

(1999) 10 CAL CK 0028

Calcutta High Court

Case No: WPTT No. 12 of 1999

Euro Grain Limited and Another

APPELLANT

Vs

Commercial Tax Officer and  
OthersRESPONDENT

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**Date of Decision:** Oct. 6, 1999**Acts Referred:**

- West Bengal Sales Tax Act, 1994 - Section 68
- West Bengal Sales Tax Rules, 1995 - Rule 215, 215(4)

**Citation:** (2004) 134 STC 135**Hon'ble Judges:** S.N. Bhattacharjee, J; Ruma Pal, J**Bench:** Division Bench

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**Judgement**

1. The petitioners imported sugar and pulses. Prior to the arrival of the consignment, the petitioners applied in the appropriate form for issuance of 20 way-bills covering cargo of 14,000 metric tons of sugar. The respondent "No. 1 directed the petitioners to appear before him with the relevant documents. The petitioners claim to have appeared before the respondents but the respondents did not issue the way-bills as claimed by the petitioners. The petitioners challenged the action of the respondent No. 1 before the Tribunal. The respondent No. 1 contended that the application of the petitioners had been rejected because the requirement was not bona fide or reasonable.

2. By an order dated September 20, 1999, the Tribunal directed the respondent No. 1 to reconsider the matter after giving the petitioners an opportunity of being heard. The respondent No. 1 was directed to pass a reasoned order. The petitioners duly appeared before the respondent again. The respondent No. 1 passed an order recalling his earlier order rejecting the petitioner application but stating in the order that the petitioners" had not paid the tax on the sugar which was previously imported and sold by it. The petitioners challenged this order before the Tribunal

again. The Tribunal set aside the order of the respondent No. 1 but remanded the matter back to the respondent No. 1 for reconsideration.

3. According to the petitioners the Tribunal erred in not indicating in its order that the petitioners could not be refused way-bills on the ground of non-payment of tax. It is submitted that in a previous case No. RN-334 of 1999 the Tribunal had, at the time of passing the order of remand specifically directed the respondent No. 1 to dispose of this application of the petitioners for way-bills and added "the applicants" prayer for way-bill shall not be refused solely on the ground of non-payment of tax".

4. Rule 215 of the West Bengal Sales Tax Rules, 1995 provides for the authority from whom, and the manner in which, way-bills are to be obtained by, inter alia, dealers. It prescribes the form in which the applications are to be made. Sub-rule (4) of rule 215 further provides :

"If it appears to the appropriate assessing authority that the particulars furnished in the application and the statement of account referred to in sub-rule (3) are correct and complete and the requirement of the way-bill in form 42 or form 48, as the case may be, for the next three months following the date of the application is reasonable, it shall issue the required number of way-bill in form 42 or form 48, as applied for, to the registered dealer:

Provided that where the appropriate assessing authority is not satisfied with the correctness of the particulars furnished in the application or statement of account of way-bill in form 42A or form 48A issued to him on the last two occasions, it may, pending enquiry or investigation into the matter by it or by such other authority as the Commissioner may authorise or direct, issue such number of way-bill forms to the registered dealer as may, in its opinion satisfy the immediate requirement of such dealer."

5. It is clear from the aforesaid sub-rule that the grounds upon which the way-bills may be refused are (i) incorrectness; (ii) incompleteness and (iii) requirement is unreasonable. If these three grounds are not there, the respondent No. 1 is bound to issue the required number of way-bills. It is also to be noted that under the proviso despite the fact that the respondent No. 1 is not satisfied and an inquiry or investigation is to be held into the matter, the respondent No. 1 can issue way-bills to satisfy the "immediate requirement" of the dealer.

6. Learned counsel appearing on behalf of the respondents submits that in addition to the ground mentioned in rule 215 of the said Rules, the further ground of evasion of tax was available for the purpose of rejecting an application for way-bills. This is unacceptable. Section 68 reads as follows :

"68. Restrictions on movement of goods.--(1) To ensure that there is no evasion of tax, no person shall transport from any railway station, steamer station, airport, port, post office or any check-post set up u/s 75 or from any other place any

consignment of goods except in accordance with such restrictions and conditions as may be prescribed."

7. This Section does not place any absolute embargo on the transportation of goods. It provides that the transportation may be allowed in accordance with "restrictions and conditions as may be prescribed".

8. It does not appear that Section 215 explicitly refers to Section 68. Even if it were, once the conditions and restrictions have been prescribed, it must be assumed that those conditions and restrictions if complied with, sufficiently protect the object of ensuring no evasion of tax.

9. It is, however, to be noted that the learned counsel appearing on behalf of the respondents has stated that, in fact, no such restrictions or conditions have been prescribed u/s 68(1).

10. We also take note of the fact that in earlier proceedings the Tribunal has passed orders similar to those asked for by the petitioners herein. We, see no reason why the Tribunal should have adopted a different approach in the petitioners' case. Accordingly, the writ petition is disposed of by modifying the order of the Tribunal to the effect that the respondent No. 1 shall dispose of the matter within 48 hours from date and while disposing of the petitioners prayer for way-bills, the respondent No. 1 shall not refuse the same on the ground of non-payment of tax as mentioned in the impugned order.

The writ petition is accordingly disposed of.

11. Having regard to the urgency of the matter, leave is granted to the learned counsel appearing on behalf of the petitioners to communicate the gist of the order to the respondent No. 1 forthwith.

All parties are to act on a signed xerox copy of this order on the usual undertaking.