(1989) 11 KAR CK 0019

In the Karnataka High Court

Case No : W.P. No. 18436/1987

M/s. Deepak Wines APPELLANT

Vs

State of Karnataka and Another RESPONDENT

Date of Decision : 27-11-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 165
Karnataka Sales Tax Act, 1957 — Section 28(3)

Citation : (1990) 34 KarLJ 5

Hon'ble Judges : S. R. Rajasekhara Murthy, J

Judgement

Rajasekhara Murthy, J.-The order of seizure made by respondent 2 under Section 28(3) of the Karnataka Sales Tax Act, 1957 (Act), is challenged in this writ petition.

On 18-8-87 respondent 2 entered the business premises of the petitioner at about 1-15 P.M. along with three Inspectors. After entering the business premises of the assessee who is a wholesale-dealer in Indian made foreign liquor, the officer started verifying physically, the stock with reference to the registers and found that there was some variance.

In the course of the inspection, as he calls it, he also came across certain documents which revealed that certain receipts and payments had not been recorded in the books of accounts of the assessee. It was also found that the petitioner had maintained duplicate-books. The second-respondent, on being satisfied that the petitioner had attempted evasion of payment of tax, proceeded to make an order of seizure under Section 28(3) of the Act and seized the following documents:

(i) Mohan duplicate book containing 1 to 100 pages and written from 28-1-87 to 1986-87 wherein sales are recorded:

(ii) Two bound note-books not serially page-numbered written from 28-8-86 to 17-8-87.

Acknowledgment was given for having taken the said account-books to his possession.

This seizure order is sought to be justified on behalf of the second-respondent and statement of objections is filed. It is asserted in the statement that it was only an inspection which culminated in the seizure of books of accounts as it was found that the petitioner had evaded payment of tax due to the State. It is also the case of the Department that the books were seized in the course of inspection and the question of searching the premises of the petitioner, therefore, did not arise.

The law relating to search and seizure is now well-settled. In a series of decisions this Court has held that whenever an officer of the Department embarks upon search of the business premises and residential accommodation of a dealer, he should record reasons and should have reasonable grounds for believing that in the normal-course and in response to the notice issued under Section 28 of the Act, the dealer would not produce such books and in cases where the residential accommodation and business premises of a dealer has to be searched, he must be armed with a warrant issued by the jurisdictional Magistrate. It is also the settled law that in cases of a search and seizure made by invoking the relevant provisions under the Sales Tax Act, all the safeguards provided in Section 165 Cr.P.C., should be observed.

This Court, in a series of decisions, struck down the seizure orders made under Section 28(3) of the Act for violation of the safeguards provided in Section 165 of the Cr.P.C. The earliest of the decisions of the Division Bench of this Court is:

Harikishandas Gulabadas & Sons and anr. v The State of Mysore and anr., ((1971) 27 STC 434).

That was a case of a surprise visit by the authorised officer along with his staff and the search and seizure effected after entering the business premises for inspection was quashed by this Court as illegal and violative of Section 165 Cr.P.C.

It is the consistent view of this Court following the ratio of the decision of the Supreme Court in Commissioner of Commercial Taxes v Ramkishan Sherikishan Jhaver, (1976) 20 STC 453, that in all cases of search and seizure the provisions of Section 165 Cr.P.C., must be strictly adhered to, and for non-compliance with the said safeguards this Court has quashed the seizure orders in a number of cases.

This Court had also occasion to deal with the contentions of the Department that the authorised officer has power to make an order of seizure if he comes across documents disclosing evasion of tax in the course of an inspection. But, whether on the facts of a given case whether, the entry by the officer is for a mere inspection or to conduct a search of the premises, is a matter which should turn on the facts of each case.

The Supreme Court in R.S. Jhaver''s case (20 STC 453) and in Krishnachattiar v

State of Madras (21 STC 258(SC)), has recognised & upheld the powers of the Department to authorise officers to enter the premises of a dealer with a view to inspect the books of accounts maintained by the dealer and that he can also take into his possession such books which are produced for his inspection.

Binny Ltd. v A.C.T.O. (INT) LR. South Zone, Bangalore, 71 STC 240.

The decision of this Court in Binny Mill''s case is a typical example of inspection and seizure. The officer who entered the business premises of Binny Ltd., called upon the Accounts Officer to produce the documents relating to the branch transfers and the relevant books, and registers were produced before the Officer. Since the officer had definite prior information about the evasion of tax by this modus-operandi of branch-transfers, he took into his possession the books produced by the dealer and seized them after recording the reasons. But, unfortunately the Department failed before the Division Bench and the finding of fact that it was a case of inspection and seizure recorded by the Single Judge, was reversed.

But, what is deprecated by this Court in the series of decisions is, the manner of seizure without observing the procedural requirements and safeguards afforded to the assessees under Section 165 Cr.P.C. But, there are large number of cases where, under the guise of inspection, the officers embark upon search of the premises of the dealer and seize whatever documents they come across and which in their opinion, reveal the undisclosed transactions.

On the facts of the present case, it is a clear case of search and seizure without following the procedure laid down by Courts. As is seen in all similar matters where the seizure orders are challenged, the officer in this case also has taken the usual defence that it was an inspection.

I am unable to agree with the case of the Department. A mere perusal of the seizure order discloses that it was not for a mere inspection that the officer entered the premises, but the intention was to make a thorough search. This, he started first, by making a physical verification of the stock with reference to the stock-register and seized whatever documents he came across in the course of the search which followed thereafter. It is impossible to accept the contention of the Department that it was a case of inspection and not search and seizure.

The order of seizure passed as per Annexure-A is, therefore, liable to be quashed and it is ordered accordingly and the writ petition is accordingly allowed.

But, so far as the prayer for return of the seized documents along with the photocopies of notes, etc., made therefrom, Sri Dattu, the learned Government pleader, opposed the return of the copies or extracts & notes taken out from the seized documents. He relies upon the decision of this Court in W.A.No. 513/80 and the decision of this Court reported in.....59 STC 252 (Universal Instruments Co. v CTO (Int), South Zone, Bangalore).

Sri B.P. Gandhi, learned Counsel for the petitioner, however, argues that in view of the direction given by the Supreme Court in-R.K. Jhaver''s case, he is entitled to the return of even the copies of notes and extracts made out by the Department from the seized documents.

But the Division Bench in its decision in Binny Ltd., (71 STC 240) has permitted retention of the extracts and notes made by the Department from the seized documents while directing the respondents to return the documents and books seized.

The prayer of the petitioner, therefore, for the return of the photo-copies and notes has to be rejected.

In the result, the writ petition is allowed and the seizure order, (Annexure-''A''.) is quashed.

The Department is directed to return the books seized within four-weeks from the date of receipt of this order.

Writ Petition allowed.

