

STATE OF WEST BENGAL AND ANR.
v.
ROAD TRANSPORT ASSOCIATION, SILGURI AND ANR.

FEBRUARY 25, 2003

[SYED SHAH MOHAMMED QUADRI AND ASHOK BHAN, JJ.]

Bengal Finance (Sales Tax) Act, 1941/West Bengal Sales Tax Rules, 1941:

Ss.2(1a-1)—Explanation I, and ss.4C(6) and 4C(7)/rr.48L(4) and 48M—Constitutional validity of—West Bengal Taxation Tribunal suspended operation of Explanation I to s.2(1a-1) holding it valid but vague and held that there is no machinery provision specifying the manner of disclosure—Tribunal also held sub-sections (6) and (7) of s.4-C invalid and unconstitutional and sub-rule(4) of r.48 as invalid observing that power to seize and sell the goods is exercisable without purchase of goods by, and a proper assessment of purchase tax in respect of, a transporter of goods—On appeal, Held, there is no ambiguity in s.2(1a-1) and Explanation I thereto—The requirements of Explanation I are clear enough—Not providing any proforma for declaring particulars under the Explanation would neither make it vague nor unworkable for want of any machinery provision—Order of Tribunal in regard to Explanation I, set aside.

Ss.4C(6) and 4C(7) of the Act and r.48L(4) of the Rules are not unconstitutional—The course of action incorporated in these provisions is meant to prevent evasion of tax due under the Act—It cannot be said that such a course of action can be taken by the authorities even without any purchase of goods by a casual trader—The sine qua non for levy of tax under the Act is the purchase of the goods within the State—In the absence of any taxable event the goods will not be liable to tax and consequently no transporter can be made liable to pay tax at the entry point for his failure to disclose the information which is required under Explanation to s.2(1a-1) of the Act—Order of Tribunal is set aside.

It is made clear that order of Tribunal is not challenged in so far as it holds r-48M as unconstitutional.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8180 of

A 1995.

From the Judgment and Order dated 7.4.95 of the West Bengal Taxation Tribunal at Kolkata, in R.N. No. 148 of 1993.

B B. Sen, Rakesh Dwivedi, Dayan Krishnan and S. Mishra for M/s. Sinha & Das for the Appellants.

Yashank Adhyaru, Satyajit Saha and Mrs. V.D. Khanna for the Respondents.

C The following Order of the Court was delivered

This appeal, by the State of West Bengal and its Commissioner of Commercial Taxes, arises from the judgment of the West Bengal Taxation Tribunal in R.N. No. 148/1993, dated April 7, 1995.

D The first respondent is an association of road transporters and the second respondent is its Member and Secretary. The respondents challenged before the West Bengal Taxation Tribunal (for short, 'the Tribunal') constitutional validity of the following provisions of the Bengal Finance (Sales Tax) Act, 1941, as amended in 1993. (for short 'the Act'):

E (i) Explanation-I to sub-section (1a-1) of Section 2;

(ii) Sub-sections (6) and (7) of Section 4-C of the Act and

(iii) the legality of sub-Rule (4) of Rule 48-L of the West Bengal Sales Tax Rules, 1941 (for short, 'the Rules').

F The Tribunal took the view that Explanation-1 to Section 2(1a-1) of the Act is valid but vague and that there is no machinery provision specifying the manner of disclosure and, therefore, suspended the operation of the said Explanation till a machinery for that purpose is provided; it was held that sub-sections (6) and (7) of Section 4-C of the Act were invalid and unconstitutional and consequently, sub-Rule (4) of Rule 48L was also invalid. G The application of the respondents was thus allowed by the Tribunal by the order under challenge.

H Mr. Dayan Krishnan, the learned counsel appearing for the appellants, contends that the approach of the Tribunal in suspending operation of the Explanation to Section 2(1a-1) and declaring sub-sections (6) and (7) of

Section 4-C of the Act and sub-Rule (4) of Rule of 48L of the Rules as invalid and unconstitutional is erroneous and the decision untenable; the Tribunal has erred in proceeding on the assumption that the power to seize and sell the goods is exercisable without purchase of goods by, and a proper assessment of purchase tax in respect of, a transporter of goods, Mr. Adhyaru, the learned counsel for the respondents has expressed the apprehension and real grievance of the respondents that due to fallacious interpretation of the said impugned provisions, trucks are being stopped at the entry points and in the event of failure of the transporters to furnish the details of the consignor or the consignee, they are required to pay tax even though the goods have not by then entered the limits of the State of West Bengal and no sale or purchase of goods by the transporter takes place at that stage.

In our view, a true and proper interpretation of the impugned provisions will put the controversy at rest. To understand the import of the definition, 'Casual trader' and Explanation-1 thereto, it is necessary to read them here:

"Sec.2 (1a-1)

"Casual trader" means a person, other than a registered dealer, who whether as a principal or agent or in any other capacity, makes occasional purchases of goods in West Bengal for purposes other than his personal use or consumption of such goods in West Bengal or makes occasional sales of goods in West Bengal and who has no fixed place of business in West Bengal, and includes a consignor or a consignee of goods in West Bengal or a transporter as defined in clause (a) of the Explanation to section 14c and an owner or lessee of a godown or warehouse let out to any person for storage of goods.

Explanation-1—A transporter who, while carrying goods in his goods vehicle within the meaning of section 14c fails to disclose the name and address of the consignee or consignor in West Bengal or fails to furnish copy of invoice, challan, transporter receipt or consignment note or document of like nature in respect of any goods, shall be deemed to be a casual trader in respect of such goods carried in his goods vehicle.

Explanation-2—An owner or lessee of a godown or warehouse, who fails to disclose the name and address of the owner of any goods stored in such godown or warehouse, shall be deemed to be a casual trader in respect of such goods."

A It is seen that sub-section (1a-1) of Section 2 of the Act defines the expression "Casual trader" to mean: (1) a person, other than a registered dealer, who whether as a principal or agent in any other capacity, (a) makes occasional purchases of goods in West Bengal for purposes other than his personal use of consumption in West Bengal; or (b) makes occasional sales of goods in West Bengal and has no fixed place of business in West Bengal, and (ii) includes (a) a consignor or a consignee of goods in West Bengal; or (b) a transporter as defined in clause (a) of the Explanation to section 14C and (c) an owner or lessee of a godown or warehouse let out to any person for storage of goods.

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C Explanation-1, referred to above, ropes in a transporter within the meaning of the expression 'Casual Trader', who fails to fulfil the obligation to disclose the name and address of the consignee or consignor in West Bengal or to furnish copy of invoice, challan, transporter receipt or consignment note or document of like nature in respect of any goods carried in his goods vehicle. Explanation-2 includes an owner or lessee of a godown or warehouse also within the meaning of a 'Casual trader' in case of failure to furnish particular mentioned therein but this Explanation is not the subject-matter of the present discussion.

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E A perusal of the definition clause and Explanation-1 shows that there is no ambiguity in them. The requirements of the Explanation are clear enough. Not providing any proforma for declaring particulars under the Explanation would neither make it vague nor unworkable for want of any machinery provision. It cannot be disputed that a prescribed proforma would have been appropriate but absence of a proforma for making the required declaration would not warrant suspension of the said Explanation. We find no substance in the reasoning of the Tribunal and, therefore, set aside the finding of the Tribunal in regard to Explanation-1.

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G Section 4-C of the Act is a charging section in respect of a casual trader. Sub-section (1) thereof opens with a non-obstante clause and mandates that subject to the provisions of sub-section (3), a casual trader shall pay tax on his every *purchase of goods* in West Bengal. Certain purchases are exempted thereunder but we are not concerned with them here. Sub-section (2) prescribes rates mentioned in various clauses of sub-section (1) of Section 5 at which the tax is payable by a casual trader on purchase of any goods. Sub-section (3) speaks of refund of the tax paid by a casual trader when he makes regular sales and gets himself registered in the circumstances specified

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therein. Sub-section (4) is a machinery provision. It says that notwithstanding anything contained in sub-section (2) of Section J 1, the tax payable under the main section shall be determined and collected in such manner and by such authority as may be prescribed and imposes an obligation on a *casual trader* to pay the same at such time and at such interval as may be prescribed. Sub-section (5) thereof deals with the procedure for production, inspection and seizure of accounts and document.

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Sub-sections (6) and (7) of s. 4-C of the Act and Rule 48L(4) of the Rules, quoted hereunder, are at the center of the controversy. They have to be read as part of the scheme of taxation of a 'Casual trader' under Section 4-C of the Act read with Rule 48L of the Rules and not in isolation.

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4C. Liability to pay purchase tax by a casual trader.....

(1) to (5)

(6) Where there is no claimant of the ownership of any goods, whether in the custody of transporter, or such owner or lessee of the godown or the warehouse denies his liability to pay tax under this section, the Commissioner or any person appointed under sub-section (1) of section 3 to assist him may, with a view to checking evasion of tax payable under this section, seize such goods from the custody of the transporter or from the godown, or warehouse of the owner or lessee of goods, if necessary, by breaking open the door of such godown or warehouse, and shall, before making seizure, prepare an inventory of such goods in the presence of the transporter or the owner or the lessee of the godown or warehouse, as the case may be, and get such inventory countersigned by him or any other witness.

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(7) If the goods seized under sub-section (6) are not claimed by the *bonafide* owner of such goods within fifteen days from the date of seizure the Commissioner may sell such goods in open action and auction adjust the amount of tax on purchases of goods that may be determined under sub-section (4) with the sale proceeds of the goods and deposit the balance, if any, with a Government Treasury for refund to the *bonafide* owner of goods upon claim preferred in the prescribed manner within one year.

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Rule 48L (4):

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A If a casual trader fails to pay the amount of tax as determined under sub-rule (1) and directed to be paid under sub-rule (3), the goods liable to the purchase tax shall be seized for recovery of tax in the manner referred to in sub-sections (6) and (7) of Section 4C."

B A plain reading of sub-section (6) shows that it is attracted where no one claims to be the owner of the goods in the custody of a transporter or owner or lessee of the godown of the warehouse and such a person denies his liability to pay tax under Section 4C; with a view to checking evasion of tax payable thereunder, it empowers the Commissioner or any person appointed under sub-section (1) of section 3 to assist him, to seize such goods from the
C custody of such transporter or from the owner or lessee of the godown or warehouse, if necessary, by breaking open the door of such godown or warehouse. A duty is cast upon the Commissioner or the person authorised by him to prepare an inventory of the goods, before making seizure, in the presence of the transporter or the owner or lessee of the godown or warehouse, as the case may be, which should be countersigned by the concerned officer
D as well as by the witnesses.

It is evident from sub-section (7) that it authorises the Commissioner/ the authorised person to sell in an open auction the goods which have been seized under sub-section (6) and not claimed by the *bonafide* owner thereof, within fifteen days from the date of seizure, and adjust the amount of tax on
E purchases of goods that may be determined under sub-section (4) with the sale proceeds of such goods. The balance amount, if any, is required to be deposited with a Government Treasury for refund to the *bonafide* owner of goods upon claim preferred in the prescribed manner within one year.

F The procedure to levy the impost under Section 4-C of the Act is mentioned in sub-rule (1) of Rule 48L of the Rules. It provides that if upon information or otherwise, the Commercial Tax Officer or Inspector, authorised by the Commissioner in that behalf, is satisfied that a casual trader is liable to pay tax under sub-section (1) of Section 4C of the Act *on his purchases made in West Bengal of goods*, he is required to determine by a precise order
G in writing in Form VIB the amount of tax payable by such trader after taking into consideration the purchase bill memo, challan or consignment note which may be available relating to such goods. Sub-rule (4) of Rule 48L of the Rules, quoted above, says that if a casual trader fails to pay the amount of tax as determined under sub-rule (1) and demanded under sub-rule (3), the
H goods liable to purchase tax shall be seized for recovery of tax in the manner

referred in sub-sections (6) and (7) of Section 4C. It is thus abundantly clear that under sub-rule (4), for the purpose of recovery of tax due, the power of seizure and sale of the goods contained in sub-sections (6) and (7) of the Act is made available to the concerned authority. A

From the above discussion, it is clear that the course of action incorporated in these provisions is meant to prevent evasion of tax due under the Act. We are, therefore, unable to accept that such a course of action could be taken by the authorities even without any purchases of goods by a casual trader. The *sine qua non* for levy of tax under the Act is the purchase of the goods within the State of West Bengal. In the absence of any taxable event, the goods will not be liable to tax and, consequently, no transporter can be made liable to pay tax at the entry point for his failure to disclose the information which is required under Explanation-1 of Section 2(1a-1) of the Act. We find no valid reason to hold that the said provisions are illegal much less unconstitutional, therefore, we are unable to sustain either the reasoning or the conclusion of the Tribunal that sub-sections (6) and (7) of Section 4-C of the Act and sub-Rule (4) of Rule 48-L of the Rules are unconstitutional. B
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In the result, we set aside the order of the Tribunal under challenge. However, we make it clear that the impugned judgment insofar as it holds Rule 48M of the Rules as unconstitutional is not challenged before us.

The appeal is, accordingly, allowed. E

There shall be no order as to costs.

R.P.

Appeal allowed.