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Court : Karnataka

Decided On : Jan-30-1985

Reported in : ILR1985KAR594; [1985]59STC252(Kar)

Judge : K.S. Puttaswamy and ;S.R. Rajasekhara Murthy, JJ.

Acts : [Constitution of India](#) - Article 226; Karnataka Sales Tax Act - Sections 28 and 28(3); Income-tax Act, 1961 - Sections 132, 132(1), 132(8), 132(10) and 132(12); Indian Income-tax Act, 1922

Appeal No. : Writ Petition Nos. 2194 to 2196 and 18923 of 1984

Appellant : Universal Instruments Co. and ors.

Respondent : Assistant Commercial Tax Officer (intelligence), South Zone, Bangalore

Advocate for Def. : S. Rajendra Babu, Government Adv.

Advocate for Pet/Ap. : E.R. Indra Kumar and ;G. Sarangan, Advs.

Judgement :

ORDER

Rajasekhara Murthy, J.

1. In these petitions under article 226 of the [Constitution of India](#), the dealers who are registered under the Karnataka Sales Tax and Central Sales Tax Acts have prayed for quashing the orders of seizure made under the Karnataka Sales Tax Act and for other reliefs. The petitioners in W.P. Nos. 2194 to 2196 of 1984 have challenged the orders of seizure made by the respondent, the Assistant Commercial Tax Officer (Intelligence), South Zone, Bangalore on 28th October, 1983 under section 28(3) of the Karnataka Sales Tax Act. The petitioner in W.P. No. 18923 of 1984 is a partnership firm carrying on business in the sale of submersible pumps. On 9th August, 1984 the business premises of the firm situate in Silver Jubilee Park Road, Bangalore, was inspected by the 1st respondent and a search was carried out in the premises and certain books of account, documents, etc., were seized by the 1st respondent as per seizure order annexure G. The petitioner has challenged the said seizure on several grounds and has prayed for issue of a certiorari quashing the said seizure order dated 9th August, 1984 and for other consequential reliefs. The petitioners have also sought for a writ of prohibition against the respondents not to make use of the information obtained from the seized documents in the above proceedings by the K.S.T. and C.S.T. Acts. They have also prayed for issue of a direction to the respondents to return all the books of account, documents and papers, etc., so seized from their respective business premises.

2. Facts relating to the institution of first batch of writ petitions are these :

The business premises of the petitioners located at No. 237, Rajamahal Vilas Extension, Bangalore, was searched on 28th October, 1983 and the respondent seized the books of account, documents, correspondence, receipts, vouchers, cheques and other negotiable instruments, etc., as per the seizure orders annexures D and E. It is the petitioners' contention that the said search and seizure was conducted in a high-handed and arbitrary manner and innumerable documents and other papers which had no relevance or necessary for the purposes of proceedings under the Act, were indiscriminately seized. It is also alleged that the respondent collected by force and threat, two cheques of the value of Rs. 50,000 each from the first petitioner at the time of raid.

3. It is the petitioners' case that all the books of account, etc., are retained by the respondent since 28th October, 1983 and on account of this prolonged retention of the books, their day-to-day business has come to a stand-still and the entire business has been paralysed. It is also alleged that they are facing threat of prosecution from the Department of Company Affairs for not filing the statutory returns under the Companies Act in time. In these circumstances, the petitioners requested the respondent by their letter dated 23rd December, 1983 to return all the books seized and in particular certain hundies and other important daily accounts to make payments to their suppliers and to collect the dues from their customers and to answer certain queries in connection with their business and to attend all other urged matters.

4. Having failed in their attempt to get back the necessary papers and documents, the petitioners have approached this Court under article 226 of the Constitution for the necessary reliefs.

5. The only point urged by the petitioners in these writ petitions is that the retention of the books beyond 60 days as prescribed by section 28(3) of the Act is illegal and unlawful and have prayed for a direction to the respondent to return all the books of account, etc., seized. We have heard the parties on this point first. Learned counsel for the parties urged for deciding this point first and then decide the other points, if it becomes necessary.

6. In support of their contention, the petitioners have placed strong reliance on the decision of the Supreme Court in *Commissioner of Income-tax, West Bengal v. Oriental Rubber Works*. The argument of the petitioners which is developed on the basis of the ratio of this decision is that the retention of the books of account beyond 60 days without communicating the order by his next higher authority approving such retention becomes unlawful and unauthorised and as a result, the Department should cause the return of the books of account, etc., to the petitioners forthwith.

7. The question that arises for our consideration is :

'Whether the retention of the books under the provisions of section 28(3) of the K.S.T. Act is rendered unlawful on account of the non-communication to the assessee, the order of the next higher authority approving such retention beyond 60 days ?'

Section 28 of the K.S.T. Act confers powers on any officer empowered by the State Government in this behalf :

(i) to demand production of the books of account from any dealer and to furnish any other information relating to his business;

(ii) right of inspecting all the accounts and registers maintained by dealers; and

(iii) to seize such accounts, registers, etc., if he has reason to suspect that any dealer is attempting to evade the payment of any tax, fee or other amount due from him under the Act.

Section 28(3) which is relevant for the cases is reproduced below :

'If any such officer has reason to suspect that any dealer is attempting to evade the payment of any tax, fee or other amount due from him under this Act, he may, for reasons to be recorded in writing, seize such accounts, registers, records or other documents of the dealer as he may consider necessary, and shall give the dealer a receipt for the same. The accounts, registers, records and documents so seized shall be retained by such officer only for so long as may be necessary of their examination and for any inquiry or proceeding under this Act :

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

8. Now, let us examine if the ruling of the Supreme Court in Oriental Rubber Works' case is applicable to the case of search and seizure under the K.S.T. Act.

9. The provisions of section 132 of the Income-tax Act, 1961, came up for interpretation before the Supreme Court in the case of Oriental Rubber Works . The petitioners therein approached the High Court of Calcutta by way of a writ

petition under article 226 of the Constitution praying for a direction to the Commissioner of Income-tax and the concerned Income-tax Officer to return forthwith the books of account, etc., seized and to cancel or rescind the warrant of authorisation issued under section 132(1) of the I.T. Act and for a mandamus directing the concerned I.T.O. not to proceed with the assessment for the assessment year 1964-65 until the books were returned to the assessees.

10. The main contention of the assessees before the Calcutta High Court was that the retention of the books and document beyond the period of 180 days from the date of the seizure, was illegal and invalid, inasmuch as, neither the approval accorded by the Commissioner for such extended retention nor the recorded reasons of the Officer/I.T.O. on which such approval was granted had been communicated to the assessees and that without the return of the seized books of account and documents no assessment for the assessment year 1964-65 could be proceeded with or made.

11. It was contended on behalf of the Revenue that the I.T.O. had recorded his reasons for the retention of the seized books beyond 180 days and had duly obtained the approval of the Commissioner for such retention and further contended that there was no statutory obligation under section 132(8) of the Act to communicate the Commissioner's approval to the assessee.

12. The learned single Judge of the High Court ordered issuance of the mandamus, as prayed for, and on further appeal by the Commissioner, a Division Bench dismissed the appeal affirming the directions given by the learned single Judge. Being aggrieved by the said order, an appeal was preferred before the Supreme Court.

13. As regards the contention regarding non-communication of the approval given by the Commissioner, the Supreme Court examined the provisions of sub-sections (8), (10) and (12) of section 132 of the I.T. Act and came to the conclusion that the authorities under the Act were under a statutory obligation to communicate to the person concerned, not merely the Commissioner's approval but the recorded reasons on which the same had been obtained and further held that in default of such expeditious communication, any retention of the seized books or documents

would become invalid or unlawful, They held :

14. In our view the scheme of sub-sections (8), (10) and (12) of S. 132 makes it amply clear that there is a statutory obligation on the Revenue to communicate to the person concerned not merely the Commissioner's approval but the recorded reasons on which the same has been obtained and that such communication must be made as expeditiously as possible after the passing of the order of approval by the Commissioner and in default of such expeditious communication any further retention of the seized books or documents would become invalid and unlawful. It is obvious that such obligation arises in regard to every approval of the Commissioner that might have been accorded from time to time.

15. In the result the orders passed by the High Court directing the return of the seized books of account and documents to the respondents in each of the appeals are confirmed and the appeals (subject to the directions given below in two of them) are dismissed with no order as to costs.'

16. It is these observations of the Supreme Court in the said case that have been strongly relied upon by the learned counsel for the petitioners in these cases. It is their submission that the provisions of section 28(3) of the K.S.T. Act are analogous to the provisions of sub-sections (8), (10) and 12 of section 132 of the I.T. Act and that therefore the law declared by the Supreme Court in relation thereto, applies in all its force, to the seizure effected by the K.S.T. Act.

17. Sub-section (3) of section 28 of the K.S.T. Act confers power on the officer to seize such accounts, etc., if he has reasons to believe that any dealer is attempting to evade payment of tax due from him under the Act. Such books seized can be retained by the officer so long as may be necessary for their examination and for any enquiry or proceeding under the Act. But, he can retain such books, if such retention is necessary for more than 60 days only with the permission of the next higher authority.

18. Now, let us compare provisions of sub-sections (8), (10) and (12) of section 132 of the I.T. Act with section 28(3) of the K.S.T. Act. Section 132 confers power on the Director of Inspection or the Commissioner or such Deputy Director of

Inspection or the Inspecting Assistant Commissioner, as may be empowered in this behalf by the Board to enter and search any building, place, vessel, vehicle or aircraft, in the circumstances referred to in detail in section 132(1).

19. Sub-sections (8), (10) and (12) of section 132 of the I.T. Act which are relevant for our purpose are reproduced below :

'(8) The books of account or other documents seized under sub-section (1) or sub-section (1A) shall not be retained by the authorised officer for a period exceeding one hundred and eighty days from the date of seizure unless the reasons for retaining the same are recorded by him in writing and the approval of the Commissioner for such retention is obtained :

Provided that the Commissioner shall not authorise the retention of the books of account and other documents for a period exceeding thirty days after all the proceedings under the Indian Income-tax Act, 1922 (11 of 1922), or this Act in respect of the years for which the books of account or other documents are relevant are completed.

* * * (10) If a person legally entitled to the books of account or other documents seized under sub-section (1) or sub-section (1A) objects for any reason to the approval given by the Commissioner under sub-section (8), he may make an application to the Board stating therein the reasons for such objection and requesting for the return of the books of account or other documents.

* * * (12) On receipt of the application under sub-section (10) the Board, or on receipt of the application under sub-section (11) the notified authority, may, after giving the applicant an opportunity of being heard, pass such orders as it thinks fit.'

20. Under section 132(8), there is a prohibition imposed on the officer to retain the books of account and other documents seized, under sub-section (1) beyond 180 days. If the books are required to be retained for any period exceeding 180 days, he has to obtain the approval of the Commissioner recording the reasons therefor in writing. The Commissioner, before according such approval, has to be satisfied about the reasons for such retention beyond 180 days as authorised by sub-

section (1).

21. Under sub-section (10), any person who is legally entitled to the books of account and other documents seized, under sub-section (1), may object for such prolonged retention by the officer with the approval of the Commissioner and any such person can approach the Central Board of Direct Taxes, if he chooses to object to the approval given by the Commissioner, as provided under sub-section (10). The Board is to make an order as it thinks fit on such application after hearing the applicant.

22. This is the scheme under the Income-tax Act relating to search and seizure and retention of the books so seized beyond a period of 180 days.

23. It can thus be seen that though the scheme of the Income-tax Act in the matter of search and seizure and retention of books and other related matters, is somewhat different in certain particulars from that provided in the K.S.T. Act, and so far as the provisions relating to the retention of the seized books, are concerned, they are substantially similar.

24. As discussed in detail earlier, the provisions of the two Acts so far as retention of the books with the approval of the higher authority/the Commissioner are almost similar. The scheme and object of search and seizure and retention of books of account and other documents in the two Acts is one and the same. The principles enunciated by the Supreme Court in so far as the aspect of non-communication of the reasons for retention beyond the period permitted under section 132(8) of the I.T. Act and the legal effect of such non-communication to the person concerned, applies equally to search and seizure effected under the K.S.T. Act. As a result of the application of the principle to cases arising under the K.S.T. Act, the declaration made by the Supreme Court in the circumstances that arose under the I.T. Act in *Oriental Rubber Works'* case have got to be applied to the present cases also and the same relief granted to the petitioners in these cases. We are of the opinion that the ratio in the ruling of the Supreme Court in *Oriental Rubber Works'* case is equally applicable to cases arising under section 28(3) of the K.S.T. Act.

25. It is submitted by Sri S. Rajendra Babu that the ratio of the decision of the Supreme Court should not be made applicable to the case of 'search and seizure' effected under the K.S.T. Act, the provisions of which, according to him, are not in pari materia. We find it difficult to make out any discernible difference between the two provisions as regards the retention of the books beyond the period allowed under the statute and also on the aspect of non-communication of the approval of the higher authority for the further retention of the books. We, therefore, reject this contention on behalf of the State.

26. In the view we have taken on the necessity to communicate the orders of the next higher authorities for retention beyond the initial period of 60 days or thereafter, from time to time, the view expressed by one of us (Puttaswamy, J.) in *Hastimal Kothari v. Commercial Tax Officer (Int.)*, Bangalore [1984] 55 STC 225 is no longer good law. We, therefore, declare the retention of books of account and documents beyond 60 days without communicating the orders of next higher authorities to the petitioners on which fact, there is no dispute, has rendered their retention illegal. From this it follows that the petitioners are entitled for the return of books of account and other documents seized from them without examining all other questions.

27. Whether we should direct the return of copies, extracts and notes made out by the authorities from the seized material is the only other question that calls for our examination.

28. As we apprehend the question is now concluded by the Supreme Court and the earlier views of this Court on the same cannot be of any assistance to us. In *Pooran Mal v. Director of Inspection (Investigation), Income-tax, New Delhi* : [1974]93ITR505(SC) , the Supreme Court upholding the validity of section 132 of the Income-tax Act of 1961 and the very question, has ruled that evidence illegally obtained under the Act can be validly relied on in any assessment or other proceedings or enquiry under the Act. In *Pooran Mal's case* : [1974]93ITR505(SC) , the Supreme Court has laid down that the income-tax authorities cannot be prohibited from using any information gathered from the documents which had been seized even in cases where the search and seizure was held illegal. While

upholding the claim of the Revenue to make use of such information gathered from the seized documents, the Supreme Court observed thus :

'However, there was another relief claimed in the petitions and that was for a writ of prohibition restraining the income-tax department from using as evidence any information gathered from the search of the articles seized. It would appear from the record that the High Court was prepared to assume for the purposes of those cases that the search and seizure was illegal. Even so the question remained whether these victims of illegal search were entitled to a writ of prohibition that the income-tax authorities shall not use any information gathered from the documents which had been seized.'

and further held :

'It would thus be seen that in India, as in England, where the test of admissibility of evidence lies in relevancy, unless there is an express or necessarily implied prohibition in the Constitution or other law of evidence obtained as a result of illegal search or seizure is not liable to be shut out.'

29. In a later case decided by the Madras High Court in *Joint Commercial Tax Officer v. Purushotham Rungta* [1977] 39 STC 39, Veeraswamy, C.J., held, explaining the implications of the ruling of the Supreme Court, as follows :

'It is clear from this decision that where the party from whom the documents were illegally seized sought for a prohibition against the department from making use of the information taken out from those documents, the prohibition was refused, the ground being that the department had, in any case, the power to summon evidence and make use of it and that there is nothing in the Constitution or in the Evidence Act to inhibit user of such evidence in income-tax proceedings. We can see no sensible distinction between information taken from documents and copies thereof as to their user in revenue assessment proceedings.'

30. Thus holding, their Lordships permitted the photostat copies of the documents to be returned to the Revenue for making use of the same. We are in respectful agreement with these views.

31. On the above discussion, we hold that the petitioners are not entitled for the return of copies, notes, if any, already made by the authorities and they are free to make use of them in completing the assessments and for other purposes in accordance with law.

32. In the light of our above discussion, we direct the respective respondents to return all books of account and all other documents seized in the respective cases to the respective petitioners with all such expedition as is possible in the circumstances of these cases and in any event within 10 days from the date of receipt of the order of this Court.

33. Writ petitions are disposed of in the above terms. But in the circumstances of the cases, we direct the parties to bear their own costs.

34. Let this order be communicated to the respondents within 7 days from this day.

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