

Calcutta Iron Merchants Association and another

Vs

Commissioner of Commercial Taxes and another

Civil Appeal No. 3858 of 1996

(B. P. Jeevan Reddy, K. S. Paripoornan JJ)

23.02.1996

JUDGMENT

1. Leave granted. Heard counsel for the parties.

2. Section 4B of the Bengal Finance (Sales Tax) Act, 1941 says :

"No person shall transport from any railway station, steamer station, airport, post office, or any other place whether of similar nature or otherwise, notified in this behalf by the State Government, any consignment of any notified goods exceeding such quantities and except in accordance with such conditions as may be prescribed. Such conditions shall be made with a view to ensuring that there is no evasion of tax by this Act."

Sub-section (2) empowers the State Government to prescribe the conditions for regulating transport of notified goods from any place, other than those referred to in sub-section (1) with a view to ensuring that there is no evasion of tax imposed by this Act.

3. Pursuant to the above provisions, rules have been made by the State Government. Rule 89A and in particular sub-rule (2) thereof is relevant for our purpose. It reads :

"(2) Where such consignment is despatched from any place within West Bengal and the value whereof exceeds rupees twenty-five thousand-

(a) any person transporting such consignment shall carry with him a consignment note or delivery note, sale bill or cash memo or similar document and a written declaration in duplicate duly signed by the consignor or his authorised agent in the form mentioned in the Schedule appended to this sub-rule in respect of such consignment, and shall, on demand by the officer referred to in the proviso to sub-rule (1) of Rule 70A, produce the said documents and declaration and the said officer, on being satisfied about the correctness of the documents and the declaration, shall only allow the movement of such quantity of notified goods mentioned in that declaration and conforming to the description given therein and to other documents produced. He shall retain one copy of the declaration and return the second copy on which he shall endorse the date on which the consignment is transported and shall sign, seal and date such endorsement;

(b) If the declaration referred to in Clause (a) in respect of any consignment has already been submitted to an officer referred to in the proviso sub-rule (a) of rule 70A any person transporting such consignment shall, on demand by such officer at any subsequent place, produce the countersigned and sealed copy of the aforesaid declaration.

SCHEDULE

Declaration

Declaration No.....

date.....

I/We declare that the following consignment of notified goods is despatched from a place within West Bengal :-

1. Name and address of the consignor

2. (a) Name and address of the consignee.

(b) Registration Certificate/Certificate No. of the consignee (if registered or certified under any of the Sales Tax Acts).

3. Place of dispatch.

4. Destination.

5. Description of consignment

6. Quantity

7. Weight

8. Value

9. Consignor's Bill/Cash Memo/other document (specify) No. and date

10. Consignment or Delivery Note No. and date.

I/We declare that I/We hold/do not hold Registration Certificate No..... under the Bengal Finance (Sales Tax) Act, 1941/West Bengal Sales Tax Act, 1954.

I/We have/have not manufactured the goods in West Bengal/not transported the goods from outside West Bengal.

The above statements are true to the best of my/our knowledge and belief.

Statues of the declarant Signature

N. B. (1) This declaration should bear a consecutive issue number of the office of the

consignor giving the declaration and a true copy of the same should be retained by him.

(2) Strike out words or phrase not applicable.

(Inserted by Notification No. 1863 F. T. dated 25-4-1985 w. e. f. 1-5-1985)"

4. According to Clause (a) of sub-rule (2), a person transporting goods shall carry with him three sets of documents, viz., (i) consignment note or delivery note (ii) sale bill or cash memo or similar document and (iii) a written declaration in duplicate duly signed by the consignor or his authorised agent in the form mentioned in the Schedule to the sub-rule in respect of such consignment. These documents are required to be produced by such transporter on demand by any appropriate officer. The declaration form contained in the sub-rule says that the declaration has to be signed by the consignor or his authorised agent and shall contain the specified particulars. It is this declaration which along with other prescribed documents, a person transporting such goods has to produce as and when demanded by the appropriate officer.

5. We are concerned herein with persons who are dealers in iron and steel. Their case is this : Iron and Steel is taxable at the first point of sale. Iron and steel is manufactured by major manufacturing units. When they sell the same, they pay tax thereon. The appellants are only purchasers and they transport goods purchased by them in the course of their business. They complain that under the rules, an obligation is placed only upon the purchasers/transporters to be in possession of the aforementioned three sets of documents and to produce them whenever demanded by the appropriate officer but no such obligation is placed upon the sellers/consignors. Consequently, the sellers are not issuing the declarations as contemplated by Rule 89A (2). The appellants are, therefore, not in position to produce the declaration when demanded by the authorities, on which account they are being put to harassment and financial loss.

6. Shri A. Subba Rao, learned counsel for the appellants, reiterates the grievance that the rule which does not place an obligation upon the seller/consignor of the goods to issue the aforesaid written declaration in the prescribed form but places an obligation upon the consignee/purchaser to carry it, is unreasonable and oppressive. We do not think this grievance is well founded. The Rule squarely places an obligation upon the consignor to issue a written declaration in duplicate in the prescribed form, signed by him or by his authorised agent. The rule places a statutory obligation upon the consignor/vendor to issue and the consignee/purchasers to carry the declaration form. All this is meant to check and prevent evasion of Sales Tax and no dealer can make any legitimate grievance against it.

7. We, therefore, dispose of this appeal with the above directions/clarifications.

8. We may also clarify that direction made by the Tribunal in Paragraph 16 of its judgment to the effect "We, however, like to direct that where a transporter or consignee fails to produce a written declaration as required by rule 89A (2), he should be allowed to establish that he had demanded such a declaration from the selling dealer or the consignor, but the latter did not issue or refused to issue the same. If the appropriate authority is satisfied that the transporter or consignee had, in fact, not neglected in the matter, and the consignor or selling dealer had not issued or refused to issue the declaration, in spite of request for the same, there should be neither any seizure of Iron and Steel declared goods nor imposition of penalty on the sole ground that the declaration has not been produced in terms of rule 89 A (2)"- is not only impractical but is also likely to lead to several

complications. In any event, in the light of the clarification made by us with respect of the meaning and purport of rule 89A (2), the above direction becomes unnecessary and is accordingly deleted.

9. The appeal is disposed of accordingly. No costs. Order accordingly.