(1981) 06 KAR CK 0030

In the Karnataka High Court

Case No : Writ Petition No. 4679 of 1977

Mastan APPELLANT

Vs

The State of Karnataka and Others RESPONDENT

Date of Decision : 10-06-1981

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 28, 28 A (2), 28 A (3), 28 A (4), 28 B

Citation : (1981) ILR (Kar) 1209 : (1981) 2 KarLJ 365 : (1982) 50 STC 189

Hon'ble Judges : M.P. Chandrakantaraj, J

Bench : Single Bench

Advocate : M. Hariprasad and K.P. Jagadeeshan, for the Appellant; M.R. Vanaja, High Court Government Pleader, for the Respondent

Judgement

Chandrakantaraj Urs, J.—In this writ petition, the petitioner, who is a driver of the transport carrier, has prayed for a declaration that the orders of the second and third respondents at exhibits B and C detaining the goods which he carried in his lorry on 4th April, 1977, as being illegal and consequentially to quash the same. He has also prayed for a writ of mandamus directing respondents 1, 2 and 3 to return the goods which they have detained as noted in exhibits B and C respectively.

2. The facts leading to this petition may briefly be stated as follows :

3. At the relevant time, the petitioner was an employee of Raghu Venkateswara Transport, the proprietor of which is one Shri Adi Murthy. On 3rd April, 1977, the petitioner was entrusted by his employer with a load of steel furniture consisting of 15 steel almirahs, 18 steel racks, 19 steel trays for being transported under invoices Nos. 112, 121, 122 and 123 bearing even date and issued by M/s. Venus Steel Industries, Bangalore, and under invoice No. 114 dated 3rd April, 1977, of one M/s. Venkateswara Industries, Bangalore, altogether valued at about Rs. 14,600. These were consigned to certain Government offices in Hassan and Mangalore Districts. When the petitioner reached the check post on Tumkur Road (National Highway No. 4) he was checked by the third respondent at the check

post on the said highway. It was found that the petitioner did not have in his possession certain documents which are required to be had in his possession in terms of sub-section (2) of section 28A of the Karnataka Sales Tax Act, 1957 (hereinafter referred to as the Act). In the result, the third respondent imposed penalty under the provisions of the Act which was paid by the petitioner. Even after payment of penalty, the petitioner was denied transit. But the goods he was carrying, namely, articles of steel furniture, were detained at the check post and were not released to him. Therefore, aggrieved by the action, he has questioned the legality inter alia contending that the authorities under the Act had no power whatsoever to detain the articles in question after the penalty had been paid and therefore the further order of 4th April, 1977, as per exhibit B to the petition, that detention is necessary for purposes of further investigation, as an illegal seizure without the authority of law.

4. On behalf of the respondents the statement of objections has been filed. The essential facts and assertions made by the petitioner are not denied. The stand taken by the respondents is, on enquiry it was learnt by them that the so-called consignors of the articles of furniture disowned their ownership of the articles and therefore the same had been detained. The consignees also denied having placed the orders. It is on this ground that the respondents have justified detaining the articles.

5. I find it difficult to sustain the detention of the articles by the respondents.

6. It must be noticed here that although in the return filed by the respondents, they have denied that the penalty determined was paid, on perusing the records produced by the Government Pleader, I find that proposition was made to impose penalty of Rs. 2,250 which was indeed imposed on 4th April, 1977, and the same has been paid.

7. The learned Government Pleader has not been able to point out under what provision of law the goods in question were detained. In the scheme of the Act, section 28 provides for powers to order production of accounts and powers of entry, inspection and seizure. Section 28A of the Act provides for establishment of check posts or barriers and inspection of goods while in transit. We are not concerned with section 28B and section 28C of the Act. It is not the case of the respondents that they have made a seizure in terms of sub-section (2) of section 28 of the Act. Even had they taken that stand such seizure would be void and illegal, as none of the provisions of section 165 of the Code of Criminal Procedure has been followed in detaining (seizing) the goods which the petitioner was carrying in his lorry.

8. We are only concerned with section 28A of the Act. Sub-section (1) of section 28A of the Act provides for the establishment of check posts by the Government. Sub-section (2) of section 28A of the Act provides for the owner or person in charge of a goods vehicle or boat to carry with him the record of the vehicle, a trip sheet or a log book as the case may be and a bill of sale or a delivery note

containing such particulars of the transaction in respect of the goods carried in the vehicle or boat which are required to be produced whenever the officer-in-charge of the check post demands the same. Sub-section (3) of section 28A of the Act provides for stopping of the vehicle on approaching the check post for purpose of inspection by the officer-in-charge. The person-in-charge of the vehicle is required to give his name and address if demanded. Explanation to sub-section (3) of section 28A of the Act provides for safeguards and placing a high rank officer of the department of commercial taxes, i.e., Assistant Commercial Tax Officer, to be the officer-in-charge of the check post. Sub-section (4) of section 28A of the act provides for the procedure by which the officer-in-charge of the check post shall conduct the inspection and for contravention by the person in charge of the goods or the driver of the vehicle. Sub-section (4) of section 28A of the Act also provides for imposition and levy of penalty, the penalty so levied being limited to what is specified in sub-section (5) of section 28A of the Act. We are really concerned with sub-section (5) of section 28A of the Act. Sub-section (5) of section 28A of the Act deals with the limitation imposed on the officer-in-charge to levy penalty under sub-section (4) of section 28A of the Act. Sub-section (6) of section 28A of the Act with which we are also concerned is as follows :

"(6) Where the penalty levied is not paid, the officer levying the penalty shall have power to take possession of so much of the goods as in his opinion would be sufficient to meet the amount of penalty levied and retain the same with him until the penalty is paid or for ten days, whichever is earlier. After the expiry of the period of ten days if the penalty is not paid, the officer shall dispose of the goods in public auction and adjust the sale proceeds towards the penalty. If the sale proceeds are more than the penalty, the excess amount shall, after deducting the charges incurred by the State, be refunded in the manner prescribed :

Provided that in the case of perishable goods, the officer may dispose of the same before the expiry of the period of ten days if in his opinion such disposal is necessary."

9. It is clear from the specific language of sub-section (6) of section 28A of the Act that the officer-in-charge of the check post has no power of seizure at all and his only power to detain the goods is confined to that much of the goods in value which would cover the amount of penalty levied by him under sub-section (4) of section 28A of the Act and no more. This contingent power could be exercised when there is failure to pay the penalty levied and not otherwise. If the penalty levied is paid, as in the instant case, the officer-in-charge of the check post has no power to detain the goods in transit. In fact, no explanation whatsoever is forthcoming from the learned Government Pleader for detention of goods even after the penalty was paid. However, it is clear from the remarks column of exhibit B that the goods had been detained as further investigation was required on the instruction of the Deputy Commissioner of Commercial Taxes,

Intelligence. The instructions given by the superior officer cannot make an act of seizure legal if it is ab initio without the authority of law and illegal. To take a lenient view in this case is disastrous as the provision is made to safeguard not only public revenues but to protect the rights of citizens in case the process is abused affecting the free trade and commerce and free movement of goods both intra-State and inter-State. The provision in law has to be strictly construed. No justification is permissible when the statute does not confer power of detention for any other purpose than what is provided under sub-section (6) of section 28A of the Act.

10. The goods carried by the petitioner which are listed in exhibit A are valued at Rs. 14,599.90 and therefore bound to be returned to him as is evidenced in the proposition notice at exhibit A. The petitioner being not the owner of the goods shall not come in the way of the respondents returning the goods to him for the petitioner was the person in charge of the vehicle and the articles were seized illegally from him alone.

11. In the result, the petitioner succeeds. Rule is made absolute. It is declared that detention by respondent 3 of the goods listed in exhibit A as is apparent from the notice issued to the petitioner under sub-section (4) of section 28A of the Act in terms of the order passed in similar form as per exhibit B is illegal. The petitioner is also entitled to a direction in the nature of a writ of mandamus directing the respondents to release forthwith the detained articles to the custody of the petitioner on receipt of this order.

12. But, in the circumstances of the case, there will be no order as to costs.

13. Petition allowed.

