(2005) 11 KL CK 0054

In the High Court Of Kerala

Case No : W.A. No. 96 of 1999 (E)

Intelligence Inspector, Intelligence Office, Agricultural Income Tax and Sales Tax and Others — APPELLANT

Vs

H.P.C. Electrical Limited and Another — RESPONDENT

Date of Decision : 08-11-2005

Acts Referred:
Constitution of India, 1950 — Article 226
Kerala General Sales Tax Act, 1963 — Section 29A, 29A(2)

Citation : (2008) 11 VST 559

Hon'ble Judges : K.T. Sankaran, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : Raju Joseph and Georgekutty Mathew, Special Government Pleader Taxes, for the Appellant; K.K. Vijayaraghavan, for the Respondent

Judgement

K.S. Radhakrishnan, J.—Intelligence Inspector, Intelligence Office, Agricultural Income Tax and Sales Tax, Mattancherry, along with four others--the appellants herein, challenge the judgment of the learned single judge, quashing exhibit P7 notice issued under Sub-section (2) of Section 29A of the Kerala General Sales Tax Act, 1963.

2 Original petition was preferred by the first respondent herein challenging exhibit P7 notice issued under the provisions of Section 29A of the Act. Intelligence Inspector had detained the goods on the ground that the consignor or consignee was not a registered dealer under the provisions of the Kerala General Sales Tax Act, 1963 as per the invoice or declaration produced and demanded security amount of Rs. 88,107 for release of the goods.

3. Petitioner pressed for the release of the goods on production of regis tration certificates contending that even the goods which were transported without proper documents are liable to be released on production of documents. It was further averred that there was no evidence to show that there has been attempt for evasion of tax on goods transported. Various other contentions were also

raised by the petitioner. A detailed statement had been filed in the original petition by the first respondent therein. However, the learned single Judge passed an interim order dated November 4, 1997 in C. M. P. No. 33582 of 1997 as follows:

In the circumstances of the case, I am of the view that the detention order in respect of item No. 2 in exhibit P5, as per exhibit P7 can be lifted on the petitioner executing a security bond without surety as provided under the proviso to Sub-section (2) of Section 29A of the KGST Act and on the petitioner undertaking that, if for any reason, ultimately it is found that the petitioner is liable to penalty in respect of the transaction in question, the same can be recovered by attachment of the amount due to the petitioner from the GCDA as per exhibit P1 agreement. If the transporting company does not have a lien over the goods in question, the same can be got released by the petitioner. I order accordingly.

4. On the strength of the above mentioned order, goods were released and after that the whereabouts of the petitioner were unknown. Notice could not be served on first respondent herein in spite of repeated attempts. Finally notice sent to R1 who was the petitioner in original petition with acknowledgement due card returned unserved with endorsement "addressee left". In the circumstance, we are inclined to declare that service is complete.

5. Original petitioner is a company incorporated under the Companies Act, 1956 having its head office at Secunderabad and is engaged in the execution of electrical contract. Petitioner has a branch office in Kerala at Brah-mapuram and is a registered dealer on the files of the Sales Tax Officer, II Circle, Perumbavoor. The Intelligence Officer issued exhibit p7 notice u/s 29A(2) of the Kerala General Sales Tax Act, 1963 demanding security of Rs. 88,107 for release of 68 boxes of electrical goods valued at Rs. 4,40,535 covered by invoice No. 001403 dated June 26, 1997 and declaration in form 27B dated June 6, 1997 kept with M/s. Annamalai Roadways. The reason for detention and demand of security deposit was that the "consignor or consignee" was not a registered dealer under the provisions of the Kerala General Sales Tax Act, as per the invoice or declaration produced. The consignor of the goods was noted as "M. D. Switchgear Ltd., Madras" and the consignee was noted as "Yogeswar Enterprises", Plaza House, No. 7, 62 M. G. Road, Secunderabad. Notice u/s 29A(2) was seen issued to the consignee mentioned above through "Annamalai Roadways".

6. A detailed statement had been filed on behalf of the first respondent in the original petition before this court. It was submitted that as per Kerala General Sales Tax Act, every consignment came to Kerala should be declared at the border check-post to enable the authorities for preventing evasion of tax. With regard to the present case, the goods were not seen declared at any of the border check-post. If the goods were declared in the border check-post, the check-post authorities would have detained the goods. Further there was an indication that the goods came to Kerala by some bye routes and therefore

authorities concluded that the attempt of the petitioner was to evade payment of tax.

7. Several attempts were made to issue notices to the consignor and consignee. But notices were returned unserved. According to the department, those transactions were shady transactions to evade payment of tax.

8. Section 29A prescribes the procedure for inspection of goods in transit through notified areas. Sub-section (2) of Section 29A states as follows:

If such officer has reason to suspect that the goods under transport are not covered by proper and genuine documents (in cases where such documents are necessary) or that any person transporting the goods is attempting to evade payment of the tax due under this Act, he may, for reasons to be recorded in writing, detain the goods and shall allow the same to be transported only on the owner of the goods, or his representative or the driver or other person-in-charge of the vehicle or vessel on behalf of the owner of the goods, furnishing security for double the amount of tax likely to be evaded as may be estimated by such officer.

(underline Here italicised supplied)

9. In exhibit P7 notice, the first appellant herein stated the following reason:

The consignor or consignee is not a registered dealer under the provisions of the Kerala General Sales Tax Act, 1963 as per the invoice or declaration produced.

10. Further in the statement filed before this court, he has elaborated the reasons for detaining the goods.

11. We have examined the reasons stated in the notice as well as in the statement filed before this court. We are of the view that there were sufficient reasons for the authorities for detaining the goods. The authorities had definite information that those goods were never entered through any border check-posts. Further though notices were issued to the consignor and consignee, there was no response. These facts as well as the facts stated in the statement have not been controverted.

12. In the circumstances, we are of the view that the learned single Judge was not justified in interfering with exhibit P7 notice. Learned single Judge should not have interfered at the notice stage. The power u/s 29A could be exercised by the officer when he has reason to suspect that the goods are not covered by proper and genuine documents. Suspicion is the initial stage of believing the existence of a certain thing and then on the basis of the available materials, a conclusion is arrived at. A circumstance would be suspicious when it is not normal, expected of a normal person. In such a situation, the learned single Judge was not justified in exercising powers under Article 226 of the Constitution of India, interfering with the opinion formed by the officer. By the interim order granted by this court, goods were released and the party could not be traced. State is a loser by

evasion of tax. Hence we set aside the judgment of the learned single Judge. It is open to the authorities to take further action on the basis of exhibit P7 notice and proceedings, if any, pursuant thereto. Writ appeal is disposed of.

Order on C.M.P. No. 230 of 1999 in W.A. No. 96 of 1999(E) dismissed.

