(1997) 08 KAR CK 0040

In the Karnataka High Court

Case No : Writ Petition No. 6303 of 1990

Paras Light House — APPELLANT

Vs

State of Karnataka and another — RESPONDENT

Date of Decision : 12-08-1997

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 28 A (4), 28 A (7)

Citation : (1998) 108 STC 85

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Judgement

Tirath S. Thakur, J.—Goods vehicle No. CRO 8887 called at the sales tax check-post at Nipani and was checked by the respondent-Assistant Commercial Tax Officer. The vehicle was found transporting from the State of Maharashtra, stove burners covered by a bill issued by M/s. Mayur Stove Industries, Bombay, in favour of the petitioner. The consignment was physically verified, which revealed that there were two types of burners being transported one described as No. 2 burners and the other as No. 3 burners. The Assistant Commercial Tax Officer was of the view that 685 pieces of No. 3 burners and 657 pieces of No. 2 burners were not covered by any valid documents. A notice u/s 28A(4) of the Karnataka Sales Tax Act, was accordingly issued and served upon the driver of the vehicle asking him to show cause why a penalty of Rs. 8,000 be not imposed on account of the goods in question being without proper documents. The driver it appears expressed his unwillingness to avail of the opportunity granted to him and conveyed to the officer that he had no money even to pay the penalty. Consequently, the officer passed an order imposing a penalty of Rs. 8,000 u/s 28A(4) of the Act and directed that in the event of failure to pay the penalty amount the goods in question would be auctioned for recovery of the same. Aggrieved the petitioner who is the consignee of the said goods has come up with the present writ petition.

2. Mr. Gandhi, learned counsel for the petitioner, made a three-fold submission.

Firstly he argued that the impugned order levying penalty was in violation of the principles of natural justice in that neither the driver nor the petitioner had any real opportunity to file objections to and oppose the proposed action. Alternatively he urged that the goods in question being in the course of inter-State sales, could not have been seized for the purpose of levy of penalty on the allegation that there was any actual or attempted evasion of tax. The taxable event, contended the learned counsel, would take place only when the goods were sold so that the question of evasion of tax would arise only if and when such a sale was effected. Thirdly it was contended that the provisions of section 28A of the Act and in particular sub-section (4) thereof were ultra vires of the Constitution in so far as the same permitted levy of penalty on the failure of the person carrying the goods to produce proper documents.

3. It is not disputed that the Assistant Commercial Tax Officer had upon physical verification of the goods found a serious discrepancy between the goods being transported and the invoice produced in support thereof. From a plain reading of the show cause notice as also the order imposing the penalty it is apparent that the physical verification of the goods had revealed that as many as 685 pieces of No. 3 burners and 657 pieces of No. 2 burners were without any documents in support of the same. The Assistant Commercial Tax Officer was therefore justified in assuming jurisdiction and proposing a penalty. That a show cause notice was issued by the Assistant Commercial Tax Officer and served upon the driver is also not in dispute. What is argued is that the notice did not give a reasonable opportunity to the driver or to the petitioner to file their objections. It is urged that the notice was issued on the 10th March, 1990 and on the very same day, even the order imposing the penalty was also passed, which clearly deprived the petitioner of a fair opportunity to defend itself and oppose the proposed action. There is no substance in this submission for the same overlooks a specific statement made in the impugned order, according to which, upon service of the show cause notice the driver of the vehicle had declined to avail of the opportunity given to him. The following lines from the order are in this regard relevant :

"In response to the notice, Shri Syed appeared and requested to unload the goods as he has no money to pay the penalty money. The driver is not ready to avail the given time to explain the defects noticed."

4. It is not the case of the petitioner that the statement attributed to the driver was not made by him. No affidavit from the driver refuting the correctness of the observations made in the impugned order has been filed. That being so, it is not open to the petitioner or the driver to allege that a reasonable opportunity against the proposed action was not granted to them. It cannot be forgotten that what is necessary is to grant an opportunity to the party likely to be affected by the proposed action, and not to force the person concerned to necessarily avail of such an opportunity. It is sufficient compliance with the requirements of natural justice if it is established that an opportunity was granted to the person

likely to be affected by the proposed order. If the person concerned declines to avail of such an opportunity as is the position in the present case he cannot turn round and complain of violation of the principles of natural justice. I therefore have no hesitation in rejecting the challenge to the impugned order on that ground.

5. Equally untenable are the other two submissions made by the learned counsel. Section 28A of the Act, engrafts a provision which is aimed at preventing evasion of taxes payable under the Act. It empowers the State Government to establish check-posts and erect barrier and obliges the owner or person in-charge of the goods vehicle to carry with him a goods vehicle record, a trip sheet or a log book, and a bill of sale or a delivery note or such other documents as may be prescribed containing such particulars as may be prescribed in respect of the goods carried in the vehicle and to produce the same before any officer in-charge of a check-post or any other officer empowered by the State in that behalf. The owner or person in-charge of the goods vehicle entering or leaving the State limits is also required to give a declaration containing such particulars of the goods as may be prescribed being carried in the vehicle, before the officer in-charge of the check-post or the officer empowered as aforesaid. Sub-section (3) of section 28A of the Karnataka Sales Tax Act, obliges the driver or any other person in-charge of the goods vehicle to stop the vehicle and keep it stationary as long as may be required by the officer in-charge of the check-post or barrier to examine the contents of the vehicle and inspect all records relating to the goods carried. Sub-section (4) of section 28A empowers the officer in-charge of a check-post or barrier or any other officer not below the rank of the Commercial Tax Officer to levy a penalty not exceeding the limits specified in sub-section (5) for contravention or non-compliance with the provisions of sub-section (2), (3), (3A) or (3B) of section 28A. Such a penalty may also be levied where the declaration under sub-section (2) of section 28A is false in respect of the materials furnished therein or where the particulars furnished in the records do not tally with the goods being transported or are found to be not relating to such goods. The provisions of section 28A therefore provide a machinery which is entirely aimed at preventing the evasion of tax payable under the Act. The power to enact such a provision is incidental to the power vested in the State Legislature under entry 54 of List II to levy a tax on the sale or purchase of goods. It is therefore futile for the petitioner to contend that the provisions of sub-section (2) or sub-section (4) of section 28A, are beyond the legislative competence of the State Legislature. Equally untenable is the submission that since the taxing event is the sale of goods which has yet to take place, there is not question of prescribing or levying a penalty for evasion in anticipation of such a sale. If the power to prevent evasion of tax is accepted as incidental to the power to levy tax, such an evasion can be checked not only at the time the actual sale takes place but at any time anterior thereto. Inasmuch as section 28A provides for a machinery aimed at preventing or detecting evasions even in anticipation of the taxing event having taken place, it does not suffer from any

unconstitutionality. Reliance was placed by Mr. Gandhi on the decision of the Supreme Court in The Check Post Officer and Others Vs. K.P. Abdulla and Bros., where their Lordships of the Supreme Court were dealing with a challenge to the constitutional validity of section 42(3) of the Madras General Sales Tax Act. The court held that the power to confiscate goods carried in a vehicle could not be said to be fairly and reasonably, comprehended in the power to legislate in respect of taxes on sale or purchase of goods. Section 28A of the State Act does not however contain any provision for confiscation of the goods carried in the vehicle on the ground of failure of the driver or person in-charge of the vehicle to produce the relevant documents. The provision envisages the levy of a penalty by the checking officer only after the person carrying the goods fails to satisfy him about the reason for not carrying the documents as required under sub-sections (2), (3) or (3A). The order levying penalty is appealable u/s 28A(7) before the prescribed appellate authority who may annul, reduce or confirm the penalty. The seizure of the goods for payment of the penalty amount has to be only to the extent the same is necessary and the goods so seized have to be retained for 10 days before the same can be sold to liquidate the liability. Section 28A of the State Act, is not therefore in pari-materia with the provisions with which the Supreme Court was dealing in The Check Post Officer and Others Vs. K.P. Abdulla and Bros., , nor can the principle enunciated in the said decision be extended or applied to the said provision as it stands after the amendments brought from the year 1969 onwards. The challenge to section 28A must therefore fail and is accordingly rejected.

6. There is no merit in this writ petition which fails and is dismissed with costs assessed at Rs. 1,500.

7. Writ Petition dismissed.

