

(1997) 08 P&H CK 0024

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 6532 of 1997

International
Switchgears

APPELLANT

Vs

The Union Territory of
Chandigarh

RESPONDENT

Date of Decision: Aug. 19, 1997

Acts Referred:

- Motor Vehicles Act, 1939 - Section 2(18), 2(8)
- Punjab General Sales Tax Act, 1948 - Section 14B(6)

Citation: (1998) 1 ILR (P&H) 239 : (1998) 118 PLR 79

Hon'ble Judges: N.K. Agrawal, J; Ashok Bhan, J

Bench: Division Bench

Advocate: K.L. Goyal, for the Appellant; R.P. Sawhney and Rajesh Bindal, for the Respondent

Final Decision: Allowed

Judgement

N.K. Agrawal, J.

This is a petition International Switch-gears, Chandigarh, a manufacturer of and dealer in electrical goods, under Articles 226/227 of the Constitution of India for quashing the notice and the proceedings u/s 14B of the Punjab General Sales Tax Act, 1948 (for short, "the Act") as applicable to the Union Territory of Chandigarh.

2. Petitioner, a proprietary concern, was registered as a dealer under the Act (as applicable to the Union Territory of Chandigarh) and also under the Central Sales Tax Act, 1956. One M/s Aggarwal Electric Store, Sector 22, Chandigarh purchased goods for Rs. 3,33,433/- from M/s Kaycee Industries Limited, Munibai. Goods were brought from Mumbai to Chandigarh by Amritsar Transport Company. These goods were sold by M/s Aggarwal Electric Store to the petitioner by transfer of documents. A sale bill was also issued in favour of the petitioner. The petitioner, after receiving the bill and the endorsed goods receipt, took delivery of the goods from the transporter's office situated in the

transport area at Chandigarh. An animal-driven cart, belonging to one Jagga, was taken on hire on April 26, 1997 by the petitioner to bring the goods from the transport Area, Chandigarh to its business premises in Industrial Area, Phase II, Chandigarh, The said cart carrying the goods was intercepted by the Assistant Excise and Taxation Commissioner for the purpose of checking under the Act and the goods were detained for verification. Cart-man produced the bill dated April 26, 1997 issued by M/s Aggarwal Electric Store showing the value of goods at Rs. 3,75,800/-. The officer, after detaining the goods, issued a notice to the petitioner under Sub-sections (6) and (7) of Section 14B of the Act.

3. The petitioner has challenged the issuance of notice u/s 14B of the Act on the ground that the said section was not applicable to the goods being carried in an animal-driven cart but to a motor vehicle. Notice issued u/s 14B for the levy of penalty is said to be without jurisdiction on this ground alone, though otherwise also, there is said to be no case of any attempt to evade tax. It is argued that the goods were being transported under a valid transaction with valid documents inasmuch as the cart-man was carrying the sale bill issued by M/s Aggarwal Electric Store, Chandigarh.

4. The respondents have, in their reply, justified the detention of the goods on the ground that the person transporting the goods was carrying sale bill issued by the vendor, M/s Aggarwal Electric Store, in favour of the petitioner but the selling dealer had not charged the local sale tax. Goods were shown in the sale bill as "Sale E-1 Transaction". Though the goods were taxable at the first stage of sale within the Union Territory, no sales tax had been charged. Therefore, the goods were rightly detained u/s 14B and notice was served upon the person carrying the goods. It has also been pleaded that the present petition under Article 226 was not maintainable inasmuch as the order can be challenged by the petitioner, if he so wanted to do, by filing an appeal before the Deputy Commissioner of Excise and Taxation and another appeal, thereafter, before the Sales-tax Tribunal under the Act. Goods are said to have been released on May 20, 1997 against surety bonds furnished by the petitioner.

5. Shri K.L. Goyal, learned counsel for the petitioner, has argued that Section 14B of the Act was not at all attracted if the goods were being carried by a person in a hand-driven or animal-driven cart. Power to check the goods in transit is available to an officer at the tax barrier in a case where the goods were being taken without requisite documents in a goods vehicle.

6. Shri R.P. Sawhney, learned senior counsel for the respondents, has justified the action u/s 14B of the Act with the plea that no other document other than (he sale bill was available with the person carrying the goods. Neither the goods receipt nor E-1 form was available with the carrier. Goods had been sold in transit by the vendor by way of transfer of documents. Sales tax at the rate of 10% with surcharge at the rate of another 10% had not been charged by the seller, M/s Aggarwal Electric Store. There was, thus an attempt to evade tax on the transaction. Sh. Sawhney has contended that goods had been rightly

checked and detained u/s 14B of the Act in order to verify the genuineness of the transaction. Goods can be sold during transit by making endorsement on the documents accompanying the goods as provided u/s 6(2) of the Act but, in the present case, it was a sale within the State i.e. a local sale from one registered dealer to another.

7. Section 14B of the Act was substituted by the Punjab General Sales Tax (Amendment) Act, 1972 (Punjab Act 5 of 1973). The Central Government, in exercise of the powers conferred by Section 87 of the Punjab Re-organisation Act, 1966, extended to the Union Territory of Chandigarh, certain enactments including the Punjab General Sales Tax (Amendment) Act, 1972 with certain modifications. Notification dated September 14, 1977 issued by the Central Government, thus, made the Punjab Act, as amended, applicable to the Union Territory of Chandigarh.

8. Section 14b, as extended and applicable to the Union Territory of Chandigarh reads as under :-

" Section 14-B:

Establishment of check posts or barriers and inspection of goods in transit:-

(1) If, with a view of preventing or checking evasion of tax under this Act, the Central Government considers it necessary so to do it may be notification direct the establishment of a check post or the erection of a barrier or both at such place or places as may be notified.

(2) The owner or person incharge of a goods vehicle or vessel shall carry with him a goods vehicle record, a trip sheet or a log book, as the case may be, and a bill of sale or a delivery note containing such particulars as may be prescribed, in respect of such goods meant for the purpose of trade as are being carried in the goods vehicle or vessel, as the case may be, and produce the same before an officer incharge of a check post or barrier or any other officer not below the rank of an Assistant Excise and Taxation Officer checking the vehicle or vessel at any place.

(3) At every check post or barrier or at any other place when so required by any officer referred to in Sub-section (2), the driver or any other person incharge of the goods vehicle or vessel shall stop the vehicle or vessel, as the case may be, and keep it stationary as long as may reasonably be necessary, and allow the officer Incharge of the check post or barrier or the aforesaid officer to examine the contents in the vehicle or vessel by breaking open the package or packages, if necessary, and inspect all records relating to the goods carried which are in the possession of such driver or other person incharge, who shall also furnish such other information as may be required by the aforesaid officer, and if considered necessary such officer may also search the goods vehicle or vessel and the driver or other person incharge of the vehicle or vessel of the goods.

(4) The owner or person incharge of a goods vehicle or vessel entering the limits of the Union Territory of Chandigarh or leaving such limits shall also give in triplicate a declaration containing such particulars as may be prescribed of the goods carried in such vehicle or vessel, as the case may be, before the officer incharge of the check post or barrier and shall produce the copy of the said declaration duly verified and returned to him by the said officer before any other officer referred to in Sub-section (2) at the time of checking:

Provided that where a goods vehicle or vessel bound for any place outside Union Territory of Chandigarh passes through the said Union Territory, the owner or person incharge of such vehicle or vessel shall furnish, in duplicate to the officer incharge of the check post or barrier of his entry into the said Union Territory a declaration in the prescribed form and obtain from him a copy duly , verified. The owner or person incharge of the goods vehicle or vessel, as the case may be, shall deliver within seventy-two hours the said copy to the officer incharge of the check post or barrier at the point of its exit from that Union Territory, failing which he shall be liable to pay a penalty to be imposed by the officer incharge of the check post or barrier of the entry not exceeding two thousand rupees or twenty per centum of the value of the goods, whichever is greater :

Provided further that no penalty shall be imposed unless the person concerned has been given a reasonable opportunity of being heard.

(5) At every station of transport of goods, bus stand or any other station or place of loading or unloading of goods, other than a rail head or a post office, when so required by the Commissioner, or any person appointed to assist him under Sub-section (1) of Section 3, the driver or the owner of the goods vehicle or the employee of a Transport Company or goods booking agency shall produce for examination transport receipts and all other documents and account books concerning the goods carried, transported, loaded, unloaded, consigned, or received for transport (maintained by him in the prescribed manner). The Commissioner or the person so appointed shall, for the purpose of examining that such transport receipts or other documents or account books are in respect of the goods carried, transported, loaded, unloaded. or consigned or received for transport, have the powers to break open any package or packages of such goods.

(6) If the officer incharge of the check post or barrier or other officer as mentioned in Sub-section (2) has reasons to suspect that the goods under transport are meant for trade and are not covered by proper and genuine documents as mentioned in Sub-section (2) of or Sub-section (4), as the case may be, or that the person transporting the goods is attempting to evade payment of tax due under this Act, he may, for reasons to be recorded in writing and after hearing the said person, order the unloading and detention of the goods, for such period as may reasonably be necessary and shall allow the same to be transported only on the owner of goods or his representative or the driver or other person incharge of the goods vehicle or vessel on behalf of the owner of the goods, furnishing to his satisfaction a security or executing a bond with or without sureties

for securing the amount of tax, in the prescribed form and manner, for an amount not exceeding one thousand rupees or twenty per centum of the value of the goods, whichever is greater:

Provided that where any goods are detained a report shall be immediately and in any case within twenty-four hours of the detention of the goods by the officer detaining the goods to the Excise and Taxation officer of the district seeking the latter's permission for the detention of the goods for a period exceeding twenty-four hours, as and when so required, and if no intimation to the contrary is received from the latter the former may assume that his proposal has been accepted.

(7) The Officer detaining the goods shall record the statement, if any, given by the owner of the goods or his representative or the driver or other person incharge of the goods vehicle or vessel and shall require him to produce proper and genuine documents as referred to in Sub-section (2) or Sub-section (4), as the case may be, before him his office on a specified date on which date the officer shall submit the proceedings along with the connected records to such officer as may be authorised in that behalf by the Central Government for conducting necessary enquiry in the matter. The said officer shall, before conducting the enquiry, serve a notice on the owner of the goods and give him an opportunity of being heard and if, after the enquiry such officer finds that there has been an attempt to evade the tax due under this Act, he shall, by order, impose on the owner of the goods a penalty not exceeding one thousand rupees or twenty per centum of the value of the goods, whichever is greater, and in case he finds otherwise he shall order the release of the goods.

(8) xx xx xx xx xx

(9) xx xx xx xx

(10) xx xx xx xx xx

(11) xx xx xx xx

Explanation I -

In this section, the expression "goods vehicle" has the same meaning as is assigned to it in Clause (6) of Section 2 of the Motor Vehicles Act, 1939, but does not include road transport plying in collaboration with rail transport.

Explanation II -

For purposes of Sub-section (7), service of notice on the representative of the owner or the driver or other person incharge of the goods vehicle or vessel shall be deemed to be a valid service on the owner of the goods."

9. A perusal of Sub-section (2) makes it clear that certain documents are required to be carried by the owner or person incharge of a goods vehicle or vessel while carrying goods for trade. In Sub-section (3), power has been conferred on the officer posted at the check post or the barrier to examine the contents of the vehicle or the vessel by breaking open the packet, if necessary and inspect all records relating to the goods which are in possession of the driver or the other person incharge. In Sub-section (4), it is the duty of the owner or the person incharge of the goods vehicle or vessel entering the limits of the Union Territory of Chandigarh or leaving such limits to furnish a declaration in the prescribed form. In Sub-section (5), the driver or the Transport Company is also required to produce for examination the transport receipts and all other documents and account books concerning the goods carried, transported or loaded. In Sub-section (6), power to detain the goods has been conferred on the officer incharge of the check post or the barrier, if the goods under transport are meant for trade and are not covered by proper and genuine documents. The officer detaining the goods, after serving a notice on the owner of the goods and giving him an opportunity of being heard may conduct an enquiry. If the officer finds that there has been an attempt to evade the tax due under the Act, he shall impose on the owner of the goods penalty.

Explanation 1 states that the expression "goods vehicle" has the same meaning as assigned to it in Clause (8) of Section 2 of the Motor Vehicles Act, 1939. Clause (8) of Section 2 of the Motor Vehicles Act, 1939 reads as under:-

"CLAUSE (8) :

"goods vehicle" means any motor vehicle constructed or adopted for use for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods solely or in addition to passengers;"

It would, thus, appear that a goods vehicle has the same meaning which a motor vehicle conveys."

In Clause (18) of Section 2, "motor vehicle" has been defined as under:-

"CLAUSE (18) :

"motor vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer, but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises;"

10. As has been seen earlier, Sub-section (2) of Section 14B of the Act enjoins upon the owner or the person incharge of a goods vehicle or vessel to carry certain documents while transporting the goods. In Sub-section (3) also, reference has been made to the goods vehicle or the vessel while empowering an officer incharge of a check post or

barrier to examine the contents of the vehicle or the vessel. Since goods vehicle has been defined to be a motor vehicle in Clause (8) read with Clause (18) of Section 2 of the Motor Vehicles Act, 1939, that cannot give rise to a presumption that the power to inspect the goods in transit extended to the carriers other than a motor vehicle. Sub-section (6) does not indeed specifically refer to a goods vehicle or vessel but the entire scheme of Section 14B of the Act relates to the transportation of goods in a goods vehicle or a vessel. It cannot, therefore, be accepted, as argued by Sh. Sawhney, that Sub-section (6) of Section 14B would be attracted even in the case of an animal-driven cart carrying the goods. In Sub-section (7) again, the officer detaining the goods has been empowered to record the statement of the owner of the goods or his representative or the driver or other person in charge of the goods vehicle or vessel. In these circumstances, the plea put-forward by Sh. Sawhney that vehicles other than goods vehicles are also covered u/s 14B of the Act cannot be accepted. Since "goods vehicle" has been defined as a "motor vehicle", there is no room for any doubt that Section 14B is applicable to a situation where certain goods are being carried in a motor vehicle or a Vessel. As the primary condition in the case of the present petitioner is found to have not been fulfilled, the initiation of proceedings and issuance of notice u/s 14B of the Act are held to be without jurisdiction and bad in law. Reliance placed by Shri Sawhney on a Full Bench decision of this Court in *Mool Chand Chuni Lal v. Shri Manmohan Singh*, Assistant Excise and Taxation Officer and Anr. 40 S.T.C. 238 is of no help because the question therein was different. Sub-section (7) of Section 14B of the Act was examined so as to decide whether there existed any repugnancy between the provision for levy of penalty and the general scheme of the Act. Reliance placed on another decision of this Court in *"New Dadri Golden Transport Company v. State of Haryana and Ors."*, (CWP No. 1964 of 1996) dated April 4, 1997 is also of no avail because, in that case, the petitioner was found to have not availed the alternative remedy of appeal. In the case before us, this Court may, in exercise of extra-ordinary jurisdiction under Article 226 of the Constitution, interfere, as it is found that the order under challenge is without jurisdiction and bad in law.

11. In the result, the writ petition succeeds and the issuance of notice and the initiation of proceedings u/s 14B of the Act are quashed.

12. No order as to costs.