

Mysore Roadways Vs. Assistant Commercial Tax Officer (intelligence), Iv South Zone, Bangalore

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SooperKanoon Citation : sooperkanoon.com/381347

Court : Karnataka

Decided On : Apr-01-1991

Reported in : [1991]83STC152(Kar)

Judge : S.R. Rajasekhara Murthy, J.

Appeal No. : Writ Petition No. 18429 of 1989

Appellant : Mysore Roadways

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

Advocate for Def. : C.V. Kumar, High Court Government Pleader

Advocate for Pet/Ap. : S.V. Subramanyam, Adv.

Judgement :

1. The writ petition which is posted for orders is taken up for hearing by consent of both sides.
2. The petitioner is a firm doing transport business. The respondent visited the office of the petitioner on October 3, 1989 and wanted to inspect certain records and registers relating to transport of certain goods and in particular wanted to

inspect documents relating to certain transactions of M/s. Rawther Spices (Pvt.) Ltd., Bangalore. Certain documents and registers as per mahazar annexure 'A' were seized from the petitioner's business premises on October 3, 1989. This order of seizure (annexure 'A') is challenged in this writ petition.

3. It is the contention of the petitioner who is a carrier that the provisions of section 28(3) cannot be made applicable to them. The argument is that section 28(3) can be invoked only in respect of dealers registered under the Act, and for the purposes referred to in the said section. Therefore, it is contended that the order of seizure made as per annexure 'A' is illegal and it is prayed that the documents and registers seized from the petitioner's premises be ordered to be returned.

4. It is contended on behalf of the respondent that on suspicion about the genuineness of the transactions carried on by M/s. Rawther Spices (Pvt.) Ltd., Bangalore, the lorry Booking order forms, lorry receipts, etc., maintained by the petitioner in respect of the said dealer were inspected by the respondent and on finding that there were some documents which disclosed certain clandestine transactions, proceeded to make an order of seizure as per annexure 'A'. The said seizure is sought to be justified by the Government Pleader relying on the provisions of section 28A(3A).

5. Section 28A provides for establishment of check post or barrier and also for inspection of goods while in transit. Section 28A(3A) empowers an authorised officer to exercise all powers of a Check-Post Officer where the goods are delivered to a carrier or other bailee for transmission. These powers include power to enter into and search such office, shop, godown, vessel, receptacle, vehicle or other place of business or building or place, and to examine the goods and inspect all records relating to such goods. The said provision also empowers the authorised officer to require production of any books maintained by the carrier, to furnish declaration and give such other particulars as may be prescribed. Sub-section 28(3)(4) is the penal provision under which the authorised officer can penalise a carrier for any contravention of or non-compliance with the provisions of sub-section (2), (3) or (3-A). It is needless to mention that any such penal provision can be invoked only after a show cause notice is issued or a notice

requiring the carrier to produce documents as provided under sub-section (3-A) is issued. Sub-section (5) indicates the limit or the amount of penalty that could be levied as penalty under sub-section (4).

6. In this case, none of these provisions which are applicable to the carrier has been invoked. It is seen from the seizure order (annexure 'A') that the respondent has invoked the power under section 28(3) to seize the documents from the petitioner's business place. He has not shown any other provision which empowers the respondent to make an order of seizure under section 28(3) in case of a carrier.

7. It is also brought to my notice that no notice under section 28A(3A) is issued to the petitioner requiring production of any document or books or file any declaration or furnish such other particulars. It is clear from the action taken by the respondent that the procedure which he ought to have followed, viz., section 28A(3A) is given a go-by and has straightway resorted to seize the documents invoking section 28(3) which, in my opinion, was not permissible to do.

8. The writ petition is therefore allowed and the order of seizure (annexure 'A') is quashed. The respondent is directed to return the documents within 2 weeks from the date of receipt of this order.

9. Writ petition allowed.