(2010) 02 CAL CK 0118

In the Calcutta High Court

Case No : W.P.T.T. No. 7 of 2010

R.S. Ispat Limited — APPELLANT

Vs

The Assistant Sales Tax Officer, Phansidewa More Check Post (Under Siliguri Range) and Others — RESPONDENT

Date of Decision : 23-02-2010

Acts Referred:
West Bengal Value Added Tax Act, 2003 — Section 6, 73, 73(1), 74, 76

Citation : (2010) 2 CALLT 503

Hon'ble Judges : Kalidas Mukherjee, J;K.J. Sengupta, J

Bench : Division Bench

Advocate : Debanuj Basu Thakur, for the Appellant;Prasenjit Basu and Ms. Soma Roy Chowdhury, for the Respondent

Judgement

The Judgment of the Court was as follows:

1. This application is against the judgment and order of the learned West Bengal Taxation Tribunal dated 30th July, 2009, by which the petitioner''s action against the interception, search, detention and seizure under the West Bengal Value Added Tax Act, 2003 (hereinafter referred to as the said Act) was rejected.

2. After the goods were intercepted and after examining all the documents, the revenue authorities have detained the goods for an exercise of imposition of penalty, as they are prima facie of the view that there has been a contravention of the provisions of the said Act. However, this proceedings has not come to a logical conclusion as yet, as, before that challenge as aforesaid has been made. The learned Tribunal has not accepted, rather rejected the challenge.

3. The short fact of the case is as follows:

Admittedly, the petitioner has a manufacturing unit for production of TMT Steel Bar at Dankuni. It has also a branch office at Matigarah, Siliguri. According to the petitioner, the goods were lawfully transported from the factory at Dankuni to Siliguri for stocking the same at Siliguri branch office. Thereafter, certain goods were sought to be transported from Siliguri office to the customer of Dhupgachi, South 24-Parganas. While the goods were being transported from Siliguri office to the said place of the customer, the revenue officials intercepted, detained and seized the goods and that is how the proceedings came to be initiated.

4. According to the petitioner, this interception, detention and seizure of the goods is wholly illegal and arbitrary as there exist no good grounds for taking such action. This is the short point which has fallen for consideration of this Court also.

5. Mr. Sumil Chakraborty, learned appearing for the petitioner addressed us yesterday and made elaborate submission. Today his learned junior has finished the submission contending that from the documents it will appear that all material documents were there as required under Rule 107 of the West Bengal Value Added Tax Rules, 2005 (hereinafter referred to as the said Rule) and there was no reason for interception, detention and seizure of the goods. He further submits that if there is any contravention of any other law, this authority cannot take any action under the provisions of the said Act or the said Rule. Learned Tribunal failed to note the aforesaid position.

6. Mr. Prasenjit Basu appearing for the revenue authority submits that the revenue officials in discharge of their duties while intercepting the vehicle with the goods, found that necessary documents viz. consignment note, lony Challan, excise note etc. for transporting the goods from Siliguri to South 24 Parganas were not there. Admittedly, the manufacturing unit of the petitioner situates at Dankuni and how these goods could be transported from Siliguri, is not understood. He submits that the power of interception and seizure has been conferred upon the officials u/s 74 of the said Act, which is set out below.

Section 74: Interception, detention and search of goods, vehicles, load carried by a person and search of warehouse etc-

For the purpose of verifying whether any consignment of goods are being or have been transported in contravention of the provisions of section 73 or section 81, the Commissioner, the Special Commissioner, the Additional Commissioner, or as the case may be, any of such persons appointed under sub-section (1) of section 6 to assist the Commissioner as may be prescribed to exercise the power under this section, may, subject to such restrictions as may be prescribed -

(a) intercept, detain and search at any place referred to in sub-section (1) of section 73, any goods vehicle or any load carried by a person, or

(b) search at any warehouse or at any other place in which, according to his information, such goods so transported in contravention of the provisions of section 73 have been stored, or

(c) intercept, detain and search at any checkpost or any other place referred to in sub-section (2) of section 81, any goods vehicle or any load carried by a person.

He has drawn our attention to section 73 sub-section (1) of the said Act which is necessary to be read along with the aforesaid section. Section 73 sub-section (1) runs as follows:

Section 73(1):

To ensure that there is no evasion of tax, no person shall transport from any railway station steamer station, airport, port, post office or any checkpost set up u/s 83 or from any other place any consignment of goods except in accordance with such restrictions and conditions as may be prescribed.

He elaborates his submission "as may be prescribed" means prescribed by the rules obviously. Then he draws our attention to Rule 107 of the said Rule, framed under the aforesaid Act. The said Rule provides as follows:

Rule 107: Restrictions on, and conditions for, transport of any consignment of goods from one place in West Bengal to any other place in West Bengal.

(1) Every dealer, casual dealer or any other person shall, while transporting any consignment of goods other than those specified in Schedule A but including raw jute by a goods vehicle, or as a load carried by any person, or value exceeding rupees twenty-five thousand despatched from any place in West Bengal to any other place in West Bengal either on his own account or on account of a consignee, make over a forwarding note or challan, in duplicate, along with the Transporter''s copy and an extra copy of tax invoice, or two copies of invoice, or bill, or cash memorandum, as the case may be, issued by selling dealer, to the driver or person in change of the road vehicle who shall present those along with the relevant consignment note before such Assistant Commissioner or Sales Tax officer as the Commissioner may authorise to intercept, detain and search u/s 74 on the way to its destination:

provided that the provision of this rule shall not apply where consignment of gold is transported by, or on account of, a banking company as defined in the banking Regulation Act, 1949 (10 of 1949).

(2) The driver or person in charge of a goods vehicle or person carrying the load, shall, while transporting such consignment of goods in West Bengal and till he. reaches the destination, carry with him the documents referred to in sub-rule (1) and any other document of like nature.

(3) Whenever, a goods vehicle transporting any consignment of goods or a load carried by a person, is intercepted under clause (a) of section 74 at any place, other than a railway station, steamer station, custom station, port, air port or post office, on its way to destination by any authority referred to in sub-rule (1), the deriver or person in charge of the goods vehicle transporting the consignment of goods or the person carrying the load, shall, on demand, present before such authority the documents referred to in sub-rule (1) for verification as to whether such consignment of goods is being transported in contravention of the provisions of section 73 or not.

(4) Where any document is presented in respect of any consignment of goods under sub-rule (3) before the authority referred to in sub-rule (1), such authority shall verify the particulars of consignment of goods disclosed in such documents with the consignment actually being carried and on satisfaction about the correctness of the disclosed particulars upon such verification, allow the vehicle or the person carrying the load, to move with the consignment of goods and retain a copy of such document for office records.

(5) Where it appears to the authority referred to in sub-rule (l) that -

(a) the documents referred to in sub-rule (1) have not been produced by the driver on person in charge of the road vehicle or person carrying the load before him; or

(b) the description, quantity, weight or value of the goods in any consignment is found on verification to be at variance with the description, quantity, weight or value of goods as disclosed in the tax invoice, or invoice or bill, or cash memorandum, or forwarding note, or challan; or

(c) the documents presented in respect of the goods in any consignment is found to be false or incorrect either in respect of the description, quantity, weight or such consignment of goods, or the value thereof; or

(d) in respect of any consignment of goods as shown in the documents produced, either the consignor or the consignee is not in existence at the disclosed place, such authority shall prepare a report in the presence of the deriver or person in charge of the vehicle or the person carrying the load, as the case may be and get such report countersigned by him, or where the driver or person in charge of the vehicle or the person carrying the load is not available for any reason, such authority shall prepare a report in the presence of one witness after explaining to him the contents of the report and get the report countersigned by him and shall, for reasons to be recorded in writing, seize such consignment of goods u/s 76.

7. Thus, it will appear from the aforesaid Rule that if any goods are to be transported from any place of West Bengal to any other place of West Bengal, documents of transportation must be there. Admittedly, no such document of transportation could be found at the time of interception. Indeed before this Court, there is no such document.

8. He then submits that ''reason to believe'' as mentioned in section 74 of the said Act has been explained in the Supreme Court judgment reported in 1994 106 SCC 205 (paragraph 5).

9. We have considered the submission of the learned counsel for the parties and have gone through the materials. The first question to be decided is whether the authority has lawfully intercepted, detained and seized the goods or not. Interception, detention and search of goods is permissible and/or authorised, indeed when the conditions mentioned in section 74 of the said Act are fulfilled.

10. From reading of section 74 of the said Act, it will appear that the officers mentioned therein can intercept the goods when there has been a contravention of provisions of section 73 of the said Act. Section 73 of the said Act provides for prohibition of transportation of goods from one place to another except in accordance with such restriction and conditions, as may be prescribed. Rule 107 of the said expressly provides, as aforesaid, the transportation by any motor vehicle must be done accompanied by, amongst others, forwarding note or challan in duplicate along with transporter''s copy and an extra copy of tax invoice or two copies of invoice, bill, cash memorandum etc.

11. In this case, at the time of interception and before us even, no such document could be produced. Under such circumstances, it cannot be said that interception, and detention of the said goods is illegal or invalid.

12. Next question is whether the seizure is lawful or not. The object of seizure of goods lias been mentioned, which pre-supposes lawful interception and detention and if it is found that interception and detention is lawful and if the officer concerned has reason to believe that any goods are bring transported in contravention of the provisions of section 73 or 81 of the said Act, then the goods may be detained and seized. Meaning of the words ''reason to believe'', according to us, is that a person on the given facts and circumstances of the case forms an opinion that certain state of affairs exists viz. contravention of the provisions of the statute can reasonably be inferred on the materials produced or due to non-production of the materials. This opinion can be formed with the subjective satisfaction of the officer concerned, based on materials.

13. The Supreme Court in the judgment mentioned above, in paragraph 5, has made an exposition of the meaning and connotation of the words "reason to believe". There in it is said that the expression "reason to believe" means that even though formation of opinion is subjective but it must be based on materials on record. It cannot be arbitrary, capricious or whimsical.

14. So, it is necessary for the Court to examine whether there has been any material to form such opinion that the petitioner is alleged to have been committed violation of the aforesaid provisions of law. When the transport challan, invoice and customs materials were not available, obviously a reasonable and prudent man can come to a conclusion that there is likelihood of contravention of provisions of law.

15. Under these circumstances, we are unable to accept the argument of Mr. Chakraborty that interception, detention and seizure of the goods is arbitrary, illegal or invalid or likely to be unauthorised. We hold that on the basis of the aforesaid facts and materials, there cannot be ''second opinion that exercise of power of interception, detention and search is arbitrary.

16. But this is absolutely a tentative and prima facie opinion which can be removed later and a final opinion can be formed by the official concerned on production of documents required under the aforesaid provisions of law. Of

course the documents as required under Rule 107 of the said Rule are lacking now, but this can be explained, either producing documents or giving evidence, if the documents in usual course of business are not available.

17. Therefore; we dispose of this matter allowing the petitioner to produce other documents and materials and cite witness for giving oral evidence so that the entire situation and circumstances can be explained before the first authority. The said authority, without being influenced by the order and observations of the learned Tribunal or of this Court, will, take a fresh decision with regard to imposition of penalty. It is made clear that this Court has only upheld the official exercise of interception, detention, and seizure of the goods and has not expressed any final opinion that there has been any contravention of the aforesaid Act or rules framed thereunder. The said authority shall take a decision with reasons, taking note of the evidence and materials, finally, upon hearing the petitioner and not before that.

18. We are told that the amount of penalty has been deposited and this payment will abide by the decision to be taken by the authority concerned. If it is found that imposition of penalty was not warranted under the law, then the amount so deposited shall be refunded within a week from the date of taking such decision.

19. With the above observations, this application is disposed of. There will be no order as to costs.

20. Xerox certified copy of this order, if applied for, be supplied to the parties.