(1970) 02 MAD CK 0039

In the Madras High Court

Case No : Writ Petition No. 423 of 1970

A.R. Manickyam APPELLANT

Vs

Assistant Commercial Tax Officer and Another RESPONDENT

Date of Decision : 26-02-1970

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1970) 26 STC 409

Hon'ble Judges : Ramaprasada Rao, J;Ramanujam, J

Bench : Division Bench

Advocate : C.S. Chandrasekhara Sastry and D. Srinivasan, for the Appellant;

Final Decision : Allowed

Judgement

Ramaprasada Rao, J.—The petitioner in this case is a partner of Sri Murugan Transports and his business is to ply lorries for purposes of carrying goods from one'' place to another. On 17th March, 1966, lorry No. APC 1791, apparently belonging to the petitioner, was proceeding towards Pallipet in Chittoor District. The lorry was stopped at about 1-30 A.M. on 18th March, 1966, by the officers of the Commercial Tax Department at the check-post at Avadi prescribed for the purpose. There were other officers stationed at the check-post. It is not in dispute that the person in charge of the goods vehicle did not carry with him the necessary documents, as prescribed u/s 44 of the Madras General Sales Tax Act, 1959. As a matter of fact, Mr. Sastry, learned counsel for the petitioner, says that he is not disputing before us this finding of fact of the Board of Revenue, whose order is impugned in this writ petition. As, according to the officials at the check-post, there has been a violation of the provisions of the Act, they took action u/s 45(2)(d) of the Act and gave an option to the petitioner to compound the offence, as provided for in Section 46 of the Act. It appears that the petitioner paid the compounding fee, as demanded and got the transport vehicle released. According to the petitioner, he had to pay such compounding fee in duress and as such a demand and collection of the compounding fee was not in accordance with law, he sought a revision of the said order of composition by approaching the Deputy Commissioner for Commercial Taxes u/s 33 of the Act. He was not successful. A further revision to the Board of Revenue, the second respondent in the case, u/s 35 of the Act, was equally of no avail, excepting that the Board allowed a small reduction in the quantum of the compounding fee. The petitioner is aggrieved against the order of the Board of Revenue as above, dated 27th September, 1968. As already stated, the factual position is not disputed. But what is contended before us is that u/s 44, there is no power for the check-post officials and the departmental officials to intercept the lorry en route at Avadi whose destination was avowedly Pallipet in Chittoor District and such interception of the lorry having been made under powers stated to be not vested in them, the subsequent demand, levy and collection of the compounding fee is unauthorised. Mr. Sastry invited our attention to the text of Section 44 of the Act and stated that that section prescribes the submission of documents or records specified therein only to the Commercial Tax Officer having jurisdiction over the area in which the goods are to be delivered and therefore the act impugned having been done otherwise than in strict conformity with the above prescription, it is illegal and unauthorised.

2. We are unable to agree Section 44 deals with the possession and submission of certain records by owner or other person in charge of the goods vehicle, which carries goods from one place to another. The marginal note to the section, which is effective in this case, is suggestive of the fact that the records contemplated therein should be in the possession of the owner or the person in charge of the goods vehicle. If such records are not possessed and subsequently submitted, as stated in Section 44, it would be a wilful contravention of the said section and it would be punishable u/s 45(2)(d) of the Act. In order to avoid the invocation of a penal provision, the Act provides for the alternative remedy to the offender to compound the offence. This is prescribed in Section 46. It says that the prescribed authority may, whether on application made to it in this behalf or otherwise, give any person who has committed or is reasonably suspected of having committed an offence under the Act, option to pay within a specified period, by way of composition of such offence, a sum of money not exceeding one thousand rupees or double the amount of the tax recoverable, whichever is greater, in case the offence relates to the failure to pay or evasion of any tax recoverable under the Act and in other cases a sum of money not exceeding one thousand rupees. As already stated, an offence has been explained in Section 45 of the Act, as including a wilful act in contravention of any of the provisions of the Act. In the instant case, it is not disputed that there has been a contravention of the statutory prescription in the nature of possession and submission of the named records, as set out in Section 44 of the Act. Therefore, the invocation of the provision for composition u/s 46 prima facie is in order. But the argument is that Section 44 contemplates in the main the submission of the prescribed records only to the Commercial Tax Officer having jurisdiction over the area in which the goods are delivered and it has not set out any other provision

or mandate. This overlooks the very text of Section 44 of the Act. Section 44 says that the owner or other person in charge of a goods vehicle shall carry with him the records specifically mentioned in the section and also such other documents as may be prescribed "and shall submit to the Commercial Tax Officer" as above, the aforesaid documents or copies thereof within the prescribed time. The conjunction "and" is expressly operative and cannot be ignored. What is prescribed in Section 44 is not referable to submission of the records alone but also to their possession. "Possession" obviously precedes submission. Unless the owner or the person in charge of the goods vehicle is in possession of the records, he cannot submit them at a later stage to the authority prescribed. Both these conditions precedent are concurrently co-active and they should be satisfied. In the absence of one such mandate, as expressed in Section 44, Section 45(2)(d) would be attracted and such a conduct on the part of the owner or the person in charge of the goods vehicle would tantamount to a wilful act in contravention of the provisions of the Act. We are, therefore, unable to agree with Mr. Sastry, learned counsel for the petitioner, that there is no jurisdiction for the officials to intercept the vehicle, as they did and demand for the records and other documents which a person in charge of the goods vehicle ought to carry u/s 44 of the Act. The interception of the vehicle and the consequential demand and levy of composition fee being within the jurisdiction of the officers concerned, as the Board of Revenue rightly appreciated the position, there is no error apparent on the face of the impugned order for us to issue a rule under Article 226 of the Constitution of India. This writ petition is dismissed.

