-charge of the vehicle:

Provided that where the goods carried by such vehicle are, after their entry into the State, transported outside the State by any other vehicle or conveyance, the onus of proving that goods have actually moved out of the State shall be on the owner or person in charge of the vehicle.

Explanation- In a case where a vehicle owned by a person is hired for transportation of goods by some other person, the hirer of the vehicle shall for the purposes of this section, be deemed to be the owner of vehicle.

6. Section 28-B of the Act is a machinery section to check the evasion of tax.

7. It is not a charging section. Every person has a right to move freely and to carry business throughout the territory of India as guaranteed by Articles 19 and 301 of the Constitution of India, State Legislature is competent to make the law for levy of tax on purchases and sales of any goods other than newspaper under Entry 54 of List 11 of the Seventh Schedule of the Constitution of India and as an incidental and ancillary power can also enact machinery provisions to check the evasion of tax. If any person wants to carry the goods from the one place to another place through the State of U.P., in order to ensure that such goods have not been sold inside the State of U. P., the provisions of Section 28-B has been introduced. The validity of Section 28-B of the Act has been challenged before Hon''ble Supreme Court in the case of Sodhi Transport Company and Anr. v. State of U.P. and Anr., reported in 1986 UPTC 712 on the ground that (i) The provisions were outside the scope of Entry 54 of List II of the Seventh Schedule (ii) They infringed freedom of trade, commerce and intercourse guaranteed

under Article 301 of the Constitution of India and (iii) imposed unreasonable restrictions on the freedom of trade guaranteed under Article 19(1)(g) of the Constitution of India. Hon''ble Supreme Court has upheld the validity of the provision. The Apex Court held a follows:-

Para-8 "Now the impugned provisions are just machinery provisions. They do not levy any charge by themselves. They are enacted to ensure that there is no evasion of tax. As already observed, the Act is traceable to Entry 54 in List II of the Seventh Schedule to the Constitution which reads thus: 54. Taxes on the sale or purchase of goods other than news papers subject to the provisions of Entry 92-A of List 1". It is well settled that when the Legislature has the power to make a law with respect to any subject it has all the ancillary and incidental powers to make the law effective.

Pra-9 " The provisions of Section 28-B of the Act and Rule 87 of the Rules which are impugned in these cases as mentioned above are just machinery provisions. They impose no charge on the subject. They are enacted to ensure that a person who has brought the goods inside the Sate of who has made a declaration that the goods are brought into the State for the purpose of carrying them outside the State should actually take them outside the State. If he hands over the transit pass while taking the goods outside the State then there would be no liability at all. It is only when he does not deliver the transit pass at the Exit Check Post as undertaking by him, the question of raising presumption against him would arise. We shall revert to the question of presumption again at a later stage, but it is sufficient to say here that these provisions are enacted to make the law workable and to prevent evasion. Such provisions fall within the ambit land scope of the power to levy the tax itself.

Para-14 " A presumption is not in itself evidence but only makes a prima facie case for party in whose favour it exists. It is a rule concerning evidence. It indicates the person on whom the burden of proof lies. When presumption is conclusive, it obviates the production of any other evidence to dislodge the conclusion to be drawn on proof of certain facts. But when it is rebuttable it only points out the party on whom lies the duty of going forward with evidence on the fact presumed, and when the party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed the purpose of presumption is over. Then the evidence will determine the true nature of the fact to be established. The rules of presumption are deducted from enlightened human knowledge and experience and are drawn from the connecting relation and coincidence of facts and circumstances.

"Para-16- In our opinion a statutory provision which creates a rebuttable presumption as regards the proof of a set of circumstances which would make a transaction liable to tax with the object of preventing evasion of the tax cannot be considered as conferring on the authority concerned the power to levy a tax which the Legislature cannot otherwise levy. A rebuttable presumption which is clearly a rule of evidence has the effect of shifting the burden of proof and it is hard to see how it is unconstitutional when the person concerned has the opportunity to displace the presumption by leading evidence."

8. In the present case, Form 34 no. 1194 dated 14.9.2004 was issued at Tamkuhiraj Check Post for 300 bags each 500 Kg. in all 15000 Kg. When the goods were checked at Kanpur, the entire 300 bags were found, which were seized on an illegal presumption that it may likely to be sold. Subsequently, at the Sarsawa Check Post, driver of the Vehicle submitted Form 34 for endorsement, same 300 bags of big Cardamom were found. Weight mentioned in the Show-cause notice is 14.73 Metric ton. There appears to be little shortage of goods either on account of transit loss or pilferage, but there is no dispute that 300 bags of big Cardamom were found. This establishes that the same goods which were loaded at Siliguri and in respect of which Transit Pass in Form 34 was issued, were available at the Exit Check Post at the time of presentation of Form 34 for endorsement. None of the authorities have made out any case that different goods were found at the Exit Check Post other than the goods which were loaded at Siliguri and in respect of which, transit pass was issued. On the facts and circumstances of the case, I am of the view that prior to the expiry of period for Surrendering the transit pass, it is wholly irrelevant at which place, goods were unloaded and reloaded. Presumption of sale of goods inside the State of U.P. for which, transit pass was issued could only be drawn, if it was found that the Form 34 was not surrendered and not prior to that. On the facts of present case as stated above, situation of presumption of sales inside the State of U. P. had not arisen. Time for surrendering of transit pass, was not expired, inasmuch as, goods were found at the premises of transporter and they were not found sold when the goods were inspected at Kanpur. Presumption of the Trade Tax Officer that goods were unloaded with an intent to sell inside the State of U.P. was merely on surmises and conjectures and without any basis. Trade Tax Authorities have jurisdiction to apply the provision of U.P. Trade Tax Act only in respect of those, goods which are meant for sale inside the State of U. P. and in respect of those, goods which are coming from outside the State of U. P. and going through the State of U. P., for which, transit pass is issued in case Transit Pass is not surrendered at the Exit Check Post. No proceeding can be taken in any of the provisions of the Act in |respect of such goods unless aforesaid situation arises. Therefore, in my view, detention of the goods in transit on an illegal inference that the goods may likely to be sold inside the State of U.P. is unjustified. Seizure of the same goods again at the Exit Check Post even transit pass was submitted for endorsement is also illegal and without jurisdiction. The seizure of goods is a patent case of harassment and illegal action.

9. In the circumstances, revision is allowed with costs of Rs. 5,000/-. Order of Tribunal and seizure order dated 2.10.2004 of 300 bags of big Cardamom are quashed and the authorities are directed to release the goods forthwith without any security and the transit pass may be discharged in accordance to the law.