(1986) 12 PAT CK 0009

In the Patna High Court

Case No : C.W.J.C. No. 5805 of 1986

Vishnu Auto Distributers and Others — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 23-12-1986

Acts Referred:
Constitution of India, 1950 — Article 301, 304

Citation : (1987) 66 STC 192

Hon'ble Judges : U. Sinha, J;B.N. Sinha, J

Bench : Division Bench

Advocate : K.N. Jain, for the Appellant; D.N. Singh, Learned Standing Counsel No. 5., for the Respondent

Final Decision : Allowed

Judgement

1. Heard Mr. K.N. Jain, for the petitioners and Mr. D.N. Singh, learned standing counsel No. 5 on behalf of the respondents.

2. Petitioner No. 2, M/s. Lohia Machines Limited, Kanpur despatched a consignment of scooters to be delivered to petitioner No. 1, M/s. Vishnu Auto Distributors, Bhagalpur. The consignment consisted of 34 scooters. The truck was intercepted at Lakhisarai by the Sales Tax Mobile Squad. The truck was detained as it was not carrying a road permit authorising transporting of goods through the State of Bihar. This was demanded presumbly in terms of the Bihar Government Notification No. S.O. 1432 dated 28th December, 1986, whereby the State Government had prescribed that a declaration form should be carried on a goods carrier or a vessel for transporting goods through the State of Bihar. The truck was ordered to be detained at the police station and is still in the legal custody of the sales tax department. The petitioners have moved this Court against arbitrary action of the sales tax department seizing the consignment of goods on the truck.

3. Learned counsel for the petitioners has drawn our attention to a Full Bench

decision of this Court in C.W.J.C. Nos. 990 and 991 of 1986 (R) disposed of on 18th November, 1986 (Harihar Prasad Debuka v. State of Bihar [1987] 66 STC 178 HP By this judgment the notification of the State Government requiring the transporters to carry road permit was quashed in the following terms :

To finally conclude, the answer to the question posed at the outset is rendered in the affirmative and it is held that Notification No. S.O. 1432 dated the 28th of December, 1985, prescribing the declaration form to be carried on a goods carrier or a vessel for transporting goods through the State of Bihar during the course of inter-State trade, is violative of Articles 301 and 304 of the Constitution of India. The said notification is consequently quashed.

4. It is thus obvious that the requirement of carrying of declaration form by a goods carrier is no longer law. The sales tax authorities had no jurisdiction to seize the petitioners'' truck transporting the scooters.

5. We, therefore, hereby direct that the sales tax department will release the truck forthwith. It will be open to the sales tax authorities to proceed to assess the assessee in regard to this consignment going to be delivered at Bhagalpur in accordance with law. Since the detention and seizure of the goods were without any authority of law, it is an apt case where the costs should be awarded to the petitioners.

6. We, therefore, hereby allow this application with costs of Rs. 1,000 (Rupees one thousand only) payable by the State of Bihar to petitioner No. 2, M/s. Lohia Machines Limited, Kanpur. It will be open to the State of Bihar to apportion the liability of costs and to take suitable action against the officer concerned.

