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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 10310/2006

TRANSPORT CORPORATION
OF INDIA

..... Petitioner
Through: Mr. T.A. Francis, Advocate

versus

GOVT. OF NCT OF DELHI
& ORS.

..... Respondent
Through: Mr. H.L. Taneja, Advocate for
R-1.
Mr. S.C. Rajpal, Advocate for
R-3.

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Date of Decision: 6th October, 2010

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE MANMOHAN

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

J U D G M E N T

MANMOHAN, J :

1. The present writ petition has been filed under Articles 226 and 227 of the Constitution of India with the following reliefs :-

- a) *To direct the respondent no. 3 to get the goods released immediately by complying with the demands made by the respondent no. 2 and handover the goods to its bona fide owners.*
- b) *As the respondent no. 2 has clearly fixed the responsibilities of the alleged violation on the respondent no. 3, no liability is fastened upon the petitioner and as such the non-appearance of the orders of the respondent no. 2 by the respondent no. 3*

though they may be right or wrong is in fact causing prejudice to the petitioner.

2. The relevant facts of the present case are that the petitioner is a public carrier and transporting goods from and to various destinations of India. The goods consigned by various consignors for transportation were booked by the petitioner being a public carrier along with liability for reaching the goods in safe and sound condition to the different consignees for consideration. The petitioner handed over all relevant documents to respondent no. 3 in respect of the goods such as latex, rubber, supari, scrap valves etc. The said goods were transported from various destinations by truck to a central hub by the petitioner. The said goods were then stuffed into the containers of Container Corporation of India Ltd., respondent no. 3 herein, along with photocopy of all documents necessary for the unhindered passage of the goods through the long haul to its receiving point by the petitioner. After having reached the receiving point and after unloading the containers, the petitioner's trucks were to be loaded with the said goods and thereafter the goods were to be sent to various destinations in Punjab, Himachal Pradesh etc.

3. However, when the goods reached Delhi, the competent authority of respondent no. 1 in exercise of power under Delhi Value Added Tax Act, 2004 (for brevity 'Act') and rules framed thereunder seized the vehicles and after unloading, detained the goods and imposed penalty.

4. Be it noted, when the penalty was imposed on the detained

goods, the petitioner had moved this Court and this Court by an ad interim measure had directed that the goods be released subject to petitioner's furnishing a fixed deposit receipt amounting to ₹ 2,00,000/- to the Registrar General of this Court without prejudice to the rights and contentions raised in the present petition.

5. The submission of Mr. T.A. Francis, learned counsel for petitioner is that as the goods were never sold in Delhi, the provisions of the Act were not attracted and consequently, the imposition of penalty was vitiated in law. He further submitted that respondent no. 3, namely, the Container Corporation of India Ltd. should have shown the documents to the competent authority of respondent no. 1 and for its failure to do so, neither the petitioner nor the consignees should be penalised.

6. On the other hand, Mr. S.C. Rajpal, learned counsel for respondent no. 3 relied upon Section 61(8) of the Act to submit that respondent no. 3 was not to carry the documents in view of the language employed in the said Section.

7. Accordingly, the question that arises for consideration in this writ petition is whether the goods were actually sold in Delhi or only transported through Delhi to reach another destinations.

8. In our opinion, the aforesaid enquiry cannot be carried out in a proceeding under Article 226 of the Constitution of India.

9. In view of the aforesaid, we direct that the Value Added Tax officer under the Act shall conduct an inquiry on production of

documents before him (which has been filed before this Court) and after affording an opportunity of hearing.

10. The amount that has already been deposited before this Court be transferred to the Value Added Tax Authority. The Registrar General of this Court is directed to prepare an account payee cheque in the name of the Commissioner of VAT, Government of NCT of Delhi, New Delhi. The cheque shall be handed over to Mr. H.L. Taneja, learned counsel for GNCT of Delhi after obtaining the receipt.

11. The competent authority of the Value Added Tax shall complete the aforesaid exercise within a period of two weeks from the date of receipt of the order passed today.

12. Be it noted, we have not expressed any opinion on the merits of the case or the stand and stance put forth by the third respondent that it is covered under Section 61(8) of the Act inasmuch as the Container Corporation of India Ltd. is not a petitioner before us.

13. As conceded to by Mr. H.L. Taneja and Mr. S.C. Rajpal, learned counsel for respondents, the Value Added Tax Officer shall also hear the Container Corporation of India Ltd. so that the controversy can be appreciated from all spectrums.

14. With the aforesaid directions, the writ petition is disposed of.

MANMOHAN, J

CHIEF JUSTICE

OCTOBER 6 , 2010

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