(2019) 07 JH CK 0171

In the Jharkhand High Court

Case No : Writ Petition (T) No. 4192 Of 2018

Salem Ahmed APPELLANT

Vs

State Of Jharkhand And Ors RESPONDENT

Date of Decision : 09-07-2019

Acts Referred:

Jharkhand Value Added Tax Act, 2005 — Section 72(3), 72(4), 72(6), 72(3)(a)
Jharkhand Value Added Tax Rules, 2006 — Rule 42(2)

Citation : (2019) 07 JH CK 0171

Hon'ble Judges : H.C. Mishra, J;Deepak Roshan, J

Bench : Division Bench

Advocate : Jitendra Kumar Pasari, Atanu Banerjee, Moushmi Chatterjee

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioner and learned counsel for the State.

2. The petitioner is aggrieved by the impugned order dated 15.02.2018, passed by the Commercial Taxes Tribunal, Jharkhand, (hereinafter referred to as the 'Tribunal'), in Revision Petition No. DN 12 of 2017, whereby, the revision filed against the appellate order dated 01.03.2016, passed by the Joint Commissioner (Appeal) Commercial Taxes, Dhanbad, dismissing the appeal filed by the petitioner challenging the penalty imposed upon him, was dismissed by the Tribunal.

3. The facts of this case lie in a short compass. The petitioner who is the driver of a Truck No. HZ 29V-1123, was bringing a consignment of Canopy DG sets from Kolkata to Ranchi. He was having the required road permit in the form 'Sugam G', as prescribed under the Rules, which was issued on 11.01.2016, and was to be valid till 18.01.2016. In the said 'Sugam G' permit, though the other details of the consignment were mentioned, but so far as the Truck / Lorry number was concerned, the same was kept vacant, and the entry point in the State of Jharkhand was shown only as Behragora. Though two points of entry could be

shown in the permit, the 2nd priority point of entry was kept vacant. The said truck was intercepted at Chirkunda check post, which is yet another entry point in the State of Jharkhand from the State of West Bengal, on 13.01.2016 at 9:00 P.M. The Officer who was checking the vehicle, found that there was no mention of truck number in the road permit and the entry point was also different, and mentioning these defects in the road permit, opined that there was an intention of evasion of the tax and accordingly, noticed the petitioner, being the driver of the truck carrying the consignment, to appear before the Commercial Taxes Officer on 18.01.2016. In spite of the said notice, the petitioner did not appear before the Commercial Taxes Officer on 18.01.2016, and accordingly, for the reasons that in the road permit, the truck number was not mentioned and the truck had entered through the different entry point in the State of Jharkhand, it was observed that there was a clear violation of Section 72 (3) (a) of the Jharkhand Value Added Tax Act and Rule 42(2) framed therein. Finding that these omissions were with the intention to evade the tax, the penalty was imposed on the driver. Taking into consideration the value of consignment at Rs.5,40,555/-, the amount of tax was fixed as 75,677.70/- and the amount of penalty was fixed three times the amount of tax, i.e., Rs.2,27,033/-.

4. The petitioner challenged the aforesaid order dated 18.01.2016 before the Appellate Authority, i.e., Joint Commissioner (Appeal) Commercial Taxes, Dhanbad, by filing Appeal Case No. CK CP VAT-07 of 2015-16, and the Appellate Authority, by order dated 01.03.2016, dismissed the appeal filed by the petitioner, confirming the order of the imposition of penalty upon him.

5. Though the petitioner had not appeared before the Commercial Taxes Officer, but in his appeal, the petitioner had taken the ground that all the other particulars were duly filled-in in the road permit and both the consignor and the consignee were registered under the VAT Act, and the required taxes were also paid, as such, no case of any evasion of tax was made out. It was the case of the petitioner before the Appellate Authority, that the required entries were also made in the concerned ledgers of both the consignor and the consignee. The Appellate Authority, however, found that there was difference in the amounts mentioned in the tax invoice and in the form 'Sugam G'. The truck number was not mentioned and even the entry point was different. The Appellate Authority held that this could not be the case of bona fide mistake, rather it was a case of willful evasion of the tax, and accordingly, confirmed the order passed by the Commercial Taxes Officer.

6. Aggrieved thereby, the petitioner moved before the Tribunal and the Tribunal also confirmed the orders passed by the Commercial Taxes Officer as well as the Appellate Authority.

7. Learned counsel for the petitioner has submitted that the impugned orders passed by all the three authorities below, cannot be sustained in the eyes of law, inasmuch as, it is a case only of a bona fide mistake in not mentioning the truck number in the road permit, i.e., 'Sugam G', and it was only a mistake on the part

of the driver that he took the different rout and entered the State of Jharkhand through the entry point which was not mentioned in the road permit. Learned counsel submitted that the Tribunal, while dismissing the revision application of the petitioner, wrongly placed reliance upon the decision of the Hon'ble Supreme Court in Gulzag Industries Vs. Commercial Taxes Officer, reported in (2007) 7 SCC 269, for coming to the conclusion that in the said case it was held by the Hon'ble Apex Court that carrying the road permit with blank columns in material particulars indicated mens rea. Learned counsel submitted that the facts of the said case is not at all applicable to the facts of the present case, inasmuch as, in the said case the material particulars like quantity, weight and description of the goods being carried, as required to be filled by the consignee, were left blank, though the declaration form was signed by the consignee, and in that backdrop it was held that carrying the document with blank columns indicated mens rea. Learned counsel submitted that in the present case all the particulars were duly filled in, except the aforesaid two entries as indicated above.

8. The other limb of argument advanced by the learned counsel for the petitioner is that the reasonable opportunity of being heard was not given to the petitioner by the Commercial Taxes Officer, inasmuch as, though he was given the notice of hearing to be held on 18.01.2016, but the time gap was not sufficient for the petitioner to appear before the Commercial Taxes Officer, inasmuch as, the vehicle was intercepted in the night on 13.01.2016, and the petitioner was given only five days time for appearing before the Commercial Taxes Officer to explain the lacunae.

9. Learned counsel further submitted that since the petitioner could not appear on the date fixed, at least one more opportunity should have been given by the Commercial Taxes Officer, at the place of deciding the matter ex-parte on 18.01.2016, which clearly shows that the penalty was imposed upon the petitioner without giving any reasonable opportunity of hearing to him. In support of his contention, learned counsel has placed reliance upon the decision of the Hon'ble Apex Court in Sohan Lal Gupta & Ors. Vs. Asha Devi Gupta & Ors., reported in (2003) 7 SCC 492, wherein it has been held as follows:-

"23. For constituting a reasonable opportunity, the following conditions are required to be observed:

1. Each party must have notice that the hearing is to take place.

2. Each party must have a reasonable opportunity to be present at the hearing, together with his advisers and witnesses.

3. Each party must have the opportunity to be present throughout the hearing.

4. Each party must have a reasonable opportunity to present evidence and argument in support of his own case.

5. Each party must have a reasonable opportunity to test his opponent's case by cross-examining his witnesses, presenting rebutting evidence and addressing

oral argument.

6. The hearing must, unless the contrary is expressly agreed,

be the occasion on which the parties present the whole of their evidence and argument."

Placing reliance on this decision, learned counsel submitted that even a reasonable opportunity of hearing was not given to the petitioner, and accordingly, the impugned orders passed by the Commercial Taxes Officer, the Appellate Authority, as well as the Revisional Authority, i.e., the Tribunal, cannot be sustained in the eyes of law.

10. Leaned counsel for the State, on the other hand, has opposed the prayer, submitting that there is no illegality in the impugned order passed by the Revenue Authorities. It is submitted by the learned counsel that Section 72 (3) of the Jharkhand Value Added Tax, clearly prescribes the documents which have to be carried by the driver and 'Sugam G' is the form prescribed under Rule 42 (2) framed under the Act. Learned counsel further pointed out that in case the documents are found to be defective, Section 72 (6) empowers the In-charge of the check post or the Officer empowered under Sub Section (4) of Section 72, after giving a reasonable opportunity of being heard, to impose the penalty equal to the amount of three times of the tax liability. Learned counsel accordingly, submitted that there is no illegality in the impugned orders passed by the Commercial Taxes Officer, the Appellate Authority, or the Tribunal.

11. Having heard learned counsels for both the parties and upon going through the record, we find that according to the road permit, which was issued on 01.01.2016, the consignment was shown to have left the destination on 01.01,2016 itself. By no stretch of imagination it could have taken more than one day to reach the entry point at Jharkhand, where the consignment was apprehended, which, as per the order passed by the Appellate Authority, was at a distance of only about 270 Kms. The interception was made after two days in the night of 13.01.2016. It is not the case of the petitioner that there was any breakdown in the vehicle, or there was any other unavoidable reason for this delay. Admittedly, the entry point was shown in the road permit as Behragora, but the truck was intercepted at another entry point at Chirkunda. The order of the Appellate Authority shows that there is difference in the amount shown in the tax invoice as also in the 'Sugam G'. Even in the tax invoice, the number of the vehicle is missing.

12. In that view of the matter, it could not be held that the non-mentioning of the vehicle number in the tax invoice or in the 'Sugam G' road permit, was not with the intention to evade the tax, and since the vehicle was found to be entering the State of Jharkhand through a different entry point, that too after inordinate delay from the date of dispatch without any reasonable cause, the chances of the deliberate attempt to evade the tax liability, could not be ruled out. The form 'Sugam G' is statutory in nature, having been prescribed to ensure

prevention of evasion of tax liability, and in such cases the strict compliance of the mandates of law are required to be followed, to avoid any reasonable apprehension of evasion of tax liability.

13. We do not find any merit even in the submission of learned counsel for the petitioner, that reasonable opportunity of hearing was not given to the petitioner. The notice to appear before the Commercial Taxes Officer, was served upon the petitioner personally, five days in advance, and by no stretch of imagination it could be held to be insufficient time given to the petitioner. There is nothing in the ratio of Sohan Lal Gupta's case (supra), to suggest that the petitioner was deprived of reasonable opportunity of hearing before the Commercial Taxes Officer.

14. As such, we do not find any illegality in the impugned orders passed either by the Commercial Taxes Officer, or the Appellate Authority, or even by the Tribunal, confirming the penalty imposed upon the petitioner, being the driver of the truck, carrying the consignment, with the defective road permit.

15. There is no merit in this writ application and the same is accordingly dismissed.