

Before M. M. Kumar and Ajay Kumar Mittal, JJ.
**SENIOR DIVISIONAL COMMERCIAL MANAGER,
NORTHERN RAILWAYS, FEROZEPUR CANTT.
AND OTHERS,—Petitioners**
versus
STATE OF PUNJAB AND OTHERS,—Respondents

C.W.P. No. 16043 of 2005

16th May, 2008

Constitution of India, 1950—Act.226—Punjab Value Added Tax Act, 2005—Ss.2(1) and 51—Railways Act, 1989—S. 93(e)—Railway booking goods for transportation—Excise and Taxation Department detaining goods—Maintainability—Petition against issuance of show cause notices to owners, passing detention order and final orders against owners not maintainable at instance of railway—However maintainability of petition upheld on plea of railway that it result into extreme inconvenience when any goods vehicle of railway is stopped for checking by authorities under VAT Act or any other Act—Owner of goods not coming forward with any grievance—Railway not supposed to go to extent of fighting cause of owners particularly keeping in view Section 93(e)—Whether expression ‘railway’ used in S.2(31) of Railway Act would mean same thing as ‘fixed rails’ as expression used in S.2(1) of VAT Act defining ‘goods vehicle’—Held, no—Expression ‘railway’ used in S.2(31) and ‘fixed rails’ as used in S.2(1)(i) of VAT Act are absolutely distinct—S. 51(2) of VAT Act requires railway incharge of goods vehicle to produce good receipt etc. containing such particulars prescribed by rules—Petition dismissed.

Held, that a perusal of Section 93(e) of the Railways Act would show that having imposed responsibility of railway as carrier of goods it has excluded the responsibility of the railway with respect to orders or restriction imposed by, *inter alia*, State Government or by an officer or authority subordinate to a State Government authorized by it in that behalf. It, therefore, follows that the railway cannot escape the obligation

of producing documents in accordance with the VAT Act, which is State Law. Therefore, it has been rightly argued by the learned Additional Advocate General that Section 51(2) of the VAT Act requires the railway, which is in charge of the goods vehicle to produce goods receipt, a trip sheet or a log book and a sale invoice or bill or cash memo or delivery challan, containing such particulars as has been prescribed by the rules. The rules further require any good vehicle which would include the use of any road for the purpose of traffic of a railway and owned, hired or worked by a railway, to produce the aforementioned documents.

(Para 20)

Further held, that the railway which is bailee of the goods has come forward with the filing of the instant petition. The railway may have cause of action to challenge any action of the respondents causing inconvenience in acting as carrier of goods but it cannot challenge the show cause notices issued to the owner or the final order passed against the owner for evasion of tax as per the provisions of Section 51 of the VAT Act by not furnishing the documents as envisaged by Section 51(2) of the VAT Act. Therefore, the writ petition against issuance of the show cause notices to the owners, passing detention order and final orders against the owners, would not be maintainable at the instance of the railway. However, we uphold the maintainability of the petition on the plea raised by the railway that it result into extreme inconvenience when any goods vehicle of the railway is stopped for checking by the authorities of the Punjab Government under the VAT Act or any other Act. Therefore, we repel the attack on the impugned notices and the orders at the instance of the railway particularly when the owners who are said to be aggrieved party have not come forward with any grievance. The petitioner railway is not supposed to go to the extent of fighting the cause of owners particularly keeping in view Section 93(e) of the Railway Act.

(Para 24)

Ashok Aggarwal, Senior Advocate, with P. K. Dutt, Advocate
and Alok Jain, Advocate, *for the petitioners.*

Amol Rattan Singh, Addl. A.G., Punjab, *for the respondents.*

M. M. KUMAR, J.

(1) This petition filed under Article 226 of the Constitution prays for quashing notices dated 5th September, 2005 and 9th September, 2005 (P-5 and P-8), detention memo dated 3rd September, 2005 (P-7) and order dated 19th September, 2005 (P-14). A further prayer has been made for restraining the respondents-the Department of Excise and Taxation, Punjab, from interfering in the peaceful working of the railways to carry goods booked with it.

(2) Brief facts of the cause are that on 3rd September, 2005, four persons booked parcels for different locations such as Lucknow, Sealdah and Rampur, with the Northern Railway City Booking Agency, Basti Jodhewal, Ludhiana-petitioner No. 3. The consignors filled up the relevant from/forwarding note declaring the required particulars therein. In token of having received the consignment, Railway Receipts bearing Nos. 704103, 287280, 287279, 70499 and 70414, dated 3rd September, 2005 were issued to the consignors [P-2 (Collectively)]. The amount received in lieu of the booking of goods for transportation was duly deposited in the account of Northern Railways on 5th September, 2005. The goods were loaded in three tempos bearing Nos. PB-10-T-3837, PB-2-AM-9758 and PB-10-BF-0832 belonging to the Railways, for taking the goods to the Railway Station for their onward transportation to their respective destinations.

(3) However, enroute to load goods on goods train the tempos alongwith goods were stopped for checking by the Excise and Taxation Officer, Mobile Wing Punjab, Chandigarh-respondent No. 3. The drivers of the tempos showed to respondent No. 3 the Railway Receipts and challan forms which were available with them. On receiving information, the representative of petitioner No. 3 (Northern Railway City Booking Agency), namely, Shri Tarun Chugh also reached the spot and apprised respondent No. 3 that as the material belonged to Railways the same cannot be detained. However, the goods were detained by respondent No. 3. It has been alleged that no notice or detention memo was handed over to Shri Tarun Chugh, who was present at the spot on 3rd September, 2005 at the time of detention of goods. When the goods were not released up to 6th September, 2005, petitioner No. 3 reported the matter

to the Post Commandant, Railway Protection Force, Ludhiana, for taking appropriate action in the matter,—*vide* letter dated 7th September, 2005 (P-3). On 7th September, 2005, the Post Commandant, Railway Protection Force, Northern Railways, Ludhiana, sent a letter to respondent No. 3 for intimating the authority under which the goods belonging to the Railways had been detained (P-4). It has been alleged that on receiving the information about lodging of complaint by petitioner No. 3 with the Railways Protection Force, respondent No. 3 got a letter, purported to have been numbered and signed on 5th September, 2005, pasted outside the office of petitioner No. 3 later in the evening of 7th September, 2005. The aforementioned notice of detention of goods, dated 5th September, 2005, was issued under Section 51(6)(a) of the Punjab Value Added Tax Act, 2005 (for brevity, 'the VAT Act') in the name of owners of the goods, namely, Dhir Madhopuri, Anoop Madhopuri, Lucky Madhopuri and Sonu Madhopuri through the Station Master, Ludhiana CBA Basti Jodhewal, Ludhiana and through the drivers Sarvshri Khem Raj, Sonu and Balwinder. It was further mentioned in the notice by respondent No. 3 that on the day of detention of goods i.e. 3rd September, 2005 at 10.30 p.m., she had issued a notice but its acceptance was refused. The addressee of the notice were asked to appear before respondent No.3 on 6th September, 2005 in her office at Plot No. 42, Phase-II, Ram Darbar, Chandigarh, to show cause as to why the goods were not being accompanied by the documents as required under Section 51(2) of the VAT Act and only Railway Receipts were produced at the time of checking. In the said notice a reference to the judgment of Kerala High Court in the case of **Senior Divisional Commissioner, Manager, Southern Railway and others versus Intelligence Officer Squad No. 2 Commercial Taxes Attingal, Thiruvanthapuram (OP No. 18234 of 1999 (U), decided on 16th March, 2005)** was also made. The provisions of Section 93 of the Indian Railway Act, 1989 (for brevity, 'the Railways Act') were also referred to and extracted in the notice (P-5)

(4) On 8th September, 2005, respondent No. 3 sent a reply to the letter dated 7th September, 2005 (P-4) to the Post Commandant, Railway Protection Force, Northern Railways, Ludhiana, wherein reliance was placed on the aforementioned Single Bench judgment of

Kerala High Court, operation of which is stated to have been stayed by the Division Bench of Kerala High Court itself. While referring to various provisions of Section 51 of the VAT Act the Section 93 of the Railways Act, respondent No. 3 sought to justify her action (P-6). Alongwith the reply dated 8th September, 2005, copy of the alleged notice dated 3rd September, 2005 was also sent (P-7).

(5) Thereafter the petitioners received a notice purported to be signed by respondent No. 2 on 9th September, 2005 mentioning therein that a notice under Section 51(7)(b) of the VAT Act was served through substituted service for 9th September, 2005 but none had appeared, therefore, a fresh notice for 13th September, 2005 was issued (P-8). This notice was again addressed to the four owners of the goods through petitioner No. 3. On 13th September, 2005, a request for adjournment on behalf of the petitioners was made on the ground that the concerned person who was to represent the petitioners was not well (P-9), therefore, next date of hearing was fixed as 16th September, 2005 (P-10 and P-11).

(6) On 13th September, 2005 itself, the Post Commandant, Railway Protection Force, Northern Railway, Ludhiana, sent a reply to respondent No. 3 clarifying all her apprehensions and specifically stating that action on her part was illegal and contrary to the provisions of the Railways Act and the Railway Property (Unlawful Possession) Act, 1966 (for brevity, 'the 1966 Act'). She was accordingly requested to return the seized goods to the Railway Administration (P-12). On 16th September, 2005, a reply was filed on behalf of the petitioners and again request was made for release of the detained goods (P-13). On 19th September, 2005, respondent No. 2 passed an order imposing a penalty of Rs. 90,000 and tax to the tune of Rs. 12,000, total Rs. 1,02,000, under Section 51(7)(b) of the VAT Act (P-14). Mr. P. K. Dutt, learned counsel for the petitioners after obtaining instructions has stated that the goods were sent to consignee by the railway authorities after executing an indemnity bond in favour of VAT authorities i.e. respondent Nos. 2 and 3. On 23rd September, 2005, petitioner No. 1 is stated to have written a detailed letter to the Commissioner, Sales Tax Department on the issues, however, no response has been received. The authority of the respondents in detaining and checking the goods in possession

of the railways for transportation, under the provisions of the VAT Act and the impugned notices dated 5th September, 2005, 9th September, 2005, detention memo dated 3rd September, 2005 and order dated 19th September, 2005 (Annexures P-5, P-8, P-7 and P-14) are subject matter of challenge in the instant petition.

(7) In the written statement filed on behalf of the respondents in the preliminary submissions various provisions of Sections 2(2), 2(8), 2(9), 2(10), 31, 93, 94, 97, 99, 100 and 102 of the Railways Act, Section 46 of the VAT Act and Rule 54, 55, 57, 62, 63, 64, 65, 66, 67 and 68 of the Punjab Value Added Tax Rules, 2005 (for brevity, 'the VAT Rules') have been referred and reproduced. On that basis it is submitted that the railways has not been granted any special treatment/privileged place as far as provisions of the VAT Act are concerned. It has been asserted that the railways is also a carrier of goods like other modes of transportation viz. Road, Air or Sea/Water and it cannot claim any immunity from law of the land. However, it has been admitted that the only exception engrafted in the VAT Act is with respect to power of the authorities to stop and check a vehicle running on fixed rails i.e. 'train' and to detain it on suspicion of evasion of tax. It has been prayed that the instant petition be dismissed on the ground of concealment of facts.

(8) It has been contended that as a result of various meetings of the officials of the Railways and Authorities under the VAT Act, Ministry of Railways has issued a circular dated 22nd November, 2004 to all the General Managers of the Divisions to constitute joint inspection committee alongwith the officials of the Sales Tax Department of the respective State to conduct surprise checks and assess whether the names and address of the consignor/consignee while booking/taking delivery are genuine or otherwise and to ensure that there is no evasion of tax (R-1). On 11th January, 2005, the Railway Board again issued further instructions reiterating that there were complaints of large scale evasion of tax and Union Finance Minister had desired that efforts should be made to stop evasion of tax (R-2). On 27th January, 2005, further instructions were issued directing the railway officials to render full cooperation to the Sales Tax Officials of the State Government (R-3). It has been further asserted that the petitioners are trying to

protect unscrupulous traders who are using the railways for promoting their illegal trade. It has been pointed out that though the goods were released under the orders passed by this Court, however, neither the consignor nor the consignee ever came forward either to claim the goods or to seek information. The respondents have alleged that the railway officials did not give any information to the respondents about the names and addresses of the owner of the goods and that every day more than 1500 packets of hosiery goods are booked through railway and on most of these packets Value Added Tax is not paid, due to which State of Punjab is suffering loss of Rs. 18,00,000/- per day.

(9) In the preliminary objections it has been denied that the goods in question are the property of the railways whereas the same either belongs to the consigners or the consignees. It has been categorically mentioned that under Section 62 of the VAT Act, a statutory appeal is maintainable against the impugned order dated 19th September, 2005 (P-14), which admittedly has not been filed by the petitioners.

(10) Mr. Ashok Aggarwal, learned Senior counsel has argued that the expression 'railway' used in Section 51 of the Vat Act must be given the same meaning as has been assigned to expression 'railway' by Section 2(31) of the Railways Act. To support his submission he has placed reliance on Section 2(31) (e) and (f) of the Railways Act. According to the learned counsel if the interpretation of the expression 'fixed rails' as used in Section 2(1)(i) read with Section 51 of the VAT Act is not adopted as defined in Section 2(31)(e) and (f) of the Railways Act then it would result into imposition of various obligations on the drivers of a railway vehicles, which are used on any road for the purposes of traffic of railway ; and owned, hired or used for railways. In other words, by virtue of Section 51(2) and (3) of the VAT Act the driver of such a railway vehicle, which are used on many roads, have to carry with them good vehicle record, goods receipt, a trip sheet or a log-book. According to him it would be something impossible. Section 2(31)(e) is reproduced hereunder for ready reference :—

“2(31)“railway” means a railway, or any portion of a railway, for the public carriage of passengers or goods, and includes-

xxx . xxx xxx

(e) all vehicles which are used on any road for the purposes of traffic of a railway and owned, hired or worked by a railway ;”

(11) Section 2(2), 2(33) and 2(39) of the Railways Act defines “carriage”, “railway receipt” and “traffic”, which are also reproduced hereunder for ready reference :

“2(2) “carriage” means the carriage of passengers or goods by a railway administration ;

xxx xxx xxx

(33) “railway receipt” means the receipt issued under section 65 ;

xxx xxx xxx

(39) “traffic” includes rolling stock of every description, as well as passengers and goods ;”

(12) Mr. Aggarwal has further argued that it is not disputed by the respondent State that they have excluded their jurisdiction from checking any goods on fixed railway as is evident from the perusal of Section 2(1) of the VAT Act, which defines the ‘goods vehicle’ and the same reads as under :—

“2(1) “goods vehicle” includes—

(i) any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer constructed or adapted for use for the carriage of goods and any vehicle not so constructed or adapted when used for the carriage of solely or in additional to passengers, but does not include a vehicle running upon fixed rails or a vehicle of a special type adopted for use only in a factory or any other enclosed premises ; and

(ii) any animal-driven or man driven vehicle used for the carriage of goods solely or with passengers ;”
(underling for emphasis)

(13) According to the submission made by the learned counsel the Authority under the VAT Act has conceded the position that they would not check any item on ‘fixed rails’ and once they accept such a situation then all vehicles being used on the road are inseparably connected with the railway and have to be considered as connected with the railway.

(14) Mr. Amol Rattan Singh, learned State counsel, however, makes reference to Section 2(1) and 51 of the VAT Act and argued that the expression “fixed rails” is entirely different than the expression “railway” used under Section 2(31) of the Railway Act. According to the learned counsel, the expression “fixed rails” has a narrow meaning than the expression “railway” used in Section 2(31) of the Railway Act. According to the learned counsel only ‘fixed rails’ are excluded from the purview of checking by the Authorities under the VAT Act. He simplifies by saying that once the goods are put on rail then the power of the Authority under the VAT Act to check is lost and it would not be within its jurisdiction. In order to substantiate his submission, learned counsel has made a reference to Rule 65(g) of the VAT Rules to argue that the only exclusion made in favour of the petitioners is that the driver of a goods vehicle is exempted from carrying From VAT 36-B but he would be under an obligation to do all the acts as are provided by Section 51 of the VAT Act read with Rules 54 and 55 of the VAT Rules. The provisions of Rule 54, 55, 57 and 65(g) of the VAT Rules are reproduced hereunder for facility of reference :—

“Rule 54. Particulars to be mentioned in a VAT invoice.—(1)

A VAT invoice shall be issued from duly bound invoice or cash memo book, except when invoices are prepared on computer or any other electronic or mechanical device. It shall be at least in triplicate i.e. Original copy, second copy and the last copy. The respective copies of the invoices shall bear these words clearly.

- (2) On the original copy of the VAT invoice, the words “Input Tax Credit is available to a person against this copy” shall be printed and it will be issued to the purchaser only. On the second copy, the words “This copy does not entitle the holder to claim Input Tax Credit” shall be printed and this copy shall be used for the purpose of transportation of goods. The last copy shall be retained by the seller.
- (3) The words ‘VAT INVOICE’ shall be prominently printed on the invoice.
- (4) A VAT invoice shall contain, the following details :—
 - (a) A consecutive serial number, printed by a mechanical or electronic process. In case of a computer generated invoice, the serial number may be generated and printed

by computer, only if, the software automatically generates the number and the same number cannot be generated more than once ;

- (b) the date of issue.
- (c) the name, address and registration number of the selling person.
- (d) the name, address and registration number of the purchaser ;
- (e) full description of the goods ;
- (f) the quantity of the goods ;
- (g) the value of the goods per unit ;
- (h) the rate and amount of tax charged in respect of taxable goods;
- (i) the total value.
- (j) If the goods are being sold, transferred or consigned to a place outside the State, serial number of Form VAT-36;
- (k) mode of transportation of goods and details thereof; and
- (l) signature of the proprietor or partner or director or authorized agent.

Rule 55. Particulars to be mentioned in a retail invoice.—

- (1) A retail invoice shall be issued from duly bound invoice or cash memo book, except when the invoices are prepared on computer or any other electronic or mechanical device. It shall be at least in duplicate.
- (2) The first copy of a retail invoice shall be issued to the purchaser of goods. The last copy shall be retained by the selling person.
- (3) A retail invoice shall carry the following details :—
 - (a) a consecutive serial number, printed by a mechanical or electronic process.
 - (b) the date of issue.
 - (c) the name, address and registration number of the selling person.
 - (d) full description of the goods.

- (e) the quantity of the goods.
 - (f) the value of the goods per unit
 - (g) the total value.
 - (h) signature of the proprietor or partner or director or/ authorized agent.
- (4) A retail invoice for interstate sale and exports out of the country shall carry the following details in addition to the details mentioned in sub-rule (3), namely :—
- (a) the name, address and registration number of the purchaser ;
 - (b) the rate and amount of tax charged in respect of taxable goods;
 - (c) serial number of Form VAT-36; and
 - (d) mode of transportation and details thereof.

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Rule 57. Particulars and information to be mentioned in a delivery challan.—

- (1) A delivery challan for transfer of goods other than by way of sale shall be issued from duly bound book, except when the challans are prepared on computer or any other electronic or mechanical device. It shall be at least in triplicate. The first copy shall be for purchaser or consignee. The second copy shall be for the transporter. The last copy shall be retained by the consignor. The serial number shall be printed by a mechanical process.
- (2) A delivery challan shall contain the following particulars :—
 - (a) The words, “Delivery Challan” shall be prominently printed on the document.
 - (b) Serial number of Form VAT-36 in case of interstate transaction.

- (c) Date of transfer of goods.
- (d) Name, address and registration number of the consignee.
- (e) Description of goods, weight, quantity, estimated price per unit and total estimated value of goods.
- (f) Mode of transportation of goods and details thereof.
- (g) Signature of the Consignor.

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Rule 65. Procedure regarding declaration for transport of goods to and from the State.

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xxx xxx xxx xxx

- (g) The taxable person shall maintain a register containing accounts of such Forms in a register in Form VAT 36-B;"

(15) Mr. Amol Rattan Singh, learned State counsel has also pointed out that this writ petition is not maintainable because railways has no cause of action vis-a-vis respondents. According to the learned State counsel it is merely a 'bailee' being a carrier of goods and aggrieved party could only be the consignor or consignee.

(16) After hearing learned counsel for the parties, perusing the record with their able assistance and pondering over the arguments raised, we are of the view that the following two questions need to be answered to resolve the controversy :—

- (1) Whether the expression 'railway' used by Section 2(31) of the Railways Act, would mean the same thing as 'fixed rails' as the expression used in Section 2(1) of the VAT Act defining 'goods vehicle'?
- (2) Whether the instant petition is maintainable at the instance of the Railways under Article 226 of the Constitution ?

RE : QUESTION NO. (1) :

(17) A perusal of Section 2(31) of the Railways Act makes it evident that expression 'railway' has been given a wider meaning. According to the aforementioned provision railway means a railway or any portion of railway for the public carriage of passengers or goods. It also illustrates by adopting inclusive definition of expression 'railway' to include all vehicles which are used on any road for the purpose of traffic of a railway and owned, hired or worked by a railway. The definition of railway is extremely wide as would be evident from the perusal of Section 2(2), 2(33) and 2(39) of the Railways Act, which defines the expression 'carriage', 'railway receipt' and 'traffic'. The expression 'carriage' has been defined to mean carriage of passengers or goods by a railway administration and 'railway receipt' means the receipt issued under Section 65. The expression 'traffic' has been defined to include rolling stock of every description as well as passengers and goods.

(18) The wider definition adopted by Section 2(31)(e) of the Railways Act by including all vehicles which are used on road for the purposes of traffic owned by railway and owned, hired or worked by the railway cannot be by any stretch of imagination be treated to have been adapted by Section 2(1)(i) of the VAT Act, which has already been reproduced in para 12 above. The aforementioned provision defines a 'goods vehicle' to include any mechanically propelled vehicle adapted for use upon roads. It also includes a chassis to which a body has not been attached and a trailer constructed or adapted for use for the carriage of goods and any vehicle not so constructed or adapted when used for the carriage of solely or in addition to passengers. However, it has excluded a vehicle running upon fixed rail or a vehicle of a special type adapted for use only in a factory or any other enclosed premises. Therefore, the respondent State has clearly delineated its power to checking of goods vehicle and/or passenger vehicles for the purpose of ensuring that there is no evasion of Value Added Tax. Therefore, the expression 'railway' used in Section 2(31) of the Railways Act and 'fixed rails' as used in Section 2(1)(i) of the VAT Act are absolutely distinct and it follows these expressions have to have

different meanings. The aforementioned interpretation is more preferable than the one canvassed by the learned counsel for the petitioner- railway because the Railways Act does not deal with imposition of Value Added Tax or Excise on the goods which are to be carried by the railway.

It is also well settled that when the railway acts as a goods carrier then it does not acquire the status of owner of goods. The status of railway as a carrier of goods is that of a 'bailee' as envisaged by Sections 152 and 161 of the Contract Act, 1872 (for brevity, 'the Contract Act') and it is supposed to take as much care of the goods as is expected to be taken by the owner of the goods. In that regard reliance may be placed on the Constitution Bench judgment of Hon'ble the Supreme Court in the case of **Union of India versus West Punjab Factories Ltd., (1)**. The aforementioned view has also been relied upon by their Lordships' in a later decision rendered in the case of **New India Assurance Co. Ltd. versus Union of India (2)**.

(19) We are further of the view that the railway is not immune to carry goods without obtaining proper documents as required by the tax laws of the State. In that regard reliance has rightly been placed by the learned State counsel on Section 93 of the Railways Act, which imposes an obligation on the railway administration for the loss, destruction, damage or deterioration in transit or non-delivery of any consignment. The provision has imposed upon the railway, as goods carrier, obligation as are postulated by Sections 152 and 161 of the Contract Act. However, it has excluded the responsibility of the railway with regard to orders or restriction imposed by the Central or the State Governments. Section 93 of the Railways Act can be read with profit, which is as under :—

“93. General responsibility of a railway administration as carrier of goods.—Save as otherwise provided in this Act, a railway administration shall be responsible for the loss, destruction, damage or deterioration in transit, or non-

(1) AIR 1966 S.C. 395

(2) (1995) 2 SCC 417

delivery of any consignment, arising from any cause except the following namely :—

- (a) act of God;
- (b) act of war;
- (c) act of public enemies;
- (d) arrest, restraint or seizure under legal process;
- (e) orders or restrictions imposed by the Central Government or a State Government or by an officer or authority subordinate to the Central Government or a State Government authorized by it in this behalf;
- (f) act or omission or negligence of the consignor or the consignee or the endorsee or the agent or servant of the consignor or the consignee or the endorsee;
- (g) natural deterioration or wastage in bulk or weight due to inherent defect, quality or vice of the goods;
- (h) latent defects;
- (i) fire, explosion or any unforeseen risk;

Provided that even where such loss, destruction, damage, deterioration or non-delivery is proved to have arisen from any one or more of the aforesaid causes, the railway administration shall not be relieved of its responsibility for the loss, destruction, damage, deterioration or non-delivery unless the railway administration further proves that it has used reasonable foresight and care in the carriage of the goods.” (underlined for emphasis).

(20) A perusal of Section 93(e) of the Railways Act would show that having imposed responsibility of railway as carrier of goods it has excluded the responsibility of the railway with respect to orders or restriction imposed by, *inter alia* State Government or by an officer or authority sub-ordinate to a State Government authorized by it in that behalf. It, therefore, follows that the railway cannot escape the obligation

of producing documents in accordance with the VAT Act, which is State law. Therefore, it has been rightly argued by the learned Additional Advocate General that Section 51(2) of the VAT Act requires the railway, which is in charge of the goods vehicle to produce goods receipt, a trip sheet or a log book and a sale invoice or bill or cash memo or delivery challan, containing such particulars as has been prescribed by the rules. The rules further require any goods vehicle which would include the use of any road for the purpose of traffic of a railway and owned, hired or worked by a railway, to produce the aforementioned documents.

(21) Any other interpretation excluding the goods vehicle owner, hired or worked by railway would result into putting a premium on any illegal activities of the owner of the goods under hiding under the lawful authority of railway, which would be impermissible because any Government agency like the railway is not supposed to protect the illegal acts of the owner or consignor of goods. On the contrary it needs to help the authority particularly in view of Section 93(e) of the Railways Act. For example, if contrabands are being carried on a goods vehicle of the railway then apparently the railway cannot come in the way of the law enforcing authorities to seize the contraband goods and proceed against the consigner or consignee or any other person in accordance with law of the land.

(22) The interpretation and principles emerging from the above discussion when applied to the facts of the present case, it becomes evident that the notices dated 5th September, 2005 and 9th September, 2005 (P-5 and P-8) and detention memo dated 3rd September, 2005 (P-7) are liable to be upheld. Likewise, order dated 19th September, 2005 (P-14) passed by the Assistant Excise and Taxation Officer, Mobile Wing, Punjab, Chandigarh, also deserves to be upheld.

RE : QUESTION NO. (2) :

(23) The question concerning maintainability of the writ petition has to be decided by keeping in view the impugned notices. A perusal of impugned notices dated 5th September, 2005 and 9th September, 2005 (P-5 and P-8) and detention memo dated 3rd September, 2005

(P-7) would show that the same have been issued by the Assistant Excise and Taxation Officer, Mobile Wing, Punjab Chandigarh, to the owners of the goods, namely, Dhir Madhopuri, Anoop Madhopuri, Lucky Madhopuri and Sonu Madhopuri. Although the notices have been issued through the Station Master, Ludhiana City Booking Agency, Basti Jodhewal, Ludhiana. the factual position is the same with regard to notice dated nil (Annexures P-10 and P-11) granting final opportunity to show cause, issued to these persons. The final order dated 19th September, 2005 also shows that it is the owner of the goods who could be considered as person aggrieved because in the operative para the respondents have held the owner as responsible for evasion of tax. The operative part of the order reads thus :—

“In view of the above facts, circumstances and evidence available on the record and having considered the overall legal position I hold that the owners of the goods have made a deliberate attempt to evade Tax by not furnishing bills/ delivery note as required under section 51(2) of the Act *ibid*. The goods in question are taxable and meant for trade. The value of the goods has been determined at Rs. 3,00,000 (Rs. Three Lacs @Rs. 25,000 per carton). I therefore impose a penalty of Rs. 90,000 (Ninety Thousand u/s 51(7)(b) of Punjab V.A.T. Act 2005 besides VAT of Rs. 12, 000 (Twelve Thousand @4%. Issue T.D.N. and challan form of Rs. 1,02,000 (One Lakh Two Thousand only) alongwith copy of order. The goods be released after making recovery of penalty and tax under VAT.”

(24) The owner of the goods has not approached this Court by challenging the aforementioned order. However, the railway, which is bailee of the goods, has come forward with the filing of the instant petition. The railway may have cause of action to challenge any action of the respondents causing inconvenience in acting as carrier of goods but it cannot challenge the show cause notices issued to the owner or the final order passed against the owner for evasion of tax as per the provisions of Section 51 of the VAT Act by not furnishing the documents as envisaged by Section 51(2) of the VAT Act. Therefore, we hold that the writ petition against issuance of the show cause notices to the

owners, passing detention order and final orders against the owners, would not be maintainable at the instance of the railway. However, we uphold the maintainability of the petition on the plea raised by the learned counsel for the railway that it result into extreme inconvenience when any goods vehicle of the railway is stopped for checking by the authorities of the Punjab Government under the VAT Act or any other Act. Therefore, we repel the attack on the impugned notices and the orders at the instance of the railway particularly when the owners who are said to be aggrieved party have not come forward with any grievance. The petitioner-railway is not supposed to go to the extent of fighting the cause of owners particularly keeping in view Section 93(e) of the Railways Act.

(25) For the reasons aforementioned, this petition fails and the same is dismissed.

R.N.R.

Before Hemant Gupta & Mohinder Pal, JJ.

SURINDER SHARMA,—*Petitioner*

versus

**CENTRAL ADMINISTRATIVE TRIBUNAL, CHANDIGARH
BENCH, CHANDIGARH AND OTHERS,—*Respondents***

C.W.P. No. 12923/C of 2003

18th July, 2008

Constitution of India, 1950—Art. 226—Dismissal from service—Charges against petitioner of getting into service by producing a fake certificate—Petitioner falsely reflecting himself as graduate while applying for an examination—Misrepresentation of facts—Disciplinary authority granting opportunity of personal hearing to petitioner but order of punishment not passed—Petitioner refusing to appeal before competent Disciplinary Authority and requesting to take a final decision on basis of material produced—No violation of principles of natural justice or the procedure