(1990) 05 KAR CK 0003

In the Karnataka High Court

Case No : Writ Petition No. 5700 of 1985

V. Laxmaiah APPELLANT

Vs

Assistant Commercial Tax Officer, Intelligence, Challakere RESPONDENT

Date of Decision : 31-05-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 165
Karnataka Sales Tax Act, 1957 — Section 10, 2 (1) (k), 28 (3)

Citation : (1990) 79 STC 144

Hon'ble Judges : S.R. Rajasekhara Murthy, J

Bench : Single Bench

Advocate : B.P. Gandhi, for the Appellant; H.L. Dattu, HCGP, for the Respondent

Judgement

S.R. Rajashekara Murthy, J.—In this writ petition the petitioner has challenged the seizure order made by the respondent in exercise of his power u/s 28(3) of the Karnataka Sales Tax Act,1957 ("the Act"). On August 3, 1984, on information that the petitioner was carrying on the business of purchase and sale of cocoanuts at the premises in which he was residing and that he had evaded payment of tax to the Government, the respondent conducted a search of the premises. In the course of the search the respondent came certain books of account and loose slips which are listed in the seizure order (annexure A at SI. Nos. 1 to 6) and on being satisfied that petitioner had attempted to evade payment of tax, seized the books and other documents. This seizure is challenged by the petitioner on several grounds.

2. Sri Gandhi, the learned counsel for the petitioner, has urged the following grounds :

That the petitioner is only an agriculturist and he was in his farm house house in R. S. Upparahatti, Hiriyur Taluk, in which he had stocked cocoanuts grown in his garden; that the petitioner was not carrying on business in purchase or sale of cocoanuts and, therefore, he is not a dealer within the of tram "dealer" as defined in section 2(1)(k) of the Act; that the petitioner, being not a dealer, he is not under obligation to register himself as a dealer u/s 10 of the Act.

3. The further contention of the petitioner is that he, being not a dealer much less a "registered dealer", the respondent was not competent to invoke the provisions of section 28(3) and order of seizure made by him is illegal.

4. Elaborating his contentions Sri Gandhi submitted that in order to be a dealer under the Act a person must be carrying on business of buying, selling, supplying or distributing goods either for cash or deferred payment. According to the petitioner he is only an agriculturist and he was not carrying on any business of buying or selling and, therefore, does not satisfy the requirement of the definition of "dealer'' under the Act.

5. The next argument advanced by Sri Gandhi is that there is no obligation on the petitioner to register himself as a dealer since he was not a dealer in the first instance and therefore non of the provisions of Chapter IV apply to him. It was authorised officers u/s 28(3) of the Act can only be invoke in the case of a dealer and the respondent had no jurisdiction to invoke the powers u/s 28(3) of the Act.

6. The next contention of the petitioner is that the manner in which the power conferred u/s 28(3) was exercised by the respondent, is contrary to the mandatory requirements of section 165, Criminal Procedure Code, 1973 ("Cr. P.C.") and hence the seizure order impugned in the writ petition is liable to be quashed.

7. Sri Shimoga Subbanna, the learned Government pleader, produced before me the original records relating to the search conducted by the respondent. It is seen that the respondent embarked upon the search of the petitioner''s premises on the strength of a signed petition given by some of the residents of the Upparahatti village stating that the petitioner was using his farms house for carrying on business of purchase and sale of cocoanuts and had evaded payment of tax to the Government. In the seizure order it is also stated that the seizure was made on the basis of confidential enquire conducted and investigation made by him. After the respondent conducted the search on August 3, 1984, he drew up a mahazar and seized certain account books and loose slips referred to seizure order (annexure A).

8. Statement of objection is filed on behalf of the respondent stating that the petitioner had stored huge quantity of cocoanuts and the said premises were being used for the purpose of business also. The seizure order is sought to be justified on the basis of the information gathered by the respondent in the course of the enquiry and investigation conducted by him and from the seized materials, that the petitioner was a dealer and his transactions attracted the levy of tax under the Act and the petitioner had attempted to evade payment of tax to the Government.

9. After hearing the learned counsel for the petitioner and the learned Government Pleader, the point that arises for consideration is whether the

seizure order passed by the respondent is liable to be quashed for non-compliance with the mandatory provisions of section 165, Cr. P.C. ? The other point is, whether the respondent had no jurisdiction to invoke the powers of search and seizure since the petitioner was not a dealer ?

10. Sri Gandhi has taken me through the relevant provisions of the Act, namely, definition of "dealer" u/s 2(1)(k) of the Act and the charging section 5 and the provisions of section 10 dealing with registration and also relevant provisions of section 29 under which a dealer who does not register himself is liable for prosecution.

11. After examining the scheme of the Act and the arguments of the learned counsel what emerges is, that one need not be a registered dealer under the Act in whose case an authorised officer may invoke the power under sub-section (3) of section 28 of the Act. The assessing authority who has jurisdiction over the assesses over the area may invoke the provisions of section 10 calling upon any dealer whose turnover in a year is not less than Rs. 75,000 to get himself registered under the Act as required u/s 10(1) and the failure to register attracts the penal provision of section 29(2)(a) of the Act. A person who does not get himself registered u/s 10 is liable to be convicted under the said provisions. The other provisions of Chapter V dealing with filing of returns, assessment, recovery, etc., are applicable to all dealers to all dealers to whom the charging section of the Act applies.

12. Sri Gandhi does not dispute that the provisions of Chapter V which are attracted to all dealers whether they register themselves under the Act or not, provided their turnover attracts the levy under the Act. In this background what is to be examined is the contention of the learned counsel as to the applicability of section 28(3) of the Act to a dealer who does not register himself under the Act. The provisions of Chapter V are attracted to a dealer whose turnover in any year exceeds Rs. 75,000. Therefore, the argument of the learned counsel that on the facts of the present case, the petitioner was not a dealer and that therefore the respondent had no jurisdiction to invoke the power of search of his premises, has to be rejected. As can be seen from the scheme of section 28 which confers extraordinary power on the authorised officers, power of inspection, search and seizure, can be invoked in the case of any dealer who makes an attempt to evade payment of tax. Whether a person is carrying on the activity of buying and selling and whose turnover attracts the levy of tax under the Act and whether he is attempting to evade payment of tax are all matters which the authorised officer, on credible information, may verify on an inspection of the premises followed by search and seizure, if need be.

13. This takes me to the last contention urged by Sri Gandhi that the seizure order is liable to be quashed for non-compliance with the requirements of section 165, Cr. P.C. It is settled law that before embarking upon the search invoking the power conferred u/s 28(3), the authorised officer has to form an opinion that the person whose premised he proposes to search is attempting to evade the

payment of tax to the Government. It is a mandatory requirement of section 165, Cr. P.C., that there must be formation of belief that the dealer is attempting to evade payment of tax and the officer must record reasons in writing before embarking upon the search in support of that belief. It is also the settled law that non-compliance with the mandatory requirement of section 165 renders the seizure order illegal. There are numerous decisions on this point rendered by the Supreme Court, by this Court and other High Courts. In the case of The Commissioner of Commercial Taxes and Others etc. Vs. R.S. Jhaver and Others etc., , it is observed by the Supreme Court is para 17 of its judgment that the safeguards provided in section 165, Cr. P.C., should mutatis mutandis apply to searches made under sub-section (2) of section 41 of the Madras Act. The Supreme Court further observed that the authorised officer can make the search only after he complied with the requirement of section 165, viz., (i) to (iv), viz. :

(i) the empowered officer must have reasonable grounds for believing that anything necessary for the purpose of recovery of tax may be found in any place within his jurisdiction, (ii) he must be of the opinion that such thing cannot be otherwise got without undue delay, (iii) he must record in writing the grounds of his belief, and (iv) he must specify in such writing so far as possible the thing for which search is to be made.

14. The records relating to the search and seizure in this case do not disclose that the respondent had recorded any such reason before embarking upon the search of the petitioner''s premised about the formation of belief that the petitioner was attempting evasion of tax. Therefore, the seizure order passed by the respondent does not satisfy the texts laid down by the Supreme Court in the aforesaid case. The seizure order, therefore, is liable to be quashed.

15. In the result, the writ petition is allowed and the order of the seizure dated August 3, 1984 (annexure A) is quashed. As a consequence the respondent is directed to return the seized books and other documents to the petitioner within four weeks from the date of receipt of this order.

16. Writ petition allowed

