

(2006) 144 STC 401

Calcutta High Court

Case No: W.P.T.T. No. 6 of 2005

Hariom Freight Carriers
(P) Limited

APPELLANT

Vs

Commercial Tax Officer
and Others

RESPONDENT

Date of Decision: June 17, 2005

Acts Referred:

- Constitution of India, 1950 - Article 226
- West Bengal Sales Tax Act, 1994 - Section 69
- West Bengal Taxation Tribunal Act, 1987 - Section 8

Citation: (2006) 144 STC 401

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

Bench: Division Bench

Advocate: Sumit Chakrabarty, for the Appellant; S.R. Islam, for the Respondent

Final Decision: Allowed

Judgement

S.P. Talukdar, J.

The present application under article 226 of the Constitution of India is directed against order dated April 13, 2005 passed by the learned West Bengal Taxation Tribunal, hereinafter referred to as "the Tribunal", in RN. No. 164 of 2005.

2. The backdrop of the present case may briefly be stated as follows :

The vehicle being No. WE 23A/3641 was intercepted on August 15, 2004 at 2 P.M. during mobile duty. It was detained for physical checking in exercise of power given in Section 69 of the West Bengal Sales Tax Act, 1994. On physical checking it was found that 50 barrels of diacetone alcohol were kept concealed in the vehicle. Initially the driver of the vehicle remained tight lipped in regard to the actual quantity and kind of goods loaded in the vehicle. There were no way-bill in form 42 and supporting documents in support of the

50 barrels of diacetone alcohol. The Commercial Tax Officer demanded the relevant documents which were required to be produced. The driver did not co-operate and expressed his inability to produce the same but afterwards, he produced another manifest waybill, CN, invoice, etc. The said way-bill was not filled up properly. The Commercial Tax Officer did not accept those documents.

3. The vehicle as well the consignment were seized and penalty of Rs. 2,48,778 was imposed. Thereafter, a revisional application was filed against the order of imposition of penalty vide Seizure Case No. 32(WSC)/04-05/CCP dated August 16, 2004. The revisional authority, being the Assistant Commissioner, Commercial Taxes, Kharagpur Range, District Paschim Midnapore by order dated August 20, 2004, while upholding the seizure, modified the order of penalty which was reduced to Rs. 2,00,000 only.

4. Another revisional application was filed against the said order dated August 20, 2004. By order dated February 24, 2005, the Deputy Commissioner, Commercial Taxes, Kharagpur Range, dismissed the same. Thereafter, the petitioner filed an application u/s 8 of the West Bengal Taxation Tribunal Act, 1987 and the learned Tribunal by order dated April 13, 2005 disposed of the application by holding the seizure to be valid though penalty was reduced from Rs. 2 lakhs to Rs. 50,000 only.

5. The main contention of the petitioner, as submitted by the learned counsel, is that the seizure was bad. It was argued that the seizing authority ought to have accepted the documents which were produced before seizure and the driver of the vehicle should have been given time to complete the way-bill.

6. On the other hand, the stand taken by the authorities is that there was every possibility of utilising a partly filled up unendorsed way-bill for another consignment.

7. Learned counsel, Mr. Chakrabarty, appearing for the petitioner contended that how could a huge quantity of 50 barrels of diacetone alcohol could be kept concealed. It was submitted that the authority cannot be allowed to refuse documents without any reason or on flimsy ground and then, seize materials merely on apprehension.

8. Learned counsel for the State authorities contended that the Commercial Tax Officer concerned was within his right to seize goods as he had reason to suspect that there was an attempt to evade payment of tax.

9. On behalf of the State authorities, it was submitted that if the check-post authority had reason to suspect that the goods under transport are not covered by proper and genuine documents or that any person transporting the goods is attempting to evade payment of the tax due under this Act, he may, for reasons to be recorded in writing, detain the goods and shall allow the same to be transported only on furnishing security. In this context he derived support from the decision in the case of *Shahnas Trading Co. v. State of Kerala* reported in [2002] 127 STC 1 (SC).

10. There can be no doubt in this regard. But here in the instant case, we are concerned with whether even after production of required documents, may be after initial reluctance but certainly before actual seizure, there could be any legal justification merely on apprehension that there would be an attempt to evade payment of tax taking advantage of a partly filled way-bill.

11. Mr. Chakrabarty, learned counsel appearing for the petitioners, relying upon the decision in the case of [Hindustan Steel Ltd. Vs. State of Orissa](#) , submitted that an order imposing penalty for failure to carry out statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation.

12. It is settled position of law that a public body invested with statutory powers must act in good faith and must act reasonably. While exercising discretion, one must, by use of its reasons, ascertain and follow the course which reasons direct.

13. In the present case admittedly documents were produced though allegedly not in proper time and certainly not in proper manner. It is not denied that the way-bill produced was not duly filled in. But the fact that subsequently other supporting documents were produced cannot also be lost sight of.

14. Be that as it may, it is necessary to analyse and ascertain as to whether the documents as required by the statute were placed before the checking authority before seizure or not. The answer in the factual backdrop of the present case being in the affirmative, it cannot be held that the seizure was legal or justified.

15. On behalf of the petitioner it was indicated that there had been a steady reduction in the amount of penalty at various stages of the proceeding. Be that as it may, considering all such facts and circumstances, we are unable to agree with the view of the learned Tribunal. As such, the present application being W.P.T.T. No. 6 of 2005 succeeds and the impugned order dated April 13, 2005 passed in R.N. No. 164 of 2005 be set aside.

16. Order of seizure dated August 16, 2004 and subsequent orders dated August 17, 2004, August 20, 2004, February 24, 2005 and April 13, 2005 passed at various stages also stand set aside.

17. No order as to costs. Xerox certified copy of this order, if applied for, may be supplied to the parties on urgent basis after due compliance with the formalities.

Aloke Chakrabarti, J.

18. I agree.