(1978) 03 KAR CK 0006

In the Karnataka High Court

Case No : Writ Petition No. 10499 of 1977

Sha Puckaraj Parasmal and Co. APPELLANT

Vs

Commercial Tax Officer, (Intelligence) III, South Zone, Bangalore-9 RESPONDENT

Date of Decision : 23-03-1978

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 28 (2), 28 (3)

Citation : (1980) 45 STC 488

Hon'ble Judges : M. Rama Jois, J

Bench : Single Bench

Advocate : B.P. Gandhi, for the Appellant; C. Shivappa, High Court Government Pleader, for the Respondent

Judgement

Rama Jois, J.—The petitioner is a registered dealer under the provisions of the Karnataka Sales Tax Act. He has challenged the order of seizure of books of account and documents made in exercise of the power u/s 28(3) of the Karnataka Sales Tax Act by the Commercial Tax Officer (Intelligence) III, South Zone, Bangalore. The impugned order reads as follows :

"At the time of routine inspection of the business premises of M/s. Sha Puckaraj Parasmal and Company, 353, Avenue Road, Bangalore-2, who are registered dealers under the Karnataka Sales Tax Act, 1957, holding R.C. No. 0215023.2 for their place of business situated at 353, Avenue Road, Bangalore, I, B. Krishnaswamy, Commercial Tax Officer (Intelligence) III, S.Z., Gandhinagar, Bangalore, came across the following books of account and documents :

Exhibits : (i) One bundle of loose slips from 1 to 20; (ii) One exercise note book; (iii) One pocket note book (small); (iv) Two day-books relating to 1975-76 and 1976-77 (Deepavali year); (v) Two ledger books relating to 1975-76 and 1976-77 (Deepavali year); (vi) One sales invoice book; (vii) One bundle of octroi and lorry receipts.

On a preliminary scrutiny of the said books of account and documents, I have reasons to suspect that the dealer is trying to evade the tax payable by him under the Karnataka Sales Tax Act, 1957. Therefore, in exercise of the powers vested in me u/s 28(3) of the Karnataka Sales Tax Act, 1957, I, B. Krishnaswamy, Commercial Tax Officer (Intelligence) III, S.Z., Bangalore, seize the above books of account and documents for further verification."

2. Sri B. P. Gandhi, the learned counsel for the petitioner, raised the following contentions :

(1) The impugned order of seizure is illegal for the reason that the procedure provided in sub-section (2) of section 28 of the Act has not been followed; and

(2) Even assuming the matter falls under sub-section (3) of section 28 of the Act, the respondent has not given any reason for seizing the documents and books of account.

3. As regards the first contention, the answer of the respondents is that the seizure was made only in the course of inspection and not after a search and, therefore, the provisions of sub-section (2) of section 28 of the Act are not attracted.

4. It is unnecessary to decide the above question for the reason that the petitioner is entitled to succeed in the writ petition on the second contention. As regards the second contention, sub-section (3) of section 28 of the Act confers a right on the respondent to seize registers, records or other documents of any dealer if he suspects that there is any attempt to evade the payment of tax. But that order has to be made for reasons to be recorded in writing. In the impugned order all that the respondent has stated is that on a preliminary scrutiny of the books of account and documents, he has reasons to suspect that the dealer is trying to evade the tax payable by him, but he has not recorded any reason on the basis of which he entertains such a suspicion. No doubt, sub-section (3) of section 28 of the Act authorises the officer to seize the documents on the basis of suspicion, but such suspicion has to be on the basis of reasons to be recorded in writing. In the impugned order, no reasons are recorded on the basis of which the respondent came to entertain suspicion that the petitioner is attempting to evade the tax excepting incorporating the words contained in the said provision. Therefore, the impugned order made without recording reasons in the exercise of power under sub-section (3) of section 28 of the Act is illegal and liable to be quashed. (See Bani Roy Chowdhury v. Competent Authority, Smt. Bani Roy Chowdhury Vs. Competent Authority, Inspecting Assistant Commissioner of Income Tax, Acquisition Range II and Others,

5. For the reasons aforesaid, the impugned order of the respondent (exhibit A) is quashed and the respondent is directed to return all the seized articles, documents, photostat copies and negatives and all notes made therefrom to the petitioner within two weeks from the date of this order. No costs.

6. Ordered accordingly.

