(1979) 08 KAR CK 0038

In the Karnataka High Court

Case No : Writ Petition No. 982 of 1979

Sree Siddeshwara Rice Mill — APPELLANT

Vs

The Commercial Tax Officer (Intelligence), Davangere — RESPONDENT

Date of Decision : 22-08-1979

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Sales Tax Act, 1957 — Section 28 (3)

Citation : (1979) 44 STC 410

Hon'ble Judges : M.P. Chandrakantaraj, J

Bench : Single Bench

Advocate : N. Santhosh Hegde, for the Appellant; B.B. Mandappa, High Court Government Pleader, for the Respondent

Judgement

Chandrakantaraj Urs, J.—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 the 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 the by the respondent. The respondent, at the time of seizure as above, gave a receipt, which is produced as exhibit A to the petition. Thereafter, in spite of several reminders by the petitioner, the respondent did not return the books of account and other records as per exhibit A. Aggrieved by the non-return, the petitioner has approached this Court under article 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-section (3) of section 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 account as per exhibit A were seized in the manner described by the petitioner. Denying the allegations of the petitioner, he has asserted that the seizure of them by him during inspection was done normally and could not 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 4th July, 1978. The law, as it stood on that date, in terms of the proviso to sub-section (3) of section 28 of the Act, reads as follows :

"Provided that such accounts, registers, records and documents shall not be retained for more than thirty 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 the 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 22nd August, 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 25th August, 1979. Assuming for a moment that it was indeed ordered on 22nd August, 1978, permitting the respondent to keep in custody the books of account 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 account as per exhibit A for a period beyond 30 days without necessary sanction enjoined mandatorily under the proviso to sub-section (3) of section 28 of the Act.

5. The learned High Court Government Pleader contends that, since subsequent permission has 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, with effect from 1st September, 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 4th August, 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 exhibit 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 account and other records as per exhibit A within one week from today. The petitioner, 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.

8. Petition allowed.

