(2001) 10 KL CK 0047

In the High Court Of Kerala

Case No : O.P. No. 22470 of 2001

Indana Trading Co. APPELLANT

Vs

Intelligence Inspector RESPONDENT

Date of Decision : 31-10-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala General Sales Tax Act, 1963 — Section 21A(1), 28A, 29(2), 29A, 29A(2)

Citation : (2001) 10 KL CK 0047

Hon'ble Judges : K.A. Abdul Gafoor, J

Bench : Single Bench

Advocate : S.K. Devi, M. Rajmohan, Santhosh P. Abraham and K.P. Pradeep Payyannur, for the Appellant; Raju Joseph, Government Pleader, for the Respondent

Judgement

K.A. Abdul Gafoor, J.—The first petitioner purchased certain goods from the second petitioner and while that was being transported in a vehicle, the vehicle was intercepted by the first respondent stated to be in exercise of power u/s 21A(1) of the Kerala General Sales Tax Act to satisfy that there was no evasion of tax. On examining the sale bills it was found that the goods covered by the bill were undervalued. Accordingly notice was issued in terms of Sub-section (2) of Section 29A the booth the petitioners. Ext. P1 is the notice, to which Ext. P2 reply was filed by the second petitioner. It was at that stage the petitioners approached this Court challenging Ext. P1 contending that Section 29a does not have any application in the facts of the case. During the pendency of the Original Petition it seems that the first respondent had issued Ext. P5 order, which is produced along with CMP No. 40968 of 2001, finalizing the proceedings initiated as per Ext. P1.

2. The contention raised by the petitioner is that when the driver of vehicle in which the goods were transported did possess the necessary documents in terms of Section 29A of the Act, the first respondent did not have any jurisdiction to ascertain the genuineness or otherwise of the bill especially when the second

petitioner had admitted that he had sold the goods to the first petitioner as per the bills available in the vehicle. In such situation, if at all there was apprechension on the part of the first respondent that there was evasion of tax, his jurisdiction shall be to invoke the power u/s 28A to purchase the goods of a value 10% h igher than that disclosed in the bill. Therefore this was not a situation to invoke Section 29A of the Act. So there is total lack of jurisdiction. Therefore a notice issued under Sub-section (2) of Section 29A of the Act can be impugned in a proceedings under Article 226 of the Constitution, even though the order that may result out of the proceedings is appealable.

3. Certainly when there is lack of jurisdiction on the part of a statutory authority, one need not wait until the proceedings are completed. When there is total lack of jurisdiction or fragrant violation of the principles of natural justice, necessarily one can invoke the remedy available under Article 226 of the Constitution.

4. But on a reading of Section 29A it can easily be noted that the officer empowered by Government can stop a vehicle or animal in which certain goods are carried, for the purpose of enabling himself to verify the documents required by Sub-section (2) of Section 29 to be in the possession of the person transporting the goods to satisfy himself whether there is evasion of tax. Documents in terms of Section 29A(2) includes sale bill as well. Therefore the power in terms of Section 29A can be exercised even when sold goods are transported as well. The sale is not disputed by any of the parties to the transaction. The officer has to satisfy himself that ''there is no evasion of tax''. So Section 29A confers a further more power than that is available u/s 28A on the empowered officer to intercept a vehicle to satisfy himself that there is no evasion of tax. When according to the Officer there is such an evasion of tax, necessarlly notice shall be issued u/s 29A(2). That is what has been done while issuing Ext. P1 which had during the pendency of the Original Petition culminated in Ext. P5 order. Therefore it cannot be stated that Exts. P1 and P5 are without authority conferred in terms of Section 29A.

5. It is further contended that the details are not adverted to in Ext. P5. That is a matter as Ext. P1 in an appealable order in terms of Section 29A(4), to be urged before the appellate authority. With that liberty the Original Petition is closed. I am not pronouncing anything upon the merit of the contentions of either side. If an appeal is filed within three weeks from today, it shall be disposed of at any rate within six weeks from the date of its receipt after hearing the petitioners.

