

The Check Post Officer and Others

Vs

K. P. Abdulla and Bros.

Civil Appeal Nos. 2012 and 2013 of 1969

(A. N. Ray, J. C. Shah, K. S. Hegde, A. N. Grover, G. K. Mitter JJ)

23.11.1970

JUDGMENT

SHAH, J. -

1. Motor lorry No. KLR 3919 driven along a highway from Coimbatore in the State of Madras towards the border of the State of Kerala was when searched by the Check Post Officer found to carry 85 bags of foodstuffs - 45 bags of Maida, 20 bags of flour and 20 bags of Khandasari sugar. The driver of the motor lorry was found to carry with him a bill of sale and a delivery note which covered 85 bags of flour. On the ground that without a bill of sale or delivery note Maida and Khandasari sugar were attempted to be transported and suspecting that there was an attempt at evasion of sales tax, the Check Post Officer by order, dated March 2, 1965, confiscated the goods and gave an option of M/s. K. P. Abdulla and Bros., the owners of the goods to pay Rs. 1,000/- as penalty in lieu of confiscation.

The owners of the goods then moved petition in the High Court of Madras challenging the validity of Section 42(3)(a) of the Madras General Sales Tax Act, 1959, and for an order quashing the penalty, and another petition for a direction to the State of Madras and the Check Post Office to return the goods seized and "confiscated while in transit". Ramakrishnan, J., rejected the petitions. In appeals filed by the owners, the petitions were allowed and the orders imposing penalty and confiscation of goods were set aside. The State of Madras has appealed to this Court with certificate granted by the High Court.

2. Section 42 of the Madras General Sales Tax Act, 1959, provides :

"(1) If the Government consider that with a view to prevent or check evasion of tax under this Act in any place or places in the State, it is necessary so to do, they may, by notification, direction the setting up of a check post or the erection of a barrier or both, at such place or places as may be notified.

(2) At every check post or barrier mentioned in sub-section (1), or at any other place when so required by any officer empowered by the Government in this behalf, the driver or any other person in charge of any vehicle or boat shall stop the vehicle or boat, as the case may be, and keep it stationary as long as may reasonably be necessary, and allow the officer in charge of the check post or barrier, or the officer empowered as aforesaid, to examine the contents in the vehicle or boat and inspect all records relating to the goods carried, which are in the possession of such driver, or other person in charge, who shall, if so required, give his name and address and the

name and address of the owner of the vehicle or boat as well as those of the consignor and the consignee of the goods.

(3) The officer in charge of the check post or barrier, or the officer empowered as aforesaid, shall have power to seize and confiscate any goods which are under transport by any vehicle or boat and are not covered by,

(i) a bill of sale or delivery note;

(ii) a Goods Vehicle Record, a Trip Sheet or a Log Book, as the case may be; and

(iii) such other documents as may be prescribed under Sections 43 and 44 :

Provided that before ordering confiscation the officer shall give the person affected an opportunity of being heard and make an enquiry in the prescribed manner :

Provided further that the officer ordering the confiscation shall give the person affected option to pay in lieu of confiscation -

(a) in cases where the good are taxable under this Act, in addition to the tax recoverable, a sum of money not exceeding one thousand rupees, or double the amount of tax recoverable, whichever is greater; and

(b) in other cases, a sum of money not exceeding one thousand rupees."

By sub-section (2) the driver or any person in charge of the vehicle is required to stop the vehicle and to allow the officer in charge of the check post or barrier to examine the contents in the vehicle, and to inspect all records relating to the goods carried in the vehicle. The officer in charge of the check post or barrier is invested with power by sub-section (3) to seize and confiscate any goods which are carried and are not covered by the documents specified therein. The officer is required when ordering confiscation to give the person affected option to pay penalty in lieu of confiscation.

3. Entry 54 of List II of the Seventh Schedule to the Constitution authorises the state Legislature to legislate in respect of taxed on the sale or purchase of goods. A legislative entry does not merely enunciate powers : it specifies a field of legislation and the widest import and significance should be attached to it. Power to legislate on a specified topic includes power to legislate in respect of matters which may fairly and reasonably be said to be comprehended therein : See *The United Provinces v. Mst. Atiq Begum and Others* ((1940) FCR 110); *Navinchandra Mafatlal v. The Commissioner of Income tax. Bombay City* ((1955) 1 SCR 829); and *Balaji v. Income tax Officer, Special Investigation Circle.* ((1962) 2 SCR 983) A taxing entry therefore confers power upon the Legislature to legislate for matters ancillary or incidental including provision for preventing evasion of tax. Sub-sections (1) and (2) of Section 42 are intended to set up machinery for preventing evasion of sales-tax. But, in our judgment, the power to confiscate goods carried in a vehicle cannot be said to be fairly and reasonably comprehended in the power to legislate in respect of taxes on sale or purchase of goods. By sub-section (3) the officer in charge of the check post or barrier has the power to seize and confiscate any goods which are being carried in any vehicle if they are not covered by the documents specified in the three sub-clauses. Sub-section (3) assumes that all goods carried in a vehicle near a check post are goods which have been sold with the State of Madras and in respect of which liability to pay sales tax has arisen, and authorises the check post officer, unless the specified documents are produced at the check post or the barrier, to seize and confiscate the

goods and to give an option to the person affected to pay penalty in lieu of confiscation. A provision so enacted on the assumption that goods carried in a vehicle from one State to another must be presumed to be transported after sale within the State in unwarranted. In any even power conferred by sub-section (3) to seize and confiscate and to levy penalty in respect of all goods which are carried in a vehicle whether the goods are sold or not is not incidental or ancillary to the power to levy sales tax. A person carrying his own goods even as personal luggage from one State to another or for consumption, because he is unable to produce the documents specified in clauses (i), (ii) and (iii) of sub-section (3) of Section 42, stands in danger of having his goods forfeited. Power under sub-section (3) of Section 42 cannot be said to be ancillary or incidental to the power to legislate for levy sales tax.

4. The High Court was of the view that the question which fell to be determined was concluded by the judgment of this Court in *The Commissioner of Commercial Taxes and Others v. R. S. Jhaver and Others*. ((1968) 1 SCR 148) That cases arose under Section 41(2) of the Madras General Sales Tax Act, 1 of 1939, and this Court struck down the power conferred under Madras General Sales Tax Act, 1359, upon the officer of the Government to seize such accounts, registers, records or other documents of the dealer as he may consider necessary, if he had reason to suspect that any dealer is attempted to evade payment of any tax, fee or other amount. This Court held that tax and penalty cannot be levied before the first sale in the State, and on that account authority conferred to levy tax and penalty before the sale and to confiscate the goods for non-payment was outside the legislative competence of the State. That case may have no direct bearing in this case.

5. In the present case, however, the power to confiscate the goods and to levy penalty in lieu of confiscation, when in respect of the goods found in a vehicle the driver of the vehicle is not carrying with him the documents specified therein, is not a provision which is ancillary or incidental to the power to tax sale of goods.

6. The appeals therefore fail and are dismissed with costs. One hearing fee.

</html