THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.19167 OF 2016

ORDER: *(Per Hon'ble Sri Justice M. Satyanarayana Murthy)*

This writ petition is filed challenging the detention notice dated 28.05.2016, detaining the goods in the lorry bearing registration No.AP 29 TC 0781, at Kodikonda border check post, Anantapur District as illegal, null, void and arbitrary and consequently set-aside the notice dated 28.05.2016.

The petitioner is a transport agent engaged in the business of transporting consignment from one place to another place by hiring lorries. On 27.03.2016, consignment of ITC Limited was booked through the petitioner from Hyderabad to Tiruchi with valid way bills, permits, tax receipts. ITC Limited gave self-printed CST e-way bill and stock transfer challan along with booking receipt, noting down particulars of the vehicle number and transporter's name as 'Tirupati Logistics Limited'.

At about 4.00 PM, when the vehicle was proceeding from Hyderabad to Tiruchi, it was stopped by the third respondent at Kodikonda check post, Anantapur and the vehicle was detained for violation of Section 47 of the A.P.VAT Act, 2005 (for short hereinafter referred to as 'Act') read with Rule 58 of the A.P.VAT Rules, 2005 (for short hereinafter referred to as 'Rules) framed thereunder. After the detention, a notice in Form 610 was issued to the driver, who inturn informed the same to his owner Durga Roadways and also informed that the vehicle was blacklisted for passing through State of Andhra Pradesh, with goods, without transit pass on 26.09.2015. Three days thereafter, when the consignment has not reached, the petitioner enquired and came to know about detention of the vehicle at Kodikonda check post.

As the way bill contained the particulars of the vehicle, the petitioner orally explained the officer about the same and requested to release the goods and he also requested to shift the goods from the lorry to deliver the goods to the consignor at Tiruchi. But, the third respondent did not accede to the request and detained the goods on the ground that the vehicle passed through the State of Andhra Pradesh on 26.09.2015 through a logistic company by name Geofast Carriers Private Limited.

The lorry bearing registration No. AP 29 TC 0781 was booked through Maa Durga Roadways vide bill dated 27.05.2016 for Tirupati Logistics Limited Hyderabad to take the consignment of confectionary worth Rs.7,67,122/- of ITC Limited from Hyderabad to Tiruchi and as 15 days has already elapsed, the confectionary items would get decomposed and expired, thereby unfit for human consumption. Hence, the writ petition is filed questioning the detention notice dated 28.05.2015.

At the stage of admission, heard Sri P. Narahari Babu, learned counsel for the petitioner and Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes and with their consent, the writ petition is disposed of.

Learned counsel for the petitioner would contend that the petitioner is a hirer of the vehicle having obtained the vehicle on hire bearing No.AP29TC0781 from Maa Durga Roadways Limited for transportation of confectionary belonging to ITC Limited from Hyderabad to Tiruchi. It is admitted that no transit pass was obtained, as required under Section 47 of the Act read with Rule 58 of the Rules framed under in the Act, to pass through the State of Andhra Pradesh. A notice of detention in Form 610 was issued on 28.05.2016 to the owner of the goods to the person who is in charge of the vehicle for violation of Section 47 of the Act read with Rule 58 of the Rules and that the vehicle was not stopped at the Kodikonda exit check post without, obtaining transit pass at Panchalingala entry check post and the goods are not accompanied by a transit pass. The petitioner did not explain any reason for not obtaining transit pass by the driver of the vehicle after entering into the State of Andhra Pradesh at Panchalingala entry check post, Kurnool, but proceeded to Kodikonda check post at Anantapur District, which is the exit check post to proceed to Tiruchi, Tamil Nadu. Therefore, it is contended that, in such a case, if the petitioner is given an opportunity to rebut the statutory presumption under Section 47 of the Act, the petitioner would produce evidence that the goods crossed the border check post i.e. Kodikonda exit check post then, the owner of the goods has no liability to pay tax and penalty if any and finally prayed to release the goods and vehicle.

It is also contended by the learned counsel for the petitioner that the petitioner did not violate Section 47 of the provisions of the Act read with Rule 58 of the Rules thereunder, but the vehicle and goods were seized without any reason, it is contrary to the provisions of the Act.

Whereas, Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes would contend that, when the goods did not accompany transit pass, it amounts to violation of Section 47 of the Act read with Rule 58 of the Rules and thereby, the respondent is entitled to confiscate the goods to the State, in the absence of any proof that the goods were not intended to sell within the State of Andhra Pradesh or crossed exit check post. Therefore, the notice issued by the third respondent is in accordance with law. However, the learned Special Standing Counsel would submit that the third respondent is ready to release the goods subject to payment of Tax and the petitioner furnishing a security for an amount, equal to two times the amount of tax in the form of cash or in the shape of bank guarantee and subject to passing of final assessment order and penalty order.

Admittedly, the petitioner is only a transport agent and hired the vehicle for transportation of confectionary belonging to ITC Limited, from Hyderabad to Trichy passing through the State of Andhra Pradesh. The respondent did not deny hiring of the vehicle by the petitioner from Maa Durga Roadways. According to explanation to Section 47, if a vehicle is hired for transport of goods by any person, the hirer of that vehicle shall be deemed to be the owner of the vehicle for the purpose of Section 47 of the Act. Therefore, the petitioner being the hirer of the vehicle bearing No.AP29TC0781 is deemed to be the owner of the vehicle and entitled to challenge the detention notice dated 28.05.2016 issued in Form 610 by the third respondent.

According to Section 47 of the Act, where a vehicle carrying goods coming from any place outside the State and bound for any other place outside the State, pass through the State, the driver or other person-in-charge of such vehicle shall obtain in the prescribed manner a transit pass from the officer-in-charge of the first check post or barrier after his entry into the state and deliver it to the officer-in-charge of the last check-post or barrier before his exit from the State, failing which it shall be presumed that the goods carried thereby have been sold within the State by the owner or person-incharge of the vehicle and accordingly the tax shall be assessed and penalty, if any shall be levied in accordance with the provisions of the Act.

Thus, there is a statutory legal presumption that the goods are deemed to have been sold within the State of Andhra Pradesh if the owner or the incharge of the vehicle failed to produce the transit pass as required under Section 47 of the Act, read with Rule 58 of the Rules framed thereunder. The said presumption is a rebuttable presumption, if the petitioner being a hirer of the vehicle or the owner of the goods produce any evidence to rebut or dispel the statutory legal presumption, the petitioner or the owner of the goods is not liable for payment of tax and penalty.

While dealing with 'rebuttable presumption' under Section 28, 28-B of U.P. Sales Tax Act, the Supreme Court has laid down the principle in **Sodhi Transport Co. and others v. State of U.P and others**[1]**,** the words "it shall be presumed" in Section 28-B only require the authorities concerned to raise a rebuttable presumption, that the goods must have been sold in the State if the transit pass is not handed over to the officer at the check-post or the barrier near the place of exit from the State. A statutory provision which creates a rebuttable presumption as regards the proof of a set of circumstances which would make a transaction liable to tax with the object of preventing evasion of the tax cannot be considered as conferring on the authority concerned the power to levy a tax which the legislature cannot otherwise levy. A rebuttable presumption has the effect of shifting the burden of proof. The authority concerned before levying sales tax arrives at the conclusion by a judicial process that the goods have been sold inside the State and in doing so relies upon the statutory rule of presumption contained in Section 28-B of the Act which may be rebutted by the person against whom action is taken under Section 28-B. The person concerned having opportunity to displace the presumption by leading evidence, there is no unconstitutionality in it. When once a finding is recorded that a person has sold the goods which he had brought inside the State, he would be a dealer even according to the definition of the word 'dealer' as it stood from the very commencement of the Act subject to the other conditions prescribed in this behalf being fulfilled. There is, therefore, no substance in the contention that a transporter was being made liable for the first time after 1979 with retrospective effect to pay sales tax on a transaction which is not a sale.

A presumption is not in itself evidence but only makes a prima facie case for the party in whose favour it exists. It is a rule concerning evidence. It indicates the person on whom the burden of proof lies. When presumption is conclusive, it obviates the production of any other evidence to dislodge the conclusion to be drawn on proof of certain facts. Having regard to the definition of 'may presume' in Section 4 of the Evidence Act, it is open to a court, in its discretion, either to draw a presumption referred to in a law or not. The words "shall presume" require the court to draw a presumption accordingly, unless the fact is disproved. They contain a rule of rebuttable presumption. When presumption is rebuttable it only points out the party on whom lies the duty of going forward with evidence on the fact presumed, and when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed the purpose of presumption is over. Then the evidence will determine the true nature of the fact to be established. The rules of presumption are deduced from enlightened human knowledge and experience and are drawn from the connection, relation and coincidence of facts, and circumstances.

In view of the legal principle laid down in the judgment, the owner of the goods or the hirer of the vehicle who is a deemed owner of the vehicle is entitled to produce necessary material to establish that the goods have crossed Kodikonda border check post at Anantapur and not intended for sale within the State of Andhra Pradesh, since the presumption under Section 47 is a rebuttable presumption. Section 58 of the Rules prescribed the procedure for obtaining a transit pass for transit movement of the vehicle, but the person incharge of the vehicle or the owner of the goods did not comply the mandatory requirement under Section 47 read with Rule 58. Therefore, the third respondent issued show cause notice proposing to levy tax of Rs.1,11,233/- on the turn over value of goods of Rs.7,67,122/- at the rate of 14.5% under Section 45(7)(a) and further separate action was initiated to impose penalty of Rs.22,25,466/- i.e. two times of tax due and further directed to get the goods released at the earliest by furnishing security for an amount of equal to two times the amount of tax in the form of cash or in the shape of bank guarantee.

As the petitioner or the person incharge of the vehicle or the owner of the vehicle violated under Section 47 of the Act read with Rule 58 of the rules thereunder, at best, the petitioner is entitled to get the goods released on payment of tax proposed to be levied in the show cause notice dated 03.06.2016 and on furnishing security two times of the amount of tax liability. The petitioner is permitted to pay tax, as proposed in the show cause notice dated 03.06.2016, subject to final order of assessment being passed by the third respondent, and furnish an unconditional bank guarantee from a nationalized bank for twice the amount of tax as security. It is open to the third respondent to levy penalty, in accordance with law. Upon such payment of tax and furnishing bank guarantee, the third respondent is directed to release the vehicle and goods, subject to final order of assessment and penalty if any passed affording opportunity to the owner of the goods; or person in-charge of the vehicle.

With the above direction, this writ petition is disposed of. Consequently, miscellaneous applications pending if any shall also stand closed. No costs.

JUSTICE RAMESH RANGANATHAN

JUSTICE M.SATYANARAYANA MURTHY

24.06.2016.
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[1] (1986) 2 Supreme Court Cases 486