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

% **DECIDED ON: 22.03.2017**

\+ W.P. (C) 2882/2013, CM APPL.5417/2013, 24904/2016

THE DELHI TRANSPORTERS ASSOCIATION AND ANR.
..... Appellants
Through: Ms. Vertika Sharma with Mr. Ravi Chandhok, Advocates.

Versus

GOVT. OF NCT OF DELHI ..... Respondents
Through: Mr. Naushad Ahmed Khan, ASC (Civil), Mr. Vikas Kr. Gupta, Advocate for Trade & Taxes, Deptt.
Mr. Nikhil Goel, proxy for Mr. L.R. Garg, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

S.RAVINDRA BHAT, J.(ORAL)

1. The petitioner - a transporter association is aggrieved and seeks several reliefs - all primarily based upon the complaint that in the absence of any statutory basis and the publication of relevant forms, the goods vehicles plied by its members cannot be subjected to detention, penalty or any coercive action.

2. The petitioner is an integrated society which espouses the cause of goods vehicles owners and such like transporters. Interstate transport, the petitioner contends, is regulated by the provisions of The Carriage by Road

Act, 2007 which outlines the responsibilities of individual owners, the kind of documents which are to be kept on board each vehicle etc. It submits that wherever goods are transported, the said authority's responsibility of requiring declarations have to be reasonable in the absence of which the obligations can result in onerous and harsh - even unlikely practical consequences. It is stated that the issue of detention of goods vehicles was gone into by the Supreme Court in *Ramesh Chandra v. Commissioner of Sales Tax, Delhi* (C.A.Nos.7306-09/2001, disposed of by an order dated 19.10.2001). The Court had noted that the then existing law, the Delhi Sales Tax Act, by Section 64 had cast obligations upon the goods vehicles to keep certain classes of documents, and further noted that the relief forms had not been framed or published. The Court directed as follows: **-**

> *"The Appeals above-mentioned being called on for hearing before this Court on the 19th day of October, 2001. Upon perusing the record and hearing counsel for the appearing parties above-mentioned, THIS COURT DOTH PASS the following ORDER: -*
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> > *"These appeals have been filed making allegations that the forms prescribed under Section 64 of the Delhi Sales Tax Act, which are meant to be carried by the truck-owners, have not been printed nor made available by the prescribed authority and therefore the vehicle without the said form could not have been detained. Though sufficient opportunity had been given to the Delhi Commissioner of Sales Tax and others in Delhi State and an affidavit has been filed, but, in that affidavit this assertion had not been denied.*
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> > *In that view of the matter, we assume that the assertion made in the petitions are true. Since the relevant forms*

are not available and have not been printed, the vehicles in question cannot have the obligation of carrying those forms with the vehicle not the vehicle could be detained for not carrying the forms in question. These appeals are accordingly allowed. We make it clear that this direction of ours will remain operative so long as the Forms in question are not printed or made available. The Government may take steps for printing the forms and making them available."

3. It is contended that till date no valid form has been published in accordance with law.

4. The petitioner relies upon form nos.34 and 35, copies whereof have been annexed to this proceeding and contends that these have never been published. It was submitted that these forms were later replaced by others, namely, T-1 and T-2 which too were again replaced by Form Nos.DS-1 and DS-2. However, the DS-1 was later withdrawn leaving only DS-2.

5. Learned counsel for the respondents submits that the petitioner's grievance is unfounded and that the forms prescribed, i.e., DS-2 is to be kept with every transporter to check mis-declarations or abuse. Section-61 of the DVAT Act which is relevant for the purposes of this proceedings reads as follows: **-**

> ***61. Power to stop, search and detain goods vehicles (Rules 22 (3), 23 (3), 43, 48 & 65)***
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> *(1) To enable proper administration of this Act, the Commissioner may, at any check-post or barrier or at any other place, require the [owner,] driver or person in charge of*

a goods vehicle to stop the vehicle and keep it stationary so long as may be required to search the vehicle, examine the contents therein and inspect all records relating to the goods carried, which are in the possession of such [owner,] driver or person in charge.

[(2) The owner, driver or person in charge of a goods vehicle shall carry with him such records as may be prescribed in respect of the goods carried in the goods vehicle and produce the same before any officer-in-charge of a check post or barrier or any other officer or any agent as may be empowered by the Commissioner.]

[(2A) The owner, driver or person in charge of a goods vehicle entering or leaving Delhi shall also file a declaration containing such particulars in the prescribed form obtainable from the Commissioner and in such manner as may be prescribed, before the officer in charge of a check post or barrier or before any other officer or agent empowered as aforesaid:

PROVIDED that where the owner, driver or person in charge of a goods vehicle, after filing a declaration at the time of entering Delhi that the goods are meant to be carried to a place outside Delhi, fails, without reasonable cause, to carry such goods outside Delhi within the prescribed period, he shall, in addition to the payment of tax, if any, be liable to a penalty not exceeding two and a half time the tax that would have been payable had the goods been sold inside Delhi or one thousand rupees, whichever is more.]

(3) The [owner,] driver or person in charge of the goods vehicle shall, if required, inform the Commissioner of –

(a) his name and address;

(b) the name and address of the owner of the vehicle;

(c) the name and address of the consignor of the goods;

(d) the name and address of the consignee of the goods; and

(e) the name and address of the transporter.

(4) If, on an examination of the contents of a goods vehicle or the inspection of documents relating to the goods carried, the Commissioner has reason to believe that the owner [or driver] or person in charge of such goods vehicle is not carrying the documents as required by sub-section (2) of this section or is not carrying proper and genuine documents or is attempting to evade payment of tax due under this Act, he may, for reasons to be recorded in writing, do any one or more of the following, namely:-

(a) refuse to allow the goods or the goods vehicle to enter [or leave] Delhi;

(b) seize the goods and any documents relating to the goods; and

(c) seize the goods vehicle and any documents relating to the goods vehicle.

(5) Where the owner [driver] or the person in charge of the goods vehicle –

(a) requests time to adduce evidence of payment of tax in respect of the goods to be detained or impounded; and

(b) furnishes security to the satisfaction of the Commissioner in such form and in such manner as may be prescribed for the prescribed amount, the goods vehicle, the goods and the documents so seized may be released.

[PROVIDED that where the owner or his agent, driver or person in charge of the goods vehicle exercises the option of paying by way of penalty, a sum equal to three and a half times the tax, which in the opinion of the Commissioner, would be leviable on such goods, if such goods were sold in Delhi, the Commissioner instead of detaining or impounding the goods or the goods vehicle or the documents relating to the goods and goods vehicle shall release the same.]

(6) The Commissioner may permit the owner [driver] or person in charge of goods vehicle to remove any goods or goods vehicle seized under sub-section (4) subject to an undertaking –

(a) that the goods and goods vehicle shall be kept in the office, godown or other place within Delhi, belonging to the owner of the goods vehicle and in the custody of such owner; and

(b) that the goods shall not be delivered to the consignor, consignee or any other person without the approval in writing of the Commissioner, and for this purpose the person in charge of the goods vehicle shall furnish an authorization from the owner of the goods vehicle authorizing him to give such undertaking on his behalf.

(7) Save as otherwise provided in this section, every search or seizure made under this section shall as far as possible be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to searches or seizures made under that Code.

(8) Nothing contained in this section shall apply to the rolling stock as defined in the Railway Act 1989 (24 of 1989)."

6. The relevant rule is Rule 43 which provides as follows: **-**

*"43. **Records to be carried by a person in charge of a goods vehicle** (1) The owner, driver or person in charge of the goods vehicle shall carry the Transport Receipt in Form DVAT-32, sale invoice or delivery note in Form DVAT- 33, and, as the case may be, export declaration in Form DVAT-34, import declaration in Form DVAT-35 or transit slip in Form DVAT 35A.*

(2) For obtaining export or, as the case may be, import Declaration in Forms DVAT-34 and DVAT-35, an application in Form DVAT 46 shall be made to the Commissioner by the user dealer.

(3) Account of the usage of Forms DVAT 34 and DVAT 35 shall be maintained by the user dealer in Form DVAT 35B which shall be open for inspection by the Commissioner and shall be filed with the Commissioner every quarter or with every new application for obtaining Form DVAT 34 and DVAT 35, whichever is earlier.

(4) A declaration in Form DVAT 34 or DVAT 35 shall be in three parts. Each part shall be filled and signed by consignor, the consignee and the transporter, as the case may be. The owner, driver or person in charge of the goods vehicle shall keep with him such declaration forms in duplicate while carrying the goods. He shall submit the declaration forms in duplicate at the check post or barrier. The officer in charge shall retain the original part of such declaration and shall return to the owner, driver or person in charge of the goods vehicle, the duplicate part duly verified, signed and stamped. The duplicate part of such declarations shall be furnished by the user dealer to the Commissioner along with the account of such declaration maintained in Form DVAT 35B at the time of obtaining of additional declaration forms.

(5) Where the goods vehicle entering Delhi, is bound for any place outside Delhi and passes through Delhi, the owner, driver or the person in charge of the goods vehicle shall furnish, in duplicate, to the officer in charge of the check post or barrier, a Transit Slip in duplicate in Form DVAT-35A duly filled, signed and verified. He will obtain from the officer in charge of the check post or the barrier one copy of the Transit Slip duly countersigned. The owner, driver or person in charge of the goods vehicle shall deliver within twelve hours of its entry into Delhi, the said countersigned copy to the officer in charge of the check post or barrier at the point of his exit from Delhi.

(6) The owner, driver or his agent or the person in charge of the goods vehicle when required to furnish security under sub-section (5) of section 61 shall furnish security in the form and in the manner and subject to the conditions specified in rule 23. The security referred to in this sub-rule shall be furnished within the time specified in the order not exceeding seven days from the detention of the goods. The Commissioner shall issue to the depositor a receipt in Form DVAT 47 acknowledging the receipt of the security. Delhi VAT Rules as on 5th March 2014 Rule 44 by Rakesh Garg, FCA (4)

(7) The officer in charge of the check post or barrier detaining the goods shall make a report to the Commissioner about all the facts and circumstances of the case within twelve hours of the detention of the goods.

(8) Where the goods detained are not released owning to the failure to furnish the security required to be furnished under sub-section (5) of section 61 within the specified time, the notified goods detained shall be sold by public auction after following the procedure as specified in rule 41."

7. It is evident from the above factual narrative that like in the past when the Delhi Sales Tax Act was in force, the DVAT authorities after the enactment of Delhi VAT Act, 2005 have chosen not to publish the relevant forms. They merely appear to have drafted certain forms and have assumed that the general public, i.e., goods transporters are expected to know it and use it. It is a well settled proposition of law as espoused in *B.K. Srinivasan v. State of Karnataka,* (1987) 1 SCC 658 that in the absence of a proper publication of the rules or statutory instrument, the action of the executive authorities is unsupportable by law. Both Section 61 in its relevant part and Rule 43 clearly speak of statutory forms. In fact Rule 43 remains unamended - however, according to the respondents Form Nos.34 and 35 are no longer in existence. In other words, the rule speaks of DVAT 34 & 35/35A; however, the Revenue now speaks of DS-2 as the relevant form in existence. Without an amendment of the Rules or publication thereof or without appropriate publication of the forms, the executive authority, i.e., the DVAT Department cannot insist that carriers and goods vehicle owners/operators are under any responsibility or obligation to carry such unpublished forms. Any action taken by them towards detention or initiation of penalty, consequent to the alleged non-adherence to such condition is bound to fail.

8. In view of the above discussion, the petitioner is clearly entitled to relief. It is held that till the relevant forms are published in accordance with law and the amended rules are brought into force

again by operation of law, the transporters especially the goods carriers cannot be compelled to carry such documents with them under pain or coercive action such as detention and penalty.

9. It is stated by learned counsel for the respondents that action is being taken towards amending the rules and publication of forms.

10. The writ petition is allowed in the above terms. All applications are disposed.

S. RAVINDRA BHAT
(JUDGE)

NAJMI WAZIRI
(JUDGE)

MARCH 22, 2017
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