

PETITIONER:
TRIPURA GOODS TRANSPORT ASSOCIATION AND ANR.

Vs.

RESPONDENT:
COMMISSIONER OF TAXES AND OTHERS

DATE OF JUDGMENT: 15/12/1997

BENCH:
SUHAS C. SEN, K. VENKATASWAMI

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

I.A.3 is an application for recalling of the order passed by this Court on 3rd March, 1997.

A writ petition was filed by Tripura Goods Transport Association challenging the competence of the State Legislature to pass any law relating to "transportation of goods". The case of the Association was that the transporters were not liable to pay Sales Tax as they were neither "Dealers" in terms of the Act nor had any authority to sell on behalf of the dealers. Various other points were made in the writ petition. One of the points related to submitting of various forms under the Sales Tax Rules by the transporters at the check-posts. The writ petition was dismissed by the Gauhati High Court. The Association approached this Court by a special leave petition. The special leave petition was disposed of by a consent order dated 1.10.1996 which was as under:

"If a Transporter furnishes Form XVIII A of Form XVIII B (prescribed under Rule 47 A and 47 C respectively of the Tripura Sales Tax Rules, 1976) entitled an information of import/export of taxable goods to the appropriate officer, such transporter shall not be required to furnish Form XXIV. If, however, the transporter does not furnish Form XVIII A or XVIII B prescribed under Rule 47 A and 47 C respectively of Tripura Sales Tax Rules, it is obvious, he shall have to furnish Form XXIV.

The learned counsel for the State of Tripura further Clarifies that the declaration in Form XVIII A or XVIII B can be furnished with respect to all goods.

In view of the aforesaid agreed order it is not necessary for us to express any opinion on the

questions of law raised in this special leave petition.

The special leave petition is disposed of accordingly."

Thereafter, another application was made on behalf of the transporters on which a further order was passed on 3.3.1997 to the following effect:

"Heard.

Mr. Kapil Sibal, learned counsel for the applicant states that because the petitioners are not dealers, they are not being supplied with forms 18A and 18B. He, therefore, submits that it is not possible for the petitioners to produce the said forms. On this submission, Mr. M.L. Verma, learned counsel for the State of Tripura responds that while he cannot give any response with respect to the question whether the applicants are dealers or not, he assures that if and when the applicants approach the Commissioner of Taxes, he shall ensure that these forms are supplied to the petitioners. The said statement is recorded herewith.

For the above reasons, we also do not express any opinion whether the applicants are dealers or not.

The application is disposed of with above clarification."

The State of Tripura has now made this application for recalling of the order dated 3rd March, 1997 on the ground that the order was entirely against the provisions of the Tripura Sales Tax Rules framed under the Tripura Sales Tax Act, 19966. It has been stated that the order was passed on the basis of an erroneous and unauthorized concession made by the Senior Counsel for the State. The concession was made without obtaining instructions from the commissioner of Tax who was also present in the court at the time of the proceedings. It has been contended that Form XVIII A prescribed under Rule 47A of the Rules can only be for "Dealers" and not for transporters. Form XVIII A cannot be issued to the transporters. The concession made on behalf of the State Counsel was against the statutory provisions and was unauthorized. It has been submitted that order passed on the basis of this erroneous concession should be recalled.

We are of the view that there is considerable force in the submission made on behalf of the State. The material part of Rule 47A is as under:

47A(1). " Where the procedure laid down in Rule 46 or Rules 62 cause inconvenience to a dealer, such dealer may transport consignment or taxable goods despatched from any place outside Tripura, on the basis of intimation furnished by such dealer in form XVIII A in accordance with the provisions contained in this Rule, from such railway station, steamer station, post office, airport or any other place notified under Section 37 or 38 of

the Act as may be specified in this behalf for the purposes of this rule by the authorised officer."

Therefore, it is the dealer and not the transporter who has to give the necessary information in Form no. XVIIIIA.

Moreover, the requirements of Form XVIIIIA clearly indicate that it has to be filled up by a dealer. The form has to be issued to a "Dealer", the name and address of the dealer has to be stated in the form. The dealer in that form has to make a declaration to the proper officer various particulars including name and address of the seller from whom the goods were purchased, name and address of the consignee, place of despatch, destination, description of consignment, quantity, weight, value, Consignor's Invoice Number and date, Mode of transport, Railway Receipt or Bill of Lading or Air Note. After filling in the form, a declaration has to be made, which is as under :

"I/We hereby declare that I/We am/are a registered dealer under the Tripura Sales Tax Act, 1976, holding registration Certificate No..... and the above Statements are true to the best of my/our knowledge and belief.

The language of Rule 47A and form XVIIIIA leaves no room for doubt that the form can only be issued to a dealer. There is no dispute that the transporter is not a dealer. Form XVIIIIA is issued to a dealer whose name, address and registration no. have to be mentioned by the Issuing officer. Obviously, such a form cannot be issued to a transporter.

The assurance given by the counsel of the State in Court was "whether the applicants approach the Commissioner of Taxes, he shall ensure that these forms are supplied to the petitioners." This assurance was clearly against the law. Form XVIIIIA cannot be issued to the transporters.

Although the order dated 3.3.1997 was based on the assurance given by the senior Advocate appearing for the State the order will have to be recalled. An advocate appearing on behalf of the State cannot undertake that the state will do something contrary to the statute. Therefore, this application is allowed. We will recall the order passed on 3.3.1997 and restore the I.A.2 of 1996 for hearing and disposal. These applications are disposed of as above. There will be no order as to costs.