(1979) 08 KAR CK 0034

In the Karnataka High Court

Case No : W.P. 962/79

Siddeswara Rice Mill APPELLANT

Vs

C.T.O. (Int), Davangere RESPONDENT

Date of Decision : 22-08-1979

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 28(3)

Citation : (1980) 1 KarLJ 288

Hon'ble Judges : Chandrakantharaj Urs, J

Judgement

1. This writ petition coming up for preliminary hearing in ''B'' Group after notice to respondent, is taken up for final disposal by consent of the learned Counsel for parties.

2. The petitioner has alleged that the respondent-Commercial Tax Officer (Intelligence), Davangere, visited the Rice Mill premises of the petitioner at about 3.45 p.m. and started indiscriminately collecting books of account and other records available in the premises of the Rice Mill. He has narrated the number of books that were taken custody of by the respondent. The respondent at the time of seizure as above, gave a receipt which is produced as Ex-A to the petition. Thereafter, in spite of several reminders by the petitioner, the respondent did not return the books of accounts and other records as per Ex-A. Aggrieved by the non-return, the petitioner has approached this Court under Art. 226 of the Constitution, inter alia contending that the seizure was illegal and in any event the respondent had no authority to retain the books beyond 30 days from the date of seizure unless and until he had obtained, the orders of superior officers permitting him to do so in writing, in accordance with the proviso to sub-sec. (3) of S. 28 of the Karnataka Sales Tax Act, 1957, (hereinafter referred to as the Act). The respondent has filed his statement of objections denying the allegations that the books of accounts as per Ext-A were seized in the manner described by the petitioner. Denying the allegations of the petitioner he has asserted that seizure of it by him during inspection was done normally and cannot be said to be illegal.

3. Some of the facts are not in dispute. Therefore, it is not necessary to go into the question as to whether the seizure was illegal or not on the basis of the pleadings.

4. This petition may be disposed of on a short question which is a pure and simple question of law. Admittedly the seizure was effected on 4-7-1978 The law as it stood on that date in terms of the proviso to sub-sec. (3) of Sec. 28 of the Act reads as follows:

"Provided that such accounts, registers, records and. documents shall not be retained for more than 30 days at a time except with the permission of the next higher authority."

On perusing the records produced by the learned High Court Government Pleader it is seen that order in accordance with the proviso extracted above was obtained from the Deputy Commissioner of Commercial Taxes (Intelligence) Southern Zone, Bangalore, by order No. MISC/CR/77/78-79 dated 22-8.1979. This obviously is a mistake so far as it relates to the year. The despatching date as endorsed on the communication shows that it was despatched on 25.8.1979. Assuming for a moment that it was indeed ordered on 22.8.1973 permitting respondent to keep m custody, the books of accounts and records for a further period beyond 30 days), it is significant to notice that the permission was accorded approximately 49 days after the date of seizure. In other words, the respondent-Commercial Tax Officer kept in custody, the seized books of accounts as per Ext-A for a period beyond 30 days without necessary sanction enjoined mandatorily under the proviso to sub-sec. (3) of Sec. 28 of the Act.

5. The learned High Court Government Pleader contends that since subsequent permission had been granted and also the law had since been changed enhancing the period of retention to 60 days the lacuna should be overlooked. It is difficult to accede to the contention. The law has been changed on 31st August 1978 w.e.f. 1-9-1978 and the law in its operation is prospective and not retrospective. In that view of the matter, the subsequent amendment of the law enhancing the retention period to 60 days will not affect the case of the. petitioner as retention by the respondent beyond 4-8-1978 had become illegal and there is no provision in the Act by which the said illegality can be cured. In this view of the matter, it is unnecessary to further investigate and examine the other points raised in the writ petition or the contentions advanced at the Bar. The petitioner has to succeed in obtaining a writ of mandamus in his favour by directing the respondent to deliver the account books as per Ext-A forthwith. It is represented by the learned counsel for the petitioner that he is already under threat by the concerned assessing authority for not filing the return in accordance with law for the year 1978-79 and that he is unable to do so without the account books. Therefore, it is necessary to direct the return of the books of accounts and other records as per Ext-A within one week from today. The petitioner shall however, if directed to produce the books before the assessing authority, shall do so.

6. In the circumstances of the case, the petitioner is entitled to costs.

7. Advocate''s Fee is Rs. 100/- This order shall be communicated forthwith to the respondent.

