
(1979) 02 KL CK 0021

In the High Court Of Kerala

Case No : O.P. No's. 546, 547, 999, 4423 of 1973 and 2081, 5179 and 5549 of 1974

P.K. Aboobacker and Others

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 19-02-1979

Acts Referred:

Constitution of India, 1950 — Article 19, 301, 304

Citation : (1979) 44 STC 250

Hon'ble Judges : K. Bhaskaran, J;G. Viswanatha Iyer, J

Bench : Division Bench

Advocate : T. Karunakaran Nambiyar and P.A. Mohammed T, for the Appellant;
Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

G. Viswanatha Iyer, J.—The constitutional validity of Section 29A of the Kerala General Sales Tax Act (hereinafter referred to as the Act) is challenged in all these writ petitions and, to appreciate the point raised, the facts in O.P. No. 999 of 1973 alone are stated in brief hereunder:

2. The petitioner is doing business in hill produce such as pepper, ginger, etc., in Tellicherry Town. He purchases the goods locally and sells those goods to registered dealers outside the State in the course of inter-State trade. The petitioner has been registered as a dealer both under the provisions of the Central Sales Tax Act and the General Sales Tax Act on the file of the Sales Tax Officer, Special Circle, Tellicherry. On 9th March, 1973, he despatched 84 bags of pepper and 8 bags of dry ginger to M/s. Chakrapani and Co., who is acting as the agent of the petitioner in Bangalore. According to the petitioner, the goods were despatched on consignment basis by a lorry. One Ahammed was its driver and he took with him the invoice and the way-bill relating to the consignment. The lorry left Tellicherry at 22.00 hours and was to reach Bangalore on the 10th morning as there was an urgent demand for the supply of pepper and ginger. But the

Sales Tax Inspector, Chavasseri, intercepted the goods vehicle at Chavasseri in Tellicherry-Kuthupuzha road at about 23.30 hours on 9th March, 1973. The driver produced the invoice and the way-bill to the officer concerned. But the Sales Tax Inspector--the second respondent herein--directed the lorry driver to unload the goods at Kuthupuzha check post and issued a notice to the driver pointing out certain defects in the documents produced by him and also proposing to take action in accordance with Sub-section (2) of Section 29A of the Act. The notice issued by the second respondent further contained a statement that an opportunity is given to the driver to prove that the documents produced by him are genuine. But before the driver could produce the necessary documents for that purpose, the Sales Tax Inspector changed his camp from Chavasseri to Tellicherry and at about 11.15 A.M. on 10th March, 1973, inspected the petitioner's place of business and demanded for the account books. At that time, the petitioner was not present in the shop. His employee could not give any details of the accounts to the officer concerned. Following this, the Inspector issued exhibit P-6 notice calling upon the petitioner to produce certain records within 3 hours. On coming to know of exhibit P-6 notice, the petitioner produced the ledger for the year 1972-73, the way-bills, and the sales and purchase bill file before the second respondent at his camp office at Tellicherry at 1.30 P.M. These records were received by the officer, but were not returned after perusal. After these, the officer issued another notice on 10th March, 1973, granting an opportunity to the petitioner to furnish security for an amount equal to double the tax in respect of the goods detained within 14 days from the date of stopping the vehicle. The notice, inter alia, stated that, as the driver of the vehicle failed to adduce any evidence, the goods have been detained and the petitioner is called upon to furnish security for an amount of Rs. 2,818, which, according to the officer, represented double the tax due on the value of the goods. The petitioner furnished the security under protest and transported the goods to Bangalore as originally arranged. Thereafter, this petition is filed challenging the action of the Sales Tax Officer. The Sales Tax Inspector--the second respondent -- has apparently acted in exercise of the powers conferred u/s 29A of the Act. Under this section, the officer is given power to stop the vehicle, to detain the goods, to demand security in any form for double the amount of tax likely to be evaded as may be estimated by the officer, to seize the goods if security is not furnished, and a power to impose penalty equal to twice the amount of tax attempted to be evaded and to recover the penalty, if imposed, by the sale of the goods seized. The conferment of these powers, according to the petitioner, on the authorised officer are unconstitutional and they are not comprehended by the legislative entry 54, List II, of the Seventh Schedule to the Constitution, and are an unreasonable restriction on the freedom to carry on trade or business. The provisions conferring such powers directly affect the free flow of trade and violate Article 301 of the Constitution. This provision, according to the petitioner, does not remove the vice in Section 29 pointed out by the Full Bench decision reported in Yogesh Trading Co. v. Intelligence Officer of Sales Tax 1970 KLT 154 This Court had declared in that decision that Sub-sections (3), (4) and (5) of Section 29,

and Sub-rules (3) to (12) and (15) of Rule 35 of the Kerala General Sales Tax Rules are unconstitutional and, therefore, invalid. The provisions in Section 29A introduced thereafter contain the same vice pointed out by the Full Bench decisionl.

3. The State opposes these petitions and contends that the vices pointed out in the above Full Bench decisionl are not in the new section and the new section is constitutionally valid. The only question for consideration at this stage, therefore, is whether Section 29A of the Act is, in any way, beyond the legislative powers of the State Legislature.

4. The occasion to enact Section 29A arose in this way. The provision for confiscation contained in Section 29 was challenged as unconstitutional in the above case. That section reads as follows:

29. Establishment of check posts and inspection of goods in transit.--(1) If the Government consider that with a view to prevent or check evasion of tax under this Act in any place or places in the State it is necessary so to do, they may, by notification in the Gazette, direct the setting up of check posts at such place or places, and define the boundaries of such check posts and notify the area of the check posts included within such boundaries, hereinafter referred to as the notified area, and demarcate such boundaries by means of barriers or otherwise for the purpose of regulating the passage of goods across the notified area.

(2) No person shall transport within the State across or beyond the notified area any consignment of goods exceeding such quantity or value as may be prescribed by any vehicle or vessel, unless he is in possession of--

(a) either a bill of sale or delivery note or way-bill or certificate of ownership containing such particulars as may be prescribed, and

(b) a declaration in such form and containing such particulars as may be prescribed when the vehicle or vessel enters or leaves the State limits.

Explanation.--The term "goods" referred to in this Sub-section shall not include luggage of persons who cross the notified area.

(3) At any place within the notified area or at any other place when so required by any officer empowered by the Government in this behalf, the driver or any other person in-charge of any vehicle or vessel shall stop the vehicle or vessel and keep the vehicle or vessel, as the case may be, stationary as long as may be required by the officer-in-charge of the notified area or the officer empowered as aforesaid, and allow and enable such officer to inspect the goods under transport and to examine the bill of sale or delivery note or way-bill or certificate of ownership relating to the goods, which are in the possession of such driver or person in-charge of the goods who shall, if so required, give his name and address, the name and address of the owner of vehicle or vessel and the name and address of the owner of the goods and in the case of a vehicle or vessel entering or leaving the State limits the declaration also.

(4) Where the goods transported exceed the quantity or value prescribed under Sub-section (2), the officer-in-charge of the notified area or the officer empowered in the preceding Sub-section shall have power to detain or seize and confiscate the goods--

(a) which are being transported by a vehicle or vessel and not covered by a bill of sale or delivery note or way-bill or certificate of ownership and where the vehicle or vessel enters or leaves the State limits, the declaration referred to in Clause (b) of Sub-section (2) also, or

(b) where the declaration is false or is reasonably suspected to be false in respect of the particulars furnished therein :

Provided that before taking action for the confiscation of goods under this section, the officer shall give the person in-charge of the goods and the owner, if ascertainable, an opportunity of being heard and make an enquiry in the manner prescribed.

(5) Whenever confiscation is authorised by this section, the officer adjudging it shall give the owner or the person in-charge of the goods an option to pay, in lieu of confiscation, a penalty not exceeding double the amount of tax calculated at the rates applicable to the goods liable to confiscation :

Provided that the officer may release the goods on cash security being furnished by the person concerned to the extent of the penalty leviable, if, in the opinion of the officer, further time is required to arrive at a correct finding as to whether a penalty is to be imposed or not and that the security so furnished shall be adjusted towards the penalty in case it is payable or returned to the party, if otherwise.

(6) Nothing contained in Sub-section (4) or Sub-section (5) shall apply in the case of goods transported which are exempted from tax under any of the provisions of this Act without any condition or restriction.

5. Unconstitutionality was attributed to this on two grounds, namely, that the provision is beyond the field of legislation covered by entry 54 and also that it is an unreasonable restriction on the freedom of trade and commerce violative of Article 301 of the Constitution. The question whether the provision of confiscation contained in Section 29 is beyond the field of legislation under entry 54 of List II of the Seventh Schedule to the Constitution was left open by the Full Bench, in view of the fact that Sub-sections (3), (4) and (5) were found to violate Article 301 and that was enough to strike down those provisions. The attempt of the State to salvage those provisions as amounting only to a reasonable restriction on the freedom of trade and commerce within the meaning of Article 304(b) of the Constitution was not successful as it was found, firstly, that the Act had not received the assent of the President as provided in Article 304 and, secondly, what amounts to a reasonable restriction in public interest will have to be considered in the light of Article 19(1)(f) and (g) of the

Constitution, and in the light of the above articles, the view of the Full Bench was that the section amounts to an unreasonable restriction. The Full Bench observed as follows:

They amply bring out that unless the owner travels with the goods, the notice provided is hardly likely to reach him in time to avoid the catastrophe of confiscation. We have already noticed the disparity between Section 29(4) and Rule 35(6) in providing for notice to the owner, the former directing notice if the owner is "ascertainable", and the latter, only, if he is "present". The further provisions in Rule 35(8) to ascertain the address and particulars of the owner, and afford him an opportunity are, in the nature of things, illusory and ineffective, unless the owner travels with the goods or is near at hand to the check post. It is little consolation for the owner that confiscation can be avoided by tendering twice the amount of tax payable on the goods under Clause (5) of Section 29 read with Clause (15) of Rule 35. The effectiveness of these provisions as a sufficient safeguard stands considerably attenuated, if not entirely destroyed, by the prospect of his having to do so at successive check posts, or in respect of successive consignments of goods at the same check post, to allay the suspicions of the officers-in-charge. Both by the terms of the section and the rule, the confiscated goods are to be sold in public auction, and all that the deprived owner can get in case he eventually succeeds in appeal against the order of confiscation would be, not even the market value of the goods, but the proceeds fetched at the auction, less the charges incurred for conducting the same. We have no doubt that these provisions operate as unreasonable restrictions on the fundamental right of a person with respect to his property and with respect to his right to carry on a trade or business in goods.

Some of the provisions in Rule 35 were also found to be invalid for the same reason and finally the Full Bench held thus:

We hold that the provisions of Section 29(4) and (5) and of Rule 35(5) to (12) and (15) violate the rights guaranteed by Article 19(1)(f) and (g) of the Constitution and cannot be saved as reasonable restrictions on the exercise of the said rights. Some of the provisions of Rule 35 may, by themselves, be innocuous, but they are so integrally connected with the process of confiscation provided therein, that portions of them alone cannot be allowed to stand. The whole of Clauses (5) to (12) of Rule 35 must be struck down.

6. We are informed that the State has filed an appeal before the Supreme Court against the above decision and the same is pending. A petition for stay of the above decision was not allowed by the Supreme Court, Consequently, to cope up with the situation that there is no effective provision to check the evasion of tax and huge loss of revenue to the Government, an Ordinance was promulgated which was subsequently replaced by an Act of the State Legislature, namely, Act No. 11 of 1972. The statement of objects and reasons of the above Act is as follows:

Section 29 of the Kerala General Sales Tax Act, 1963, provides for the establishment of check posts and inspection of goods in transit, the procedure for such inspection, detention of vehicles and vessels, seizure and confiscation of goods, imposition of penalty, etc., with a view to prevent evasion of sales tax. In O.Ps. Nos. 2642, 4977 and 4995 of 1967, See [1970] 26S.T.C. 45 (F.B.) a Full Bench of the Kerala High Court struck down Sub-sections (3), (4) and (5) of that Section 29 and Sub-rules (3) to (12) and (15) of Rule 35 of the Kerala General Sales Tax Rules, 1963, as violative of Articles 301 and 19(1)(f) and (g) of the Constitution.

2. Since the provisions mentioned above have been invalidated by the High Court, the check posts and flying squads, which are found to be very effective in checking evasion of sales tax, could not function, resulting in heavy loss of revenue to the State due to evasion of sales tax. Appeals filed before the Supreme Court against the decision of the High Court have not yet been disposed of. A petition for stay of the decision of the High Court filed before the Supreme Court was not allowed. Therefore, to prevent the evasion of tax and the huge loss of revenue to the Government, it was considered necessary to make appropriate provisions in the Act after curing the defects pointed out by the High Court. Although Section 29 of the Act has become inoperative due to the decision of the High Court, it was considered advisable to retain the section, pending decision of the Supreme Court in the appeals and to insert a new Section 29A in the Act for the above purpose.

3. Since the Legislative Assembly was not in session, the required amendments were made by the promulgation of the Kerala General Sales Tax (Second Amendment) Ordinance, 1971 (24 of 1971), See [1972] 29 S.T.C. Statutes 32. The Bill seeks to replace the Ordinance by an Act of the State Legislature." (Kerala Gazette, Extraordinary No. 174, dated 19th March, 1972).

7. The counsel for the petitioners attack this new provision. According to them, all the vices in Section 29 are substantially present in the new provision. They further contend that, except for keeping track of the goods and the identity of its owner, the power conferred, to demand security and to seize and sell the goods in case the security is not furnished, is beyond the power of taxation contained in entry 54, List II, of the Seventh Schedule. This latter contention may be considered first.

8. It is well-settled that the legislative entries have to be considered in their widest amplitude and a power authorising an imposition of the tax also includes a power to prevent tax imposed being evaded and to check such evasion. The petitioners do not dispute this. But, according to them, conferment of a power to seize the goods in case security for payment of penalty, if subsequently imposed, is not furnished and to sell the goods seized to realise the penalty, if imposed, is not very much different in substance from a power of confiscation and a power of confiscation cannot be said to be within the scope of the incidental or ancillary to a power to tax sale and purchase of goods, as held by the Supreme Court in the

case reported in *The Check Post Officer and Others Vs. K.P. Abdulla and Bros.*, There the Supreme Court confirmed the decision of the Madras High Court reported in *K.P. Abdulla & Bros. v. Check Post Officer* [1968] 22 S.T.C. 552 . Section 42 of the Madras General Sales Tax Act, 1959, empowered the officer-in-charge of a check post to seize and confiscate any goods which are in transport and are not covered by bill of sale or delivery note, goods vehicle records and such other documents as may be prescribed under Sections 43 and 44 of the Act. That section further provided that before ordering confiscation, notice giving an opportunity of being heard should be given to the person affected and also empowered the officer to give the person affected an option to pay in lieu of confiscation (a) in cases where the goods are taxable under this Act, in addition to the tax recoverable, a sum of money not exceeding one thousand rupees or double the amount of tax recoverable, whichever is greater and (b) in other cases, a sum of money not exceeding one thousand rupees. Striking down this provision, the Supreme Court observed as follows:

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] F.C.R. 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. Sub-sections (1) and (2) of Section 42 are intended to set up machinery for preventing evasion of sales tax. But, in our judgment, 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. Subsection (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. A person carrying his own goods even as personal luggage from one State to

another or for consumption, because he is unable to produce the documents specified in Clauses (i), (ii) and (iii) of Sub-section (3) of Section 42, stands in danger of having his goods forfeited. Power under Sub-section (3) of Section 42 cannot be said to be ancillary or incidental to the power to legislate for levy of sales tax.

These observations have to be understood in the light of the provisions of the Madras General Sales Tax Act. Section 42(3) of the latter Act conferred a power of seizure and confiscation of any goods which were under transport and were not covered by the prescribed documents. This provision was based on the unwarranted assumption that the goods were transported after sale within the State. The seizure and confiscation may be made irrespective of the question whether there was any attempt to evade tax. So it was held that the power to seize and confiscate any goods, which were carried in a vehicle, whether they were sold or not, was not incidental or ancillary to the power to levy sales tax. Further, the option to pay, in lieu of confiscation in cases where the goods are taxable under the Act, in addition to the tax recoverable, a sum of money not exceeding double the amount of tax is invalid for the reason that whether a dealer is liable to be assessed to sales tax will depend upon the turnover and, until the turnover exceeds the minimum, it cannot be said that any tax is recoverable. 9. These defects in the Madras Act of 1959 are not present in the new section. The new section is not based on any assumption that the goods were transported after sale within the State. It is intended only for prevention of evasion of tax and of violation of any provisions of the Act.

10. Preventing the attempt to evade tax is certainly within the incidental and ancillary power of taxation and if there is reason to suspect that there is an attempt in that direction, a provision to guard against that attempt is certainly comprehended by the incidental or ancillary powers. The provision that the goods transported should be accompanied by the prescribed documents is part of this provision to check evasion. If that is not properly enforced by some penal step, prevention of evasion will not be effective. Attempt to evade tax may take various forms. Goods for which one rate of tax is leviable may be transported but the documents accompanying them may show a different item of goods for which the tax may be less or nil. The actual quantity transported or its value may or may not be correctly shown in the accompanying documents. It is not possible to exhaustively enumerate all possible attempts to evade tax. The enquiry into this is a process and some time is required to find out the exact state of affairs. If there are reasons to suspect an attempt at evasion, the same is directed to be recorded in writing and the person concerned is called upon to furnish security for the penalty if imposed after enquiry. If the security is not called upon, the subsequent imposition of penalty will not be effective. If the penalty is not recoverable easily and if the sales tax authorities have to take steps in the normal course and leisurely to recover it, the penalty provision will not be effective. Seizure of goods is allowed only if security is not furnished. No doubt it is a temporary restriction in the movement of goods. But the property in the

goods continues to be with the owner unlike in the case of confiscation. The danger of losing custody and control of the goods will act as discouragement and an effective check at evasion. Therefore, the provision to furnish security and seizure of the goods in default are only in the nature of an effective provision to recover the penalty which, in turn, is a measure aimed at prevention of tax evasion and perfectly within the incidental or ancillary powers of taxation.

11. We are supported, in this conclusion, by the decision of the Supreme Court reported in Commissioner of Commercial Taxes and Others Vs. Ramkishan Shrikishan Jhaver and Others, where the court observed thus in paragraph 13:

It is also not in doubt that while making a law under any entry in the schedule it is competent to the legislature to make all such incidental and ancillary provisions as may be necessary to effectuate the law; particularly it cannot be disputed that in the case of a taxing statute it is open to the legislature to enact provisions which would check evasion of tax. It is under this power to check evasion that provision for search and seizure is made in many taxing statutes. It must therefore be held that the legislature has power to provide for search and seizure in connection with taxation laws in order that evasion may be checked.

No doubt this observation was made while considering whether the power to confiscate goods which are not entered in the accounts is merely a provision of ancillary nature to check evasion of tax by making it unprofitable for dealers to secrete goods in which they are dealing. Though the Supreme Court did not decide that question, the court definitely held that the legislature has power to provide for search and seizure in connection with taxation laws in order that the evasion may be checked.

12. The question whether, for violation of any provision of the Sales Tax Act, penalty by way of forfeiture is permissible, arose for consideration in a recent decision of the Supreme Court in R.S. Joshi v. Ajit Mills AIR 1977 S.C.2279. In that case, the provision of the Bombay Sales Tax Act to forfeit the sums collected by the dealers by way of sales tax, though not exigible, to the public exchequer punitively, was held to be within the incidental or ancillary powers under entry 54. In dealing with that question, the Supreme Court has taken the view that the forfeiture, which is plainly punitive, is justifiable under the incidental or ancillary powers of entry 54.

13. The repugnancy of a case where tax is ordered to be recovered even before the sale in addition to the penalty is also not here in Section 29A. Section 29A does not provide for recovery of tax at all but only provides for the imposition of a penalty and stringent measures to recover the same in case an attempt at evasion is made out. Therefore, there is no invalidity on that score. Thus, we hold that Section 29A is only a provision to punish those dealers who attempt to evade tax or violate any of the provisions of the Act, which are aimed at checking evasion. All these are part of the incidental or ancillary powers to the power of taxation.

14. The further question is whether this provision violates Articles 301 and 19(1) (f) and (g) of the Constitution. The interception of the movement of goods from one place to another is, to some extent, a restriction in the freedom of trade, commerce and intercourse coming within the scope of Article 301. Notwithstanding that Article 304(b) permits the imposition of a reasonable restriction on such a freedom of trade, commerce and intercourse with or within the State as may be required in the public interest and the law imposing such a reasonable restriction can only be with the previous sanction of the President. There is no dispute that the previous sanction of the President has been obtained for enacting Section 29A. So the only other matter to be considered is whether this is only a reasonable restriction in the public interest within the meaning of Article 304(b) of the Constitution, which is identical with a similar provision in Article 19(1)(f) and (g) read with Clauses (5) and (6).

15. What amounts to reasonable restriction has been the subject-matter of decision of the Supreme Court in more than one case. In a recent decision of the Supreme Court reported in *Pathumma and Others Vs. State of Kerala and Others*, Fazal Ali, J., has grouped all the decisions and enumerated all of them under seven heads, and it is not necessary to repeat them here. The only thing to be remembered, in this connection, is that the restrictions must not be arbitrary or of an excessive nature so as to go beyond the requirement of the interest of the general public and, in order to judge the quality of the reasonableness, no abstract or general pattern or a fixed principle can be laid down so as to be of universal application and the same will vary from case to case. A just balance has to be struck between the restriction imposed and the interest of the general public. The restriction must have a direct and proximate nexus with the object which is sought to be achieved and the nature of reasonableness has to be viewed not only from the point of view of the citizen but the problem before the legislature and the object which is sought to be achieved by the statute. In the light of this principle, we have to consider whether the various provisions contained in Section 29A are restrictions reasonable in the interest of the public. It cannot be disputed that evasion of tax has to be prevented and at the same time the movement of the goods shall not be paralysed. Here, the officer-in-charge of the check post has to record his reasons in writing why he suspects a violation and give an opportunity to the owner of the goods or the driver of the vehicle to furnish security for the realisation of the penalty that may likely to be imposed after the enquiry. The reasons stated for suspecting the genuineness of the documents or suspecting an attempt at evasion can be shown to be unfounded. The section requires an enquiry to be held after giving an opportunity to the person concerned before penalty is imposed. This is consistent with the principles of natural justice. Only if security is not furnished within the time allowed, power is given to the officer to seize the goods. The ownership in the goods continues to be in the same person and, if penalty is imposed, the goods seized are sold as his goods and, after realising the penalty, if there is a balance, that is returned to the owner of the goods. Until the sale, it is open to the owner

to pay the penalty and take back the goods. Time is also given to pay the penalty after the imposition. So, the procedure in the matter of imposition of penalty is substantially and procedurally fair and reasonable. This provision is substantially different from the provisions in Subsections (3), (4) and (5) of Section 29 held to be invalid in the above Full Bench decision, 1970 KLT 154. We do not think that there is any unreasonableness or excessiveness in the restriction imposed in the movement of goods. This is only a safeguard in the nature of prevention of evasion of tax.

16. A contention was feebly advanced that security for payment of penalty and seizure in default in advance of the imposition of penalty are not justified or reasonable as it is not certain whether the enquiry would result in an imposition of a penalty. There is no substance in this contention. Demanding security for the proper payment of the penalty payable under this provision is neither arbitrary nor unreasonable. A similar provision for security for payment of tax at the time when a person applies for being registered as a dealer or later has been held to be valid in view of the decision of the Supreme Court reported in *Nand Lal Raj Kishan Vs. Commissioner of Sales Tax, Delhi and Another*, followed by our Court in *Abdulla v. Sales Tax Officer* [1972] 30 S.T.C. 436 (sc). The same principle applies here.

17. It was submitted that the power u/s 29A is conferred on a subordinate official and as there is a likelihood of the power being abused, this provision is invalid. A mere possibility of abuse is no ground to strike down the statutory provision. But we make it clear that the stringent powers given to the officers should not be exercised arbitrarily. They should exercise their powers bona fide only for the purpose for which they have been conferred and not for any ulterior purpose and, whenever there is a transgression by the authorities, they should not forget that the extraordinary powers of this Court are there to strike down their illegal action.

18. It follows therefore that there is no basis for the contention that Section 29A is constitutionally invalid. In each of these petitions, the allegations are made against the manner in which the action has been taken against the petitioners. We are not going into them, because, at the enquiry u/s 29A, they can point out that a case has not been made out for imposition of penalty and, if they are aggrieved by the orders of the subordinate authorities, there is provision to file an appeal. We have only disposed of the objection regarding the constitutional validity of the provision. It is open to the petitioners to move the concerned authorities that a case has not been made out to invoke the provisions of Section 29A of the Act.

Subject to these observations and directions, these original petitions are dismissed, but, in the circumstances, we make no order as to costs.