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Calcutta High Court

Case No: W.P.T.T. No. 10 of 2000

Bhabaneswar Singh	APPELLANT
Vs	
Commercial Tax Officer, Central Section and Others	RESPONDENT

Date of Decision: Dec. 4, 2000

Acts Referred:

- Constitution of India, 1950 - Article 226, 301
- West Bengal Sales Tax Act, 1994 - Section 68
- West Bengal Sales Tax Rules, 1995 - Rule 212
- West Bengal Taxation Tribunal Act, 1987 - Section 8

Citation: (2001) 122 STC 494

Hon'ble Judges: Satyabrata Sinha, J; Pratap Kumar Ray, J

Bench: Division Bench

Advocate: Sumit Chakraborty, for the Appellant;

Judgement

1. This application is directed against an order dated July 14, 2000 passed by the West Bengal Taxation Tribunal in Case No. RN-168 of 2000 whereby and whereunder the writ application filed by the petitioner was dismissed on the ground of availability of alternative remedy. The petitioner is a registered dealer both under the West Bengal Sales Tax Act, 1994 and Central Sales Tax Act, 1956. It placed an order with Eastern Trading Company, Mangalore, for 10,050 kgs., of betelnut packed in 134 bags. The said consignment was sent through Assam Carriers (P) Ltd. In the check-post waybills and other documents accompanying the consignment were verified. However at Andul a purported inspection was made and on the ground that the waybill is under-invoiced, the goods were seized. Questioning the legality of such seizure the application was filed by the petitioner before the learned Tribunal. The learned Tribunal did not go into the merits of the matter but directed as under :

"At this stage we are not going into the question as to the jurisdiction of a competent officer to intercept and seize the goods while on transit because that provision of statute is not under challenge.

On perusal of the order imposing penalty we find that the learned Commercial Tax Officer himself has observed that the price of arecanuts in Karnataka is varying between Rs. 55 and Rs. 65 per kg. Therefore, the under-invoicing, if any, is to be considered in the context of the price which according to the officer himself is prevailing in Karnataka. At any rate for adjudication of the dispute we have come to a finding as to whether there is an under-invoicing or what is the proper price of arecanuts in the market. These are purely questions of fact on which the fact-finding authorities should record their findings first. Accordingly, the instant application cannot be entertained. The applicant must exhaust all the alternative remedies available under the statute. However, the applicant''s prayer for instant release of the goods is taken into consideration. Admittedly, the applicant is a registered dealer. The seized goods shall be released provided the applicant furnishes security to the extent of Rs. 2,70,000, 50 per cent of which should be in cash and 50 per cent should be by way of bank guarantee. If such securities are furnished and evidence to that effect is produced before the C.T.O., Central section, the goods shall be released immediately. The bank guarantee, if furnished, shall be renewed from time to time, as may be required by the competent authority. The security shall abide by the ultimate decision in the revision application, if any, filed. This security amount will not influence the penalty amount as may be fixed. Mr. Chakraborty submits that the original documents like the waybill, consignment note and invoice may be returned to the applicant. Mr. Saha Roy has no objection provided the applicant furnishes photocopies of the same duly authenticated by the applicant No. 1 or his authorised representative. The original documents, be returned provided photocopies of the same duly authenticated by the applicant are furnished to the Revenue.

Thus, the instant application is disposed of without any order for costs."

2. Mr. Chakraborty, learned counsel appearing on behalf of the petitioner has raised a short question in support of this application. The learned counsel submits that the main purpose of seizure is to check evasion of tax. By reason of under-invoicing his client did not benefit itself by way of short payment of tax but evasion if any was on the part of the consignor. The learned counsel would submit that having regard to the provisions of Section 68 of the West Bengal Sales Tax Act, 1994 and ratio of Rule 212(9) of the West Bengal Sales Tax Rules, 1995 the concerned authority had no jurisdiction to effect any seizure.

3. The learned counsel appearing on behalf of the respondent when asked, very fairly stated that there does not exist any provision in the West Bengal Sales Tax Rules for seizure of goods for under-invoicing. The learned counsel drew our attention to the effect that in Tamil Nadu there exists such provision in respect whereof reliance must be placed in Commissioner of Sales Tax and Another Vs. M/s. P.T. Enterprises and Another, .

Section 68 of the Act and Rule 212(9) of the Rules read thus :

"Section 68(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.

(2) .....

(3) Subject to the restrictions and conditions prescribed under Sub-section (1) or Sub-section (2), any consignment of goods, may be transported by any person after he furnishes in the prescribed manner such particulars in such form obtainable from such authority or in such other form as may be prescribed.

(4) Subject to such restrictions and conditions as may be prescribed, nothing in Sub-section (1) shall apply to--

(a) duly accredited diplomatic personnel attached to foreign consulates or other diplomatic offices,

(b) organisations and specialised agencies of the United Nations,

(c) Khadi and Village Industries Commission,

(d) Embarkation headquarters, Shipping section, Customs Group, Ministry of Defence, Government of India, Calcutta, or

(e) such other persons, organisations or institutions as may be prescribed."

"212. (9) The Commercial Tax Officer or Inspector of a check-post empowered to endorse the waybill in form 42 or such Assistant Commissioner or Commercial Tax Officer, as the Commissioner may authorise to proceed u/s 69 outside the check-post, may verify correctness of the description, quantity, weight or value of the goods of a consignment as mentioned in the accompanying waybill with the description, quantity, weight or value which are actually found n such consignment."

4. A citizen of India has a right to carry on business. In course of carrying of his business, inter-State transfer if permissible in terms of Article 401 of the Constitution of India. It is now a well-settled principle of law that an illegal seizure would amount to deprivation of property.

5. The question which therefore ought to have been posed and answered by the learned Tribunal was as to whether the seizure of the goods made by the appropriate authority was wholly without jurisdiction or not. It is now a well-settled principle of law that although a writ court and particularly the Tribunal having regard to the provisions of the West Bengal Taxation Tribunal Act, 1987 does not exercise its jurisdiction when there exists an

alternative remedy, a self-restraint in this regard by the writ court would not be taken recourse to, inter alia, in the cases where the action complained against is wholly without jurisdiction or an order has been passed in violation of the principles of natural justice.

6. In Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, the apex Court held as under :

"15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principle of natural justice or where the order of proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

7. Another aspect of the matter in this connection may also be taken note. Sub-section (3) of Section 8 provides that the Tribunal shall not ordinarily admit an application unless it is satisfied that the application referred to in Sub-section (1) involves a substantial question of law.

8. In the Administrative Tribunal Act, 1985 it is stated as under :

"20. (1) A Tribunal shall not ordinarily, admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of Sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,--

(a) If a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance ; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of Sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any

other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial."

9. Provisions of both the Acts therefore do not lay down an absolute embargo in entertaining any application even if there exists any alternative remedy.

10. The aforementioned provisions, in our opinion, will have to be considered having regard to the decision of the apex Court in Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, . In this case the learned Tribunal has not held that there exists any remedy as regards the vires of the seizure. As such the learned Tribunal as noticed hereinbefore, inter alia, held that the question as regards the value of the goods cannot be gone into the assessment proceedings. This may be so but the question of going into the said question would arise only before the assessing authority at an appropriate stage. It appears that the learned Tribunal has not considered the question that apart from moving the Tribunal questioning such seizure which according to the petitioner was wholly without jurisdiction, he could not have approached the assessing authority. There does not exists any provision of appeal questioning the act of seizure but only a revisional application would be maintainable, if a penalty is imposed.

11. In the instant case as indicated hereinbefore it is accepted at the Bar that there does not exist any provision for seizure in the case of under-invoicing in the waybill. Another aspect of the matter may also be considered. Different prices cannot be mentioned in different documents accompanying the consignment.

12. Rule 212(9) of the Rules as quoted (supra) clearly postulate verification of the correctness of the description, weight and value of the goods of a consignment accompanying waybill which are actually valued in such consignment.

13. Thus the verification has to be made, as mentioned in the accompanying bill that the description, quantity, weight or value which are actually found in such consignment. It is, therefore, not for the assessing authority at that stage to verify the actual market value vis-a-vis the value mentioned in the waybill although the same value had been mentioned in different documents accompanying the consignment. He may only make a note thereof and send a report to the assessing authority for the purpose of assessment. Having regard to the fact that the seizure is to be effected, in accordance with law, only for the purpose of detection of evasion of sales tax, the statutory authority must exercise its jurisdiction within the four corners of the statute.

14. If by reason of under-invoicing the petitioner has not evaded any tax nor there was any scope therefore the question of assessing the value of said goods did not arise.

15. In any event the market value of any goods cannot be seized by an assessing authority and the very fact that the goods can be seized if the appropriate authority has reasons to believe that the goods were being transported in violation of the provisions of the Act and the Rules. There cannot be any doubt that unless the condition precedent

therefore is satisfied, no action taken de hors the statute would be wholly illegal and without jurisdiction.

16. Having regard to the decision in Anisminic Ltd. v. Foreign Compensation Commission reported in (1969) 2 AC 147 the word jurisdiction must be held to have a wider meaning. It not only includes an action order which was passed wholly without jurisdiction but a jurisdictional error while exercising such jurisdiction.

17. For the reasons aforementioned we are of the opinion that the learned Tribunal was not correct in not entertaining the writ application on the ground of existence of an alternative remedy.

18. For the reasons aforementioned the seizure is quashed and the respondents are directed to release the bank guarantee furnished by the petitioner, if any. However, xerox copies of all the relevant documents would be kept and the same would be sent to the assessing authority of the petitioner and to the consignor for taking appropriate action in accordance with the law. As the petitioner is a registered dealer in the event it is found by the assessing authority that the petitioner has sought to evade tax or committed any illegality which attracts penal provisions it would be open to the assessing authority to act in accordance with law.

19. This application is disposed of with the aforementioned directions.

All parties are to act on a xeroxed certified copy of the judgment, to be delivered on priority basis, on the usual undertaking.