

(1981) 04 DEL CK 0050

In the Delhi High Court

Case No : Civil Writ Appeal No. 414 of 1974

Union of India and Another

APPELLANT

Vs

Mahabir Parshad and Sons and Another

RESPONDENT

Date of Decision : 15-04-1981

Acts Referred:

Citation : AIR 1983 Delhi 150 : (1982) 21 DLT 243 : (1982) RLR 385

Hon'ble Judges : N.N. Goswamy, J;D.K. Kapur, J

Bench : Division Bench

Advocate : T.C.P. Lal, G.D. Gandhi and Arya Girdhari, for the Appellant;

Judgement

D.K. Kapur, J.

(1) This is a petition under Article 226 and 227 of the Constitution of India filed by Union of India and others in respect of some orders passed under the Delhi Municipal Corporation Act, 1957 (hereinafter referred as Act) relating to terminal tax. The respondent M/s. Mahabir Parshad & Sons had imported some sanitary goods in July 1971. On Aug. 10, 1971 the terminal tax officer noted that the statement of Sh. Kunj Behari Lal belonging to the first respondent firm, showed that there was a misdeclaration for the purposes of evading terminal tax and imposed the penalty at the rate of ten times the tax. An appeal was taken by M/s. Mahabir Parshad & Sons to Shri M.K. Chawla, Additional District Judge, Delhi u/s 169 read with Sections 178 to 183 of the Act. The appeal was rejected by the orders dated July 20, 1972. Therefore, a review application was filed which was decided by the learned Additional District Judge, Delhi on September 1, 1973. Therein it was noted that there was Rule 39 of Delhi Terminal Tax Rules which applied to the particular case i.e. wrong declaration. The Rule provided that on conviction a fine of Rs. 100.00 could be imposed by the Magistrate. As it was a case of wrong declaration to which a particular rule applies, the Additional District Judge accepted the review and held that the Terminal Tax Officer was not competent to impose ten times penalty. Another point which was discussed by the learned Additional District Judge was that there was a judgment of the

Punjab High Court in *Gian Chand v. State* (1958 Plr 539) in which it was held that when dutiable articles were introduced within the octroi limits of the municipality the municipality had to prove that the accused attempted to do so with intent to defraud and unless the intention was established there was no offence.

(2) In the case of Delhi Municipal Corporation Act, Section 464 shows that evading payment of tax by introducing goods within the octroi limits of Delhi also involves a punishment which may extend to ten times of the value of the goods imported. Furthermore, it shows that any person who does it or abets such introduction can be liable to this penalty. It was urged before us -that this is not a criminal offence because it is a penalty and not a punishment. We do not go into the question and leave it open for a better case. It was brought to our notice that there is a Db judgment of this Court in *M/s. Parkash Raadlines Pvt. Ltd. v .Union of India* (CW 903 /73) where in it would appear that Terminal Tax Officer was competent to act u/s 464 of the Act, but, the judgment only states that a show cause notice could be issued by such officer. We do not know what actually happened in that case at the end as to whether the punishment was actually imposed by the Terminal Tax Officer or not. As to which court and which authority can act u/s 464 of the Act will have to be decided in some other case.

(3) For the present, we proceed on the base that the Terminal Tax Officer could take action in this respect but the ground on which the Additional District Judge has set aside the action u/s 464 of the Act is on the ground that the municipality has not proved the ingredient of Section 464 of the Act. He stated as follows :-

" I am left with no option but to hold that the respondents have miserably failed to bring on the record any fraudulent intention on the part of the petitioner to import the goods in the territory of Delhi. It was a bonafide allegation of the petitioner that their goods were stone ware and not sanitary ware which allegation, even if proved to be unfounded, cannot justify a finding that there as intention to defraud."

(4) We now refer to the language of Section 464 of the Act. It opens with the words "where any goods imported into the Delhi are liable to the payment of terminal tax, any person with the intention of evading the payment of the tax introduces or abets to introduce or causes or abets the introduction of any such goods within the union territory of Delhi..." The important words in the section are "the intention of evading the payment of tax". Unless this intention is established the section does not apply and this would lead to the result arrived at by the Learned Additional District Judge. Learned Counsel urges that in fact there was an intention, but as there was no evidence led and there are no circumstances on the record which is only because the goods has not gone to the Magistrate it is not possible to find out whether the intention has been established by evidence led by municipal corporation. It is obvious that if an offence under Sec. 464 of the Act is to be established the necessary prosecution evidence must be on the record to establish the circumstances in which the intention can be inferred from the facts. It is very difficult to draw an inference of

this type from a mere statement in a short order of few lines recorded by the terminal tax officer.

(5) In the circumstance, we do not think it is fit case to interfere under Art. 226 of the Constitution of India.