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COMMISSIONER OF SALES TAX AND ANR.

v

M/S. P.T. ENTERPRISES AND ANR.

DECEMBER 8, 1999

B

[S.P. BHARUCHA, D.P. WADHWA AND N. SANTOSH HEGDE, JJ.]

Sales Tax

C

Madhya Pradesh General Sales Tax Act, 1958—Sec.29-A—Whether empowers the authorities to question the value of goods as declared in the documents with reference to market Value? Held, Yes.

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A truck belonging to the respondent carrying 'supari' was checked by the Sales Tax authorities and it was found that the value of goods as shown in the declaration form was less than the real value. Thus, a notice under Section 29-A (II) of the Madhya Pradesh General Sales Tax Act, 1958 was issued. The writ petition filed by the respondent to quash the said notice was allowed by High Court holding that the provisions of Section 29-A of the Act did not authorise the authorities to question the value of the goods as contained in the documents with reference to market value. Hence the present appeals.

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Allowing the appeals, this Court

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HELD : 1.1. The High Court erred in holding that the provision of Section 29-A of Madhya Pradesh General Sales Tax Act, 1958 does not authorise the authorities to question the value of the goods as contained in the documents with reference to market value. [189-D]

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1.2. The provisions of sub-section (8) and (II) of Section 28-A of the Act clearly state that every person who transports goods of the kind notified by the State Government, and it is not disputed that 'supari' is notified, must carry with him an invoice, bill or challan or any other document issued by the consignor of the goods that gives particulars relative to the goods. The transporter is obliged to stop the vehicle carrying the goods when required to do so to allow the Sales Tax authority to verify and check the declaration and documents aforesaid and to search the vehicle and inspect the goods. If such search and verification shows that the declaration that has been filed in respect of the goods is false or incorrect in respect of, *inter alia*, the value

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thereof the authority may presume until the contrary is proved that an attempt is being made to evade sales tax. He must then record his reasons in this behalf and supply a copy thereof to the transporter. If, after considering the transporter's explanation, the authority remains unsatisfied, he is required so to record and to serve on the transporter a notice to show cause why a penalty should not be imposed upon him. [188-H; 189-A-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8921 of 1994.

From the Judgment and Order dated 13.5.94 of the High Court of M.P., Bench at Indore in M.P. No. 71/94.

WITH

C.A. Nos. 9458/94, 9/95 and 168/98.

S.K. Agnihotri and Niraj Sharma for the appearing parties.

The Judgment of the Court was delivered by

BHARUCHA, J. These appeals raise a common question pertaining to the power conferred by Section 29-A of the Madhya Pradesh General Sales Tax Act, 1958.

The facts that we narrate relate to the first appeal (Civil Appeal No. 8921 of 1994).

A truck carrying 120 bags of 'supari' belonging to the respondent was checked by the Sales Tax Authorities on 10th January, 1994 near Bijalpur when it crossed the barrier into Madhya Pradesh. It was found by these authorities that the value of the 'supari' as shown in the declaration form, was less than what it should really have been. Accordingly, the authorities issued to the respondent a notice under Section 29-A (11) of the said Act. The notice required the respondent to show cause why it should not be held that the truck was carrying the goods without paying sales tax with the intention of evading sales tax and why penalty in the sum of Rs. 31, 472 should not be imposed. The respondent filed a writ petition in the High Court of Madhya Pradesh to quash the notice. By the order under challenge, the writ petition was allowed. The High Court held that the provisions of Section 29-A did not "authorise the authorities to question the value of the goods as contained in the documents with reference to market value.....".

Section 29-A empowers the State government or the Commissioner of Sales Tax to set up checkposts or barriers "with a view to prevent or check

A evasion of tax.....” Under sub-section (4) thereof, every person transporting goods notified by the State Government must carry with him an invoice, bill or challan or any other document, by whatever name called, issued by the consignor of the goods giving such particulars as may be prescribed. Under sub-section (6) the transporter is obliged to stop his vehicle at every checkpoint or barrier and keep it stationery for as long as may be reasonably necessary

B to allow the checkpoint officer to verify and check the declarations and documents mentioned above, to search the vehicle and inspect the goods and all documents relating thereto which are in the possession of the transporter. Sub-section (8), so far as is relevant here, states :

C “(8) *If the check post officer finds* after searching the vehicle and verifying the declaration of other documents relating to the goods, that--

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D (b) *the declaration* filed in respect of any goods *is false or incorrect*, either *in respect of* the kind of goods or the quantity of goods transported, or *the value thereof*; or

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xxx

xxx

E such officer may presume, until the contrary is proved, that an attempt was being made to facilitate the evasion of tax in respect of such goods and he may, after recording his reasons therefore in writing a copy of which shall be forthwith supplied to the transporter seize such goods in such manner as may be prescribed.”

Sub-section (11) reads thus :

F “(11). If the check post officer is not so satisfied, he shall record his findings accordingly giving reasons therefore and he shall serve on the transporter a notice in writing requiring him to show cause, ordinarily within fifteen days of the service of the notice, why a penalty as specified in the notice, which shall be equal to three times

G the amount of tax which would have been payable if the goods were sold within the State on the date of such seizure, should not be imposed upon him for the attempt made to facilitate the evasion of tax on such goods.”

(Emphasis supplied)

H It is, therefore, clear that every person who transports goods of the kind

notified by the State Government, and it is not disputed that 'supari' is notified, must carry with him an invoice, bill or challan or any other document issued by the consignor of the goods that gives particulars relative to the goods. The transporter is obliged to stop the vehicle carrying the goods when required to do so to allow the Sales Tax authority to verify and check the declarations and documents aforesaid and to search the vehicle and inspect the goods. If such search and verification shows that the declaration that has been filed in respect of the goods is false or incorrect in respect of, inter alia, the value thereof, the authority may presume until the contrary is proved that an attempt is being made to evade sales tax. He must then record his reasons in this behalf and supply a copy thereof to the transporter. If after considering the transporter's explanation, the authority remains unsatisfied, he is required so to record and to serve on the transporter a notice to show cause why a penalty should not be imposed upon him. In the premises, the High Court was plainly in error when it held that the aforesaid provision does not authorise the authorities to question the value of the goods as contained in the documents with reference to market value. The provision clearly does.

The civil appeals are allowed. The orders under appeal are set aside.

No order as to costs.

S.V.K.

Appeals allowed.