(1971) 11 AP CK 0004

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3515 of 1970

Kotha Rama Doss APPELLANT

Vs

Deputy Commercial Tax Officer RESPONDENT

Date of Decision : 10-11-1971

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 28(6)

Citation : (1985) 60 STC 53

Hon'ble Judges : Vaidya, J;Sriramulu, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Vaidya, J.—In this writ petition, the vires of Section 28(6) of the Andhra Pradesh General Sales Tax Act, 1957 (hereinafter referred to as "the Act") is challenged on the ground that it is outside the legislative field conferred upon the State Legislature by entry 54 of List II of the Seventh Schedule to the Constitution of India.

2. The facts giving rise to this writ petition are very few. The Deputy Commercial Tax Officer, Penugonda (1st respondent herein) inspected the business premises of the petitioner on 6th November, 1969 and found that 195,bags of rice and 40 bags of paddy were not accounted for in the books of account maintained by the petitioner. He seized the goods. On 16th November, 1969, he released the goods after collecting cash security of Rs. 10,350 representing the full value of the goods seized. On 18th June, 1970 the Deputy Commercial Tax Officer passed an order confiscating the entire goods seized and forfeiting the security deposit made by the petitioner. It is this order that is challenged before us.

3. The provisions of Section 28(6) of the Act which is challenged before us read :

28. (6) Any such officer shall have power to seize and confiscate any goods which are found in any office, shop, godown, vehicle, vessel or any other place of business or any building or place of the dealer, but not accounted for by the

dealer in his accounts, registers and other documents maintained in the course of his business :

Provided that before taking action for the confiscation of goods under this sub-section, the officer shall give the person affected an opportunity of being heard and make an inquiry in the prescribed manner.

Explanation : It shall be open to the State Government to authorise different classes of officers for the purpose of taking action under Sub-sections (1), (2) and (3).

4. Section 28 empowers the officers concerned to order production of accounts and also confers on them the powers of entry, inspection, etc. Sub-section (1) authorises any officer not below the rank of an Assistant Commercial Tax Officer to require any dealer to produce before him the accounts, registers and other documents. Under Sub-section (2), all accounts, registers and other documents maintained by a dealer in the course of his business, the goods in his possession, and his offices, shops, godowns, vessels or vehicles shall be open to inspection by such officer at any time during the business hours. Under Sub-section (3), if any officer has reason to suspect that any dealer is attempting to evade the payment of any tax or other amounts, he may, for reasons to be recorded in writing, seize such accounts, registers or other documents of the dealer. Under Sub-section (4), the officer has got the power to enter and search any office, shop, godown, vessel, vehicle, etc., for the purposes of Sub-section (2) or Sub-section (3). The power conferred by Sub-section (4) has been enlarged in Sub-section (5). It is argued that the power conferred by Sub-section (6) of Section 28 empowering the officer to seize and confiscate the goods is outside the ambit of entry 54 of List II of the Seventh Schedule to the Constitution.

5. Entry 54 reads :--

Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92-A of List I.

6. It is argued that under this entry, the State Legislature has the power to tax sale or purchase of goods; and such a power will also include legislation in regard to ancillary matters, but confiscation of goods is not ancillary to the legislative power conferred under entry 54 of List II of the Seventh Schedule. Reliance is placed on a decision of the Supreme Court in The Check Post Officer and Others Vs. K.P. Abdulla and Bros., . Their Lordships of the Supreme Court considered the provisions of Sub-section (3) of the Madras General Sales Tax Act, 1959 which empowered the officer-in-charge of the check post or barrier to seize and confiscate any goods which are under transport by any vehicle or boat and are not covered by the documents prescribed in the sub-clauses thereof, and also the documents that may be prescribed under sections 43 and 44 of the said Act. Their Lordships, while dealing with entry 54 of List II of the Seventh Schedule, observed at page 3 :

Entry 54 of List II of the Seventh Schedule to the Constitution authorises the State Legislature to legislate in respect of taxes on the sale or purchase of goods. A legislative entry does not merely enunciate powers : it specifies a field of legislation and the widest import and significance should be attached to it. Power to legislate on a specified topic includes power to legislate in respect of matters which may fairly and reasonably be said to be comprehended therein : see United Provinces v. Mst. Atiqa Begum [1940] FCR 110, Navinchandra Mafatlal Vs. The Commissioner of Income Tax, Bombay City, and Balaji Vs. Income Tax Officer, Special Investigation Circle, . A taxing entry therefore confers power upon the Legislature to legislate for matters ancillary or incidental including provisions for preventing evasion of tax.

7. Their Lordships then proceeded to consider whether the provisions of Section 42, Sub-section (3), were ancillary or incidental for purposes of taxation and whether those provisions were intended for preventing evasion of tax. The learned Judges held that :

The power to confiscate goods carried in a vehicle cannot be said to be fairly and reasonably comprehended in the power to legislate in respect of taxes on sale or purchase of goods. By Sub-section (3) the officer in charge of the check post or barrier has the power to seize and confiscate any goods which are being carried in any vehicle if they are not covered by the documents specified in the three sub-clauses. Sub-section (3) assumes that all goods carried in a vehicle near a check post are goods which have been sold within the State of Madras and in respect of which liability to pay sales tax has arisen, and authorises the Check Post Officer, unless the specified documents are produced at the check post or the barrier, to seize and confiscate the goods and to give an option to the person affected to pay penalty in lieu of confiscation. A provision so enacted on the assumption that goods carried in a vehicle from one State to another must be presumed to be transported after sale within the State is unwarranted. In any event power conferred by Sub-section (3) to seize and confiscate and to levy penalty in respect of all goods which are carried in a vehicle whether the goods are sold or not is not incidental or ancillary to the power to levy sales tax.

8. Their Lordships, therefore, struck down the provisions of Section 42, Sub-section (3), of the Madras General Sales Tax Act, 1959.

9. Applying the principle laid down by the Supreme Court in The Check Post Officer and Others Vs. K.P. Abdulla and Bros., , We find that Sub-section (6) of Section 28 of the Act is outside the legislative power conferred by entry 54 of List II of the Seventh Schedule and cannot be said to be a power ancillary to levy tax on sale or purchase of goods. We also find that Sub-section (6) takes it for granted that all goods which are found in any office, shop, godown, vessel or any other place of business or any building or place of a dealer and are not accounted for by him have escaped taxation. The sub-section does not take into account the various points at which taxes can be levied under the provisions of the Act. In our opinion, Sub-section (6) of Section 28 is outside the legislative field

conferred upon the State Legislature by entry 54 of List II of the Seventh Schedule to the Constitution. We have, therefore, no hesitation in striking down the provisions of Sub-section (6) of Section 28 of the Act.

10. We are also referred to a decision of Division Bench of this Court in W. P. Nos. 4815 and 5101 of 1968 (The Anantapur District Co-operative Marketing Society Ltd. and Others Vs. The Special Assistant Commercial Tax Officer (Evasions) and Others, rendered by Obul Reddi and Venkateswara Rao, JJ., on 11th February, 1971. The learned Judges struck down the provisions of Sub-sections (3) and (4) of Section 29 of the Act. We are supported in our conclusion by this decision.

11. In view of the fact that Section 28(6) under which the order of confiscation of the goods and forfeiture of cash deposit has been made has been held by us to be ultra vires of the power conferred upon the State Legislature, the order also cannot survive.

12. In the result, the writ petition is allowed and the order dated 18th June, 1970 is quashed. The 1st respondent is directed to return to the petitioner the cash deposit made by him and wrongly forfeited by the 1st respondent. The Government will pay the costs of the petitioner. Advocate''s fee Rs. 100 (Rupees one hundred only).

