
(2008) 09 KAR CK 0031
In the Karnataka High Court
Case No : Writ Petition No. 18707 of 2007

Vijayalakshmi Marketing

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 10-09-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Standards of Weights and Measures Act, 1976 — Section 39, 63, 73

Citation : (2009) 1 KCCR 203

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : Jose Sabastian and Associates, for the Appellant; B. Veerappa, Additional Government Advocate, for the Respondent

Judgement

N.K. Patil, J.—The petitioner being aggrieved by the seizure notice dated 13-6-2007 vide Annexure B presented the instant writ petition.

2. The petitioner is the proprietary concern having been as registered as a dealer u/s 22 of the Karnataka Value Added Tax Act, 2003, and also a registered dealer under the provisions of Central Sales Tax Act, 1956. Being a dealer doing business after obtaining necessary registration certificate to deal and market the electrical and electronic home appliances as per the commodity list under CST 1956. The inspector of the respondent office seized the mixer-grinder supplied to the petitioner from another dealer M/s. Salem Industries and produced at Annexure B, as the package did not contain MRP and date of manufacture on it and the same is in contravention of the provisions of Section 39 of the Standard Weights and Measures Act, 1976 r/w Rules 4 & 23 and Section 63 of the said Act, issued the impugned notice dt 13.6.2007 referring to case No. 22690 dated 1.2.2007 calling upon the petitioner for compounding the offences as envisaged u/s 73 of the said Act.

3. It is further stated by the petitioner that the 2nd respondent seized the materials mentioned in Annexure E as they did not come within the purview of

the provision of the aforesaid Act. the petitioner contends that they have not violated the vary provisions of the said Act as alleged by the respondent in the seizure notice and further it is specifically contended that these two items as referred above in the impugned seizure notice are not referred in the Schedule of the Act. There is no notification as such which has been issued to the knowledge of the petitioner coming into force of the Act in respect of the products dealt with and marketed by the petitioner. The petitioner is not selling any pre-package commodity to attract the provisions of the Act. The article seized by the respondent a mixer grinder is a home appliance. These articles are being sold to the prospective customers only after demonstration and these home appliances which are supplied to the customers in protective cover after purchase cannot be treated as pre-packed commodity or the package does not require to be sold in packed form. The prospective customer is at liberty to see the product and its demonstration and thereafter only they can buy the same. As such the seized article, cannot be considered as commodity in packed form or pre-packed commodity so as to attract the provisions of the Act as referred above. Keeping in view the fact and circumstances of the case as stated supra, the petitioner presented the instant writ petition.

4. The principle submission vehemently canvassed by the learned Counsel appearing for the petitioner Sri. Jose Sebastian is that the impugned seizure notice issued by the respondent is one without jurisdiction and it does not come within the purview of the relevant provisions of the Act and rules. To substantiate his submission he is quick to point out there is no notification as such issued with reference to these two seized commodities as stated in the impugned seizure notice vide Annexure E. The petitioner is a marketing company and selling directly to the customer the mixer grinder and table top wet grinder as a single piece whenever the prospective customers visit his business place it is not a pre-packed commodity nor given to be packed or to be deemed as commodity in packed form. To substantiate his submission he is quick to point out and has taken me through the Schedule I to IV. The same has neither been referred nor included and also places reliance on the Judgments of the High Court of Andhra Pradesh reported in AIR 2003 Andhra Pradesh 175 - Eureka Forbes Limited Vs. Union of India (UOI) and Others, - Eureka Forbes Limited v. Union of India and Ors. The ratio of the said Judgments when applied to the case on hand, the impugned seizure notice cannot be sustained and is liable to be set aside at the threshold. Therefore, he prayed that the impugned seizure notice may be quashed and proper direction issued to the respondent to hand over the seized materials.

5. per contra the learned A.G. appearing for the respondents inter alia, contended and submitted substantiating the impugned seizure notice issued calling upon the petitioner to say in the matter. Instead of filing objection to the said notice he has filed this writ petition seeking remedy as envisaged under Article 226 of the Constitution of India. The writ petition filed by the petitioner is liable to be rejected at the threshold. Further he filed detailed objections pointing

out that the respondent authority has got every right in pursuance of the notification issued under the jurisdictional competent authority of the Central Government. The said notification at Annexure R-1 is filed along with the objection statement bearing No. GSR 620 (S) dated 26.9.77. The powers exercised by the 2nd respondent herein is strictly as provided under the relevant provisions of the standards of weights and Measures Act, 1976 r/w Rules 1977, in view of violation of mandatory provisions of the said Act after making spot inspection the articles are seized. There is no error as such committed as the impugned seizure notice is issued within the power vested under the jurisdictional competent authority. Therefore, he submitted that the writ petition filed by the petitioner is liable to be dismissed as not maintainable.

6. After hearing the learned Counsel appearing for the petitioner and the learned K.G.A. appearing for the respondent and after carefully perusing the grounds urged and the statement of objection filed by the respondent including the impugned seizure notice issued by the 2nd respondent what emerges is that the seizure notice issued registering the case for violation of the provisions of the Standards of heights and Measures Act, 1976 Standards of heights and Measures (Packaged Commodities) Rules 1977, issuance of compounding notice wherein it is specifically spelt out that on inspection of the said pre-packed commodities it was found that they were not in accordance with the provisions of the Act and Rules as referred above. Therefore, they have seized the articles u/s 29 of the said Act, viz.

- 1) On express idly vessels stainless steel packages additional label certified for making MRP and packed ought not to have and year?
- 2) On vijayalakshmi wet grinder package additional label affixed does not mark M.R.P. and packed month and year? and
- 3) Calling upon the petitioner to say his defence regarding violation of the said Act and Rules specifically referred in the impugned seizure notice.

The petitioner instead of filing objections to the impugned seizure notice has approached this court by way of this writ petition invoking the extraordinary jurisdiction under Articles 226 & 227 of the Constitution of India.

7. The petitioner cannot maintain this writ petition until and unless he files reply to the said notice and substantiates its case that notice is issued without jurisdiction and in contravention of the relevant provisions of the Act and Rule.

8. It is well settled principle of law laid down by the Apex Court and this court that this Court cannot entertain petitions invoking extraordinary jurisdiction when the jurisdictional authority has issued notice calling upon the applicants regarding violation of the relevant provisions of the Act and Rules. It is the duty cast on the competent authority after issuing the notice, objections if any, filed, take appropriate decision in accordance with law and in consonance with the relevant provisions of the Act and Rules. Therefore, interference by this court at

this state is not called for. I do not find any good ground made out by the petitioner to interfere with the impugned seizure notice issued by the 2nd respondent.

9. Reliance placed by the learned Counsel appearing for the petitioner on the two Judgments of the Andhra Pradesh High court as referred above may not be applicable to the facts and circumstances of the case on hand. It is very much open for him to place reliance on the said Judgments and any other Judgment of the Apex Court and this court by way of filing reply to the impugned notice.

10. so far as specific ground urged by the learned Counsel for the petitioner that the impugned seizure notice is without notification cannot be accepted nor is there any substance in the submission made by the learned Counsel for the petitioner, in view of the notification being produced by the respondent along with the objection statement at Annexure R-1. The notification has been issued by the jurisdictional competent authority as early as on 26.9.1977 as referred above.

In the light of the facts and circumstances of the case referred above, the Writ Petition filed by the petitioner is dismissed as not maintainable reserving liberty to the petitioner to redress its grievance before the jurisdictional competent authority by filing its objection statement.

Ordered accordingly.