

SARAL KUMAR
v.
STATE OF HARYANA AND ORS.

JANUARY 12, 1996

[B.P. JEEVAN REDDY AND FAIZAN UDDIN, JJ.]

Haryana Sales Tax Act :

Ss.37, 38—Validity of—S.38 already struck down in earlier decisions—S.37 already held valid—Clarification—Production of documents i.e. challan, cash memo and bill—In case the driver/person-in-charge of Carrier satisfies Sales Tax Officer that the said documents could not be produced by him, officer not to insist upon their production—However production of goods carrier record or trip sheet or log book is obligatory and cannot be dispensed with.

Sales Tax Officer, Kanpur & Ors. v. Union of India & Ors., [1995] Suppl. (1) S.C.C. 410, held applicable.

State of Haryana & Ors. v. Sant Lal & Anr., (1993) 91 S.T.C. 321 and Delite Carriers (Regd.) v. State of Haryana & Ors., (1990) 77 S.T.C. 170, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2122 of 1996.

From the Judgment and Order dated 12.8.94 of the Punjab and Haryana High Court in C.W.P., No. 2674 of 1983.

Harish N. Salve, Ms. Rachna Srivastava and Ms. Rani Chhabra for the Appellant.

Ms. Nisha Bagchi and Ms. Indu Malhotra for the Respondents.

The following Order of the Court was delivered :

Leave granted.

We have heard learned counsel for the parties. This appeal is directed

against the judgment of the Punjab and Haryana High Court allowing the writ petition partly. The writ petitioner challenged the validity of Sections 37 and 38 of the Haryana Sales Tax Act in the High Court. So far as Section 38 is concerned, it was struck down by the High Court in an earlier decision which has been affirmed by this Court in *State of Haryana & Ors. v. Sant Lal & Anr.*, (1993) 91 S.T.C. 321. No further need be said with respect to Section 38 of the Act.

Coming to Section 37 of the Act, its validity was also upheld by this Court in *Delite Carriers (Regd.) v. State of Haryana & Ors.*, (1990) 77 S.T.C. 170. Thus, the question of validity of Section 37 is also no longer in issue. However, Sri Harish N. Salve, learned counsel for the appellant, has stated that it may be difficult for the appellant to produce some of the documents mentioned in Sub-Section (2) of Section 37. We may clarify the issue, Section 37(2) reads as under :

"The owner or person incharge of the goods and when the goods are carried by a goods carrier, the driver or any other person incharge of the goods carrier, shall carry with him a goods carrier record, a trip sheet or log-book (alongwith a challan as may be prescribed or cash memorandum or bill as the case may be), in respect of the goods meant for the purposes of trade and are carried by him or in the goods carried and produce the same before an officer incharge of a check post or barrier or any other officer of the department not below the rank of an Assistant Excise and Taxation Officer or such other officer, as the State Government may, by notification appoint, checking the goods carrier at any other place."

It is obvious from a reading of the sub-section that the sub-section refers to two sets of documents. The first set of documents are goods carrier record, trip sheet and log book. They are mentioned in the alternatives which means that production of any one of these three documents would be enough. The sub-section proceeds further and says that any of the said three documents should be produced "along with a challan as may be prescribed or cash memorandum or bill as the case may be". These three documents, viz, challan, cash memorandum and bill may be called second set of documents. These three documents are again mentioned in the alternative, which means that any one of these three documents can be produced. In short, one of the documents from the first set and one of the documents from

the Second set have to be produced and that would be a sufficient compliance with the requirements of sub Section (2). Sri Salve, however, points out that there may be situations where the person-in-charge of the goods/the driver/ or the person-in-charge of the goods carrier may not be in a position to produce any of the documents in the second set, i.e., either the challan (as prescribed by Rules) or the cash memorandum or the bill. It is clarified herewith that in such a case, it is for him to satisfy the concerned sales tax authority that it is not possible for him to produce any of the said three documents. If the officer is so satisfied, he will not insist upon the production of any of the said three documents, viz., the challan, cash memorandum or bill. It is also clarified that so far as the production of goods carrier record or trip sheet or log book is concerned, production of any one of them is obligatory and cannot be dispensed with.

The Authorities may examine the appellant's case in the light of the above clarification.

In all other aspects the decision of this Court in *Sales Tax Officer, Kanpur & Ors. v. Union of India & Ors.*, [1995] Suppl. 1 S.C.C. 410 shall apply herein. The appeal is disposed of in above terms. No costs.

Appeal disposed of.