

(1997) 02 PAT CK 0005
In the Patna High Court
Case No : C.W.J.C. No. 2420 of 1996 (R)

Shiv Shankar Coke Industries

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-02-1997

Acts Referred:

Bihar Finance Act, 1981 — Section 31, 31(2), 31(3)
Central Sales Tax Act, 1956 — Section 15

Citation : (1997) 2 PLJR 121

Hon'ble Judges : S.K. Chattopadhyay, J;Nagendra Rai, J

Bench : Division Bench

Advocate : Pawan Kumar and M.S.Mittal, for the Appellant; Indrani Sen Choudhary, Ashok Kr. Jha and Anil Kr, for the Respondent

Final Decision : Dismissed

Judgement

Nagendra Rai and S.K. Chattopadhyay, JJ.

- 1.This application is being disposed of at the stage of admission itself.
2. The Petitioner, a small scale industry engaged in manufacturing hard coke from the coal has filed the present writ application for the following reliefs:
 - (a) For declaring the Bihar Taxation Laws (Amendment and Validation) Ordinance, 1996 as ultra vires on the ground that the said Ordinance is contrary to the judgment of this Court reported in the case of O.C. Corporation and Others Vs. State of Bihar and Others, and the same is beyond the competence of the State Government.
 - (b) For quashing the seizure of the truck belonging to the Petitioner bearing No. PB-05A-9880 as well as the order imposing the penalty for not carrying the road permit in Form XXVIII-B and for further direction to refund the penalty.
3. The Petitioner claims that it is a small scale industry and is engaged in manufacturing of hard coke from the coal. The coal includes the coke and as

such the liability of payment of tax is at first point of sale and no further tax can be imposed on coke by virtue of the provisions contained in Section 15 of the Central Sales Tax Act. The Respondents Sales Tax Authorities on 23.7.96 when the truck of the Petitioner alongwith Coke was going on G.T. Road, illegally seized the same and wrongfully imposed the penalty on the driver.

4. To appreciate the points raised on behalf of the Petitioner it is necessary to refer to certain provisions of the Bihar Finance Act (hereinafter referred to as the Act) which have an important bearing on the question in controversy. Section 31 of the Act contains a provision with regard to the furnishing of information by clearing and forwarding agents and seizure of goods carrier etc. Sub-section (2a) of Section 31 requires that any person transporting goods shall carry a declaration in such form as may be prescribed by the Commissioner supported by either a cash memo, bill or a challan, in case the movement is otherwise than as a result of sale, in respect of goods which is being transported on a goods carrier, or a vessel and shall produce such challan, cash memo or bill along with the aforesaid form of declaration on demand before the prescribed authority. Sub-section (2b) of Section 31 provides that the authority may in order to verify that the transportation of goods is being made according to Sub-section (2a) intercept, detain a carrier or vehicle and may search and seize the goods and vehicle if it is found that the transportation of goods is being made in contravention of provision, of Sub-section (2a). Sub-section (3) of Section 31 provides for imposition of penalty after giving an opportunity of hearing in case of violation of provision of Sub-section (2a).

5. The vires of the aforesaid Sub-sections (2a) and (2b) of Section 31 of the Act after substitution in 1993 was challenged before the Division Bench of this Court in C.W.J.C. No. 3018/93, O.C. Corporation and Others Vs. State of Bihar and Others, and the same were disposed of on 2.2.96. This Court held that Sub-sections (2a) and (2b) of Section 31 read with rules are valid. However, this Court held that after amendment of Sub-sections (2a) and (2b) the Commissioner has neither adopted nor prescribed the form of declaration as provided under Sub-section (2a) and in absence of that no proceeding can be taken for the imposition of the penalty for violation of the provision of Sub-section (2a). This Court further held that the prescribed authority before taking action under Sub-sections (2b) and (3) must be satisfied that the goods in question transported through the State of Bihar were sold or purchased in the State of Bihar and was clandestinely transported by evading payment of taxes due to the State. After the aforesaid judgment was rendered on 15.2.96 a notification No. S.O. 127 was issued whereby the Commissioner adopted earlier Forms Nos. XXVIIA and XXXVIIIB for the purposes of Sub-section (2a) after its amendment in 1993. Thus, the very ground for which the seizure and imposition of penalty was held to be invalid was rectified by the aforesaid notification. On 15th June, 96 the State Government issued a validation ordinance, namely, Bihar Taxation Laws (Amendment and Validation) Ordinance, 1996 by which it validated the levy and collection of penalty between 15.6.93 to 14.2.96.

6. The vehicle of the Petitioner alongwith coke was seized on 23rd July, 96 and earlier to that on 15.2.96 the notification as contained in Annexure-A was issued adopting declaration Forms XXVIII A and XXVIII B. The said notification has not been challenged by the Petitioner in this writ application. This Court in the Division Bench found that the sections under Sub-sections (2b) and (3) were invalid on the ground that Forms under XXVIII A and XXVIII B were not prescribed or adopted by the Commissioner. The said lacuna has been removed by the aforesaid notification. As such the authorities were competent to exercise the power under Sub-sections (2b) and (3) on 23rd July, 96 as Forms were already adopted by the aforesaid notification.

7. So far the Petitioner is concerned it is not in any way concerned with the Validating Ordinance, 1996 as his case is covered by notification dated 15.2.96 and in that view of the matter the challenge to the Validation Ordinance is not warranted for the reason that any decision on the aforesaid point is in no way relevant for deciding the case of the Petitioner. This Court never decides the legal point in vacum. As such the vires of the Validating Ordinance is not being decided for the aforesaid reasons.

8. So far as the second point raised on behalf of the Petitioner about the seizure of the vehicle and the imposition of penalty is concerned, from the counter affidavit it appears that the vehicle of the Petitioner with coke was seized on the ground of non-production of the declaration form under XXVIII A and XXVIII B as per notification No. S.O. 127 dated 15.2.76 and the discrepancy in the name of consignor. It is stated that the concerned authority after perusal of the documents found that prima facie it was a case of inter-State sale and accordingly seized the vehicle and a copy of the seizure list was served upon the driver and a show cause notice was issued on 24.7.96 to the driver as well as the consignor and reply to the show cause was filed on behalf of the driver and thereafter after hearing the parties a demand notice was issued and the same was received on 26.7.96 and the amount of penalty was deposited on the same day and thereafter the vehicle alongwith coke was released.

9. We have held that after the notification dated 15.2.96 whereby a form has been adopted the authorities can exercise the power under Sub-sections (2b) and (3) and in this case the authority after having satisfied about the alleged breach of provision of Sub-section (2a) and after giving an opportunity of hearing to the Petitioner has imposed the penalty. In our view, the action taken by the Respondent authority does not suffer from illegality justifying interference by this Court. This is not a case where the seizure has been made on suspicion only as asserted on behalf of the Petitioner. On the other hand the authority after having satisfied about the breach of provision under Sub-section (2a) and after having come to the conclusion that it is a case of inter-State sale seized the vehicle and imposed the penalty under the provision of law.

10. Thus, in our considered view there is no merit in this application and the same is dismissed. The interim order passed by this Court dated 13.8.96 stands

vacated.