

**(2005) 05 CAL CK 0038**

**Calcutta High Court**

**Case No:** W.P.T.T. No. 7 of 2004

New India Transport Corporation  
(Regd)

APPELLANT

Vs

Commercial Tax Officer

RESPONDENT

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**Date of Decision:** May 6, 2005

**Acts Referred:**

- West Bengal Sales Tax Act, 1994 - Section 68, 70, 71
- West Bengal Sales Tax Rules, 1995 - Rule 212(10)
- West Bengal Taxation Tribunal Act, 1987 - Section 8

**Citation:** (2006) 145 STC 70

**Hon'ble Judges:** S.P. Talukdar, J; Alope Chakrabarti, J

**Bench:** Division Bench

**Advocate:** Chakraborty, for the Appellant;

**Final Decision:** Dismissed

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**Judgement**

1. The petitioner, a registered partnership firm, carrying business as a transporter, approach the West Bengal Taxation Tribunal with the following grievances :

On March 9, 2004 when the vehicle being No. HR37J-6937, loaded with goods was approaching Andal, respondent No. 1 intercepted the truck at Kajore at about 3 p.m. On being asked the driver produced the relevant documents like invoices, consignment notes and the way bills. Respondent No. 1 took possession of the said documents and directed the truck to be brought to Durgapur Range office for physical verification of the goods and the documents. The respondent No. 1 issued a detention order dated March 9, 2004. On March 10, 2004 respondent No. 1 gave a seizure receipt to the driver of the vehicle after seizing the goods which included 28 bundles of fibre glass sheets for which there was no coverage in the bills ; zip rolls and I.S. core which were of different quantity from what was mentioned in the bill. It was alleged that all the goods were undervalued and there was a previous seizure

case against the consignor. The goods were seized u/s 70 of the West Bengal Sales Tax Act, 1994 for being allegedly transported in violation of Section 68 of the said Act. Penalty proceeding was started and the respondent No. 1 by order dated March 11, 2004 imposed penalty of Rs. 1,94,670.

2. The petitioner by filing an application u/s 8 of the West Bengal Taxation Tribunal Act, 1987 challenged the seizure as well as the order of penalty. It was contended before the learned Tribunal that there was no fibre glass sheets but there were only PVC sheets which were duly mentioned in the documents. It was denied that there was any variation in the quantity of zip rolls and I.S. core or that there had been any under-valuation. The learned Tribunal by the impugned order dated March 25, 2004 dismissed the application and gave liberty to the petitioner to avail the statutory remedy against the order of penalty.

3. Being aggrieved by the said order of the learned Tribunal the petitioner/appellant approached the court praying for setting aside the order of seizure as well as the impugned order passed by the learned Tribunal.

4. The learned Counsel appearing for the petitioner Mr. Chakra-borty submitted that the seizure was made in a mechanical manner without bringing any materials on record with regard to the allegations made in the seizure receipt.

5. Mr. Chakraborty also submitted that the learned Tribunal failed to consider and appreciate that the goods loaded in the truck were duly covered by the documents including way bills. It was also contended that the goods were seized without any valid reasons.

6. According to learned Counsel Mr. Chakraborty the goods were wrongly described as fibre glass sheets but actually those were only PVC sheets. He sought to explain a minor variation in the quantity by pointing out that this was quite natural in the circumstances in which the goods were shifted from one place to another.

7. In response to this the learned Counsel for the State authority submitted that it was not correct to say that the truck in question was carrying PVC sheets and no fibre glass sheets had been detected by the seizing authority.

8. It appears from the materials on record that the detention order was passed on March 9, 2004 and thereafter the authority concerned took up the job of verifying the genuineness of the papers as against the materials loaded in the truck. Thereafter by order dated June 10, 2004, the concerned authority seized the materials in question. It was observed by the said authority that on physical checking on March 10, 2004 it was found that the description, quantity and the value of the goods loaded in the vehicle differed from what was mentioned in the supporting documents.

9. It appears to be the unambiguous finding of the seizing authority that the truck in question was carrying 28 belts of fibre glass sheets without any coverage in the bill

produced before the authority. According to the seizing authority, the said articles were thus being imported in a concealed manner. The authority concerned also mentioned in the documents that there had been variation in the quantity and the materials actually found from what was referred in the bills. The grounds of seizure further included that the item of goods which were seized was under-valued. It appears from the order dated March 11, 2004 that the anomaly as detected at the time of seizure could not be explained by anybody on behalf of the petitioner. According to the authority concerned the approximate value of the seized goods would be about Rs. 6,44,900 and in exercise of the power u/s 71 of the said Act penalty of Rs. 1,94,670 was imposed.

10. The matter was then taken up before the Tribunal where it was contended that the seizure was made without proper verification of the documents. At the time of hearing of the matter Mr. Chakraborty, learned Counsel for the petitioner, submitted that there was no scope for finding that there had been any variation in the quantity of goods seized. The explanation submitted by Mr. Chakraborty however does not at all inspire confidence of the court. It is also very difficult, if not impossible, to discard the finding of the authority that there had been actual seizure of fibre glass sheets which do not find mention in any of the documents produced in response to the direction of the authority concerned. Thus, non-mentioning of the materials, being 28 bundles of fibre glass sheets, the variation in the quantity of the goods which were found after seizure and the under-valuation were thus, established before the concerned authority. The learned Tribunal in the impugned order referred to the fact that the authority concerned relied upon to the price of the articles as shown in the Economic Times of the relevant date. In view of the fact that there had been gross violation of the provisions of Sub-rule (10) of Rule 212 of the West Bengal Sales Tax Rules, 1995 the seizure was made and the learned Tribunal seems to be perfectly justified in holding such seizure as lawful. It appears from the materials on record and the impugned order passed by the learned Tribunal that the grievance with regard to the imposition of penalty has not been effectively dealt with at this stage and the learned Tribunal thought it fit that the matter should better be left open for the statutory authority concerned to decide.

11. In view of the clear finding of the learned Tribunal that matter may still be agitated before the learned Tribunal after raising before the said statutory forum we also do not find any reason to interfere with the impugned order of the learned Tribunal.

12. Mr. Chakraborty, learned Counsel for the petitioner, had drawn the attention of the court to an unreported decision of the honourable division Bench in connection with a case being W.P.T.T. No. 11 of 1999 but the facts and circumstances of the said case are different from those of the present case. There is no scope for any confusion that in case of any variation in description, quantity, weight or value of the goods in any consignment, there is right to seize the goods in question and then,

take follow up action in accordance with law.

13. The decision as referred to by the learned Counsel Mr. Chakraborty does not lead us to hold anything to the contrary in this regard.

14. Our attention was also drawn to the decision in the case of [Commissioner of Sales Tax and Another Vs. M/s. P.T. Enterprises and Another](#) . In fact if there is any incorrect statement or declaration as to the value of the goods with reference to the market value, the authority concerned has the power to take up necessary action in terms of the Sales Tax Act.

15. After due consideration of all relevant facts and materials we do not find any reason to interfere with the order passed by the learned Tribunal. Accordingly, the present application is dismissed on contest.

16. No order as to costs.