(1981) 11 AHC CK 0090

In the Allahabad High Court

Case No : Criminal Revision No. 145 of 1981

Roshan Transport and Forwarding Agency APPELLANT

Vs

The Collector and Another RESPONDENT

Date of Decision : 25-11-1981

Acts Referred:

Essential Commodities Act, 1955 — Section 6
Uttar Pradesh Excise Act, 1910 — Section 72, 72(5)

Citation : (1982) 6 ACR 16

Hon'ble Judges : N.N. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.N. Sharma, J.—This revision is directed against the order dated 19-11-1979 by Sri Ram Behari Lal learned Sessions Judge, Kanpur in Criminal Appeal No. 141/M of 1979 by which the appeal was dismissed and the order of Collector, Kanpur dated 20-8-1979 about confiscation of truck No. UPA/4602 u/s 72 of U.P. Excise Act, 1910 was upheld.

2. This revision arose under following circumstances. It appears that the revisionist is a transporter in Kanpur city. He had his office in Bombay also. It was on 21-4-1979 that one consignment of 75 bales of cloth was booked by M/s.

Sidh Gopal Amar Nath, 623 Kishore Building, Bombay for Kanpur in the name of M/s. Kamal Brothers, Kanpur who were the consignees of the aforesaid goods ; 22 drums were also booked as containing solvent oil. At the time of checking by Excise Inspector Sri S.K. Awasthi on Kalpi Road at the Excise Barrier on 21-4-1979 it was detected that the drums contained 4510 litres illicit liquor and 75 bales of cloth; the matter was reported to the Collector, Kanpur by Excise Authorities. The contention put forward on behalf of revisionist was that they never knew that the drums contained illicit liquor. Report of the Excise Inspector discloses that the drum contained rectified spirit which was not an excisable article; this contention was repelled by Collector, Kanpur, who recorded the confiscation order on 20-8-1979. This order was confirmed in Criminal Appeal No. 141/M of 1979 giving rise to this revision.

3. I have heard learned Counsel for parties and perused the record. The main contention put forward on behalf of revisionist before me was that the order of confiscation was illegal. In this connection reliance was placed upon Section 72, Sub-clause (5) of Uttar Pradesh Excise Act, 1910 as below:

(5) (a). No order of confiscation under this section shall be made unless the owner thereof or the person from whom it is seized is given--

(i) a notice in writing informing him of the grounds on which such confiscation is proposed ;

(ii) an opportunity of making a representation in writing within such reasonable time as may be specified in the notice, and

(iii) a reasonable opportunity of being heard in the manner.

4. During arguments in the revision it could not be shown that such notice was issued against the revisionist. It was contended on behalf of the State that since the Petitioner had appeared before the Collector and had filed an objection it would be deemed sufficient compliance of the aforesaid provision. This contention can not be permitted to prevail. The mandate of law can not be ignored and, therefore, the impugned order is vitiated and can not be allowed to stand vide Prem Ratanmal v. Collector, Ganjam reported in 1978 C L. T. 123 = Criminal Law Journal 599. It is correct that in the aforesaid authority a notice to show cause had to be served u/s 6(b) of Essential Commodities Act, 1955; however, that provision is identical with Section 72, Clause 5(a) of the aforesaid Act. A similar point came up for consideration in Laxmi Narain Anand Prakash Vs. Commissioner of Sales Tax, Lucknow, where it was observed:

If the law says that no jurisdiction can be assumed without issue of notice and serving it on the Assessee it can not be circumvented by invoking equitable principle of estoppel and participation of the Assessee. It is not an error in the exercise of jurisdiction but an error which debars the assessing authority from proceeding in the matter.

No authority to the contrary was cited before me on behalf of State.

5. The next contention was that the revisionist never knew about the drums being filled with illicit liquor. Transport receipt showed them to contain solvent oil. The drums were booked from Thana Bombay in sealed up condition and could not have been placed above the bales of cloth, the truck driver was not remiss in the discharge of his duties if he simply placed bales of cloth over the drums as the drums could not have covered the cloth. Under such circumstances learned Appellate Court wrongly fixed revisionist with the knowledge that drums contained illicit liquor. This contention also seems weighty. There is nothing on record to show that revisionist by exercise of due care could have known that the

drums contained liquor and not solvent oil when they were misled by the contents. Booking receipts dated 21-4-79 by which these drums were booked to Kanpur by Sunil Industries are in the name of Krishna Chemicals vide paper No. 16. These receipts could not have described better particulars nor the revisionist could be liable for 3-A. Cr.R. the default; the driver of the truck was not in a position to have peeped in the sealed drums at the time of transport and there is nothing on record to show that he shared criminality in any manner.

6. In the result, this revision is allowed; impugned order is set aside; let the truck be released forthwith in favour of revisionist unless its detention is needed in connection with any other process of law. Bonds executed by the revisionist and his sureties are discharged. Inform the authorities concerned forthwith.

