

*Before M. M. Kumar & Rajesh Bindal, JJ*

GOYAL FINANCE (P) LTD,—*Petitioner*

*versus*

STATE OF PUNJAB & OTHERS,—*Respondents*

*C.W.P. No. 15005 of 2007*

5th October, 2007

***Constitution of India, 1950—Art. 226—Punjab Value Added Tax Act, 2005—S.51(6) (a) (b)—Petitioner's goods detained on account of transport vehicle defaulting on earlier occasion—Huge loss due to detention of goods—No fault on part of owner of goods—No warrant for respondents to detain goods merely because transport vehicle was at fault on account of its previous lapse—Respondents failing to issue any notice to the petitioner nor responding to its representations resulting into avoidable harassment—Gross negligence of respondents in handling goods—Petition allowed with costs of Rs. 25,000.***

*Held*, that there was no warrant for the respondents to detain the goods merely because the transport vehicle was at fault on account of its previous lapse. The petitioner did not have any notice of the lapses committed by the transport vehicle lest it would have not hired such a vehicle. The respondents did not issue any notice to the petitioner nor responded to its representations resulting into avoidable harassment. The goods have been detained since 21st August, 2007 and a period of 1½ months has gone by. It is wholly unfair for the respondents to shatter the business aspirations of an entrepreneur like the petitioner by blocking its goods for such a long time.

(Para 6)

Sachin Midha, Advocate, for the petitioner.

Amol Rattan Singh, Addl. AG, Punjab, for the respondents.

***M. M. KUMAR, J.***

(1) This petition filed under Article 226 of the Constitution prays for issuance of a writ in the nature of certiorari quashing notice dated 26th August, 2007 (P-3), regarding detention of goods under Section

51(6)(a)(b) of the Punjab Value Added Tax Act, 2005 (for brevity, 'the Act'), carried in vehicle No. HR-58-0411, belonging to M/s New Sharma Transport Company, Delhi, directing the owner of the goods i.e. the petitioner to appear and get the documents pertaining to the goods verified at ICC Shamboo on 28th August, 2007. Further prayer has been made for directing respondent Nos. 2 and 3 to immediately release the detained goods. Still further a prayer has been made for directing the respondents to pay compensation to the petitioner for illegally detaining the vehicle and goods loaded therein for an unlimited period without any reasonable cause.

(2) We have heard learned counsel for the parties and perused the record with their able assistance.

(3) It is an admitted position that the goods could not be detained and only the transport vehicle could have been detained under Section 51(4) of the Act. However, notice dated 26th August, 2007 (P-3) shows that it was issued to the owner of the goods through the driver and the goods were detained alongwith the connected documents on 21st August, 2007. The petitioner made a representation on 28th August, 2007 seeking release of goods which had been detained on the ground that Truck No. HR-58-0411 on some earlier occasion had defaulted in leaving State of Punjab after obtaining transit slip issued showing Jammu as the destination of goods. It was pointed out that huge loss due to detention of goods without any fault on the part of the owner of the goods, would be caused to the petitioner and request was made for release of the goods at the earliest so that the goods be transported by the petitioner in another vehicle. It was further intimated that if needful was not done then the petitioner would be constrained to approach the Court of law. However, when nothing was done the petitioner was compelled to approach this Court.

(4) When the matter came up for consideration on 3rd October, 2007, we issued notice to the respondent—State and directed learned State counsel to obtain instructions.

(5) At the hearing today, learned Additional Advocate General, Punjab, after obtaining instructions has stated that the goods are not required to be detained and order on 10th September, 2007 against the transport vehicle has been passed. He could not dispute the factual position as noticed in the preceding para. He has further apprised the Court that the owner of the goods is free to take the goods without any tax or penalty etc. However, he has not been able to explain as to how notice dated 26th

August, 2007 (P-3) was issued to the owner of the goods and why order dated 10th September, 2007 has not been served on the petitioner. From perusal of the order dated 10th September, 2007, which has been produced before us alongwith record, it is evident that some penalty under Section 51(4) of the Act has been imposed on the owner of the vehicle on account of some default committed by him earlier. The order has got nothing to do with the petitioner, who is owner of the goods.

(6) After hearing learned counsel for the parties, we expressed our complete dis-satisfaction with the conduct of the respondents. The handling of the goods belonging to the petitioner without any realisation of the loss likely to be suffered by it is far from satisfactory. There was no warrant for the respondents to detain the goods merely because the transport vehicle was at fault on account of its previous lapse. The petitioner did not have any notice of the lapses committed by the transport vehicle lest it would have not hired such a vehicle. The respondents did not issue any notice to the petitioner nor responded to its representations resulting into avoidable harassment. The goods have been detained since 21st August, 2007 and a period of 1½ months has gone by. It is wholly unfair for the respondents to shatter the business aspirations of an entrepreneur like the petitioner by blocking its goods for such a long time. We say no more than this with the hope that there would be no repetition of such a conduct.

(7) In view of above, notice dated 26th August, 2007 (P-3) is quashed. The respondents are directed to immediately release the goods to the petitioner. On account of the gross negligence of the respondents in handling the goods of the petitioner and harassment, we saddle the respondents with exemplary costs of Rs. 25,000. We make it clear that costs shall be initially paid by respondent No. 1. Simultaneously, an inquiry shall be held fixing the responsibility. The inquiry shall be completed within a period of two months from the date of receipt of copy of this order. The costs of Rs. 25,000 shall be recovered from the officer found to be guilty of lapse after holding inquiry. Let an inquiry be held and completed on or before 20th December, 2007 and a report be submitted to this Court by 4th January, 2008. If inquiry is not completed or not held as per directions then the case be put up before this Court on 11th January, 2008.

(8) The writ petition stands disposed of in the above terms.

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**R.N.R.**