(2016) 2 HimLR 1104 : (2016) ILRHP 271

High Court of Himachal Pradesh

Case No: CWP No. 6630 of 2010

National Traders Dharamshala — APPELLANT

Vs

State of H.P. & Ors. — RESPONDENT

Date of Decision: March 15, 2016

Acts Referred:
Himachal Pradesh General Sales Tax Act, 1968 â€” Section 22(2)

Citation: (2016) 2 HimLR 1104 : (2016) ILRHP 271

Hon'ble Judges: Mansoor Ahmad Mir, C.J.; Tarlok Singh Chauhan, J.

Bench: Division Bench

Advocate: Shrawan Dogra, Advocate General with Anup Rattan and Romesh Verma, Addl. AGs with J.K. Verma, Dy.AG, for the Respondent

Final Decision: Dismissed

Judgement

Tarlok Singh Chauhan, J. - This writ petition is directed against the findings recorded by the H.P. Tax Tribunal, thereby upholding the decision by

the two authorities below, imposing a penalty of Rs. 36,000/- upon the petitioner under the H.P. General Sales Tax Act, 1968 (for short the

"Act").

2. On 1.5.1995, Flying Squad (Northern Zone), Dharamshala intercepted two trucks which were loaded with 240 quintals of steel (Saria). It was

found that both the drivers were not having bills and other documents and even the ST XXVI-A form had not been filled on the inter-State Barrier.

3. The partner of the petitioner Sh. Ved Parkash Sharma, appeared and showed his ignorance regarding the bills and other documents, resulting in

initiation of the proceedings against the petitioner.

4. The Assessing Authority was constrained to carry out ex-parte proceedings against the petitioner for want of non appearance and ultimately

passed an order imposing penalty to the tune of Rs. 36,000/- on the ground that the petitioner had violated the provisions of Section 22(4) of the

Act.

5. Aggrieved by the aforesaid order, the petitioner filed an appeal before the first appellate authority, which came to be dismissed for want of pre-

requisite deposit of 50% of the amount.

6. This order was assailed by the petitioner by filing by filing an appeal before the H.P.Tax Tribunal, Dharamshala, before whom petitioner again

failed to show any bills or other documents, resulting in dismissal of the appeal. It is against these decisions that the petitioner has filed the instant

writ petition.

7. Respondents have filed their reply and have supported the orders passed by the authorities below and have prayed for dismissal of the writ

petition.

We have heard the learned counsel for the parties and have gone through the records of the case.

8. Sh. S.C.Sharma, learned counsel for the petitioner has strenuously argued that the entire proceedings are sham and have been initiated at the

instance of respondent No.3, who in fact owed the petitioner a sum of Rs. 10,000/- and has placed heavy reliance on annexure P-1, annexed with

the petition. It is claimed that the petitioner had all the documents and, therefore, could not have been fastened with a penalty of Rs. 36,000/-.

9. We are unable to agree with this submission, for the simple reason that the same appears to be an innovative idea generated by the petitioner to

escape the liability as imposed upon him. There is nothing to suggest on record that this ground had in fact been taken before the authorities below

and, therefore, the same cannot be permitted to be taken before this Court.

10. That apart, the documents filed in support of this contention are nothing, but self serving documents, to which no credence can be given.

11. It is not disputed even by the petitioner that in the event of the goods having been found without accompanying document, the petitioner would

be liable to be imposed with the penalty, but his contention is that in case the petitioner''s goods had in fact been found to have been transported

without necessary documents, then the respondents were required to resort to the procedure as envisaged under Section 22 (6) and (7) of the Act,

which they have failed to do.

12. Before we proceed any further, the relevant provisions of this ''Act'' may be noticed.

Section ""22(2) The owner of person-in-charge of a (goods carriage) or vessel shall carry with him a (good carriage) 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 or trade as are being carried in the (goods carriage) or vessel, as the case may be, and produce the same

before an officer in-charge or a check post or barrier or any other officer not below the rank of Excise and Taxation Inspector checking the

vehicle or vessel at any place.

(4) The owner or person-in-charge of a (goods carriage) or vessel entering the limits of State 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-in-

charge or the check post or barrier and shall produce the copy of the said declaration duly verified and returned to him by the said officer or

before any other officer referred t in sub section (2) at the time of checking under this section.

Provided that where a goods vehicle or vessel bound for any place outside the State passes through the State, the owner or person in-

charge of such vehicle or vessel shall furnish, in duplicate, to the officer-in-charge of the check post or barrier of his entry into the State a declaration in the prescribed form and obtain from him a copy duly verified. The owner or person-in-charge of the goods vehicle or vessel

as the case may be, shall deliver within seventy two hours the said copy of the officer-in-charge of the check post or barrier at the point of

its exit from the State failing which he shall be liable to pay a penalty to be imposed by the officer-in-charge 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.

(6) If the Officer-in-charge 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) 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 made 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 in-charge 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 in 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 State Government for conducting

necessary enquiry in the matter.

The said officer shall before conducting the inquiry, 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.

13. The records reveal that during inspection carried out on 1.5.1995 it was found that goods without bill or form ST XXVI-A were being carried

in two trucks and neither the driver nor the petitioner could satisfy the authority regarding the same being tax paid goods. It is also borne out from

the record that the respondent authorities had in fact decided to detain the goods in terms of Section 26(6), but it was on account of the

petitioner''s persuasion that he was a local trader that the goods instead of being detained were ordered to be released to him on "sapurdari". Prior

to doing so, statement of the driver as also Sh. Ved Parkash were duly recorded by the concerned officer. Thus, it is more than established that the

procedure, as envisaged under Section 22(6) and (7) of the Act, has been duly followed.

14. Apart from above, petitioner has even before this court failed to produce the bills or any other document whereby it could be inferred that he

had paid the requisite tax. Having failed to do so, no interference is called for with the decisions rendered by the authorities below.

15. Consequently, we find no merit in this petition and the same is accordingly dismissed, leaving the parties to bear the costs.