

The Check Post Officer & Ors vs K. P. Abdulla Bros on 23 November, 1970

Equivalent citations: 1971 AIR 792, 1971 SCR (1) 817, AIR 1971 SUPREME COURT 792, 1971 TAX. L. R. 4, 1972 2 SCR 817, 27 STC 1, 1971 KER LT 75, 1971 2 SCJ 342

Author: S.M. Sikri

Bench: S.M. Sikri, G.K. Mitter, K.S. Hegde, A.N. Grover, A.N. Ray

PETITIONER:
THE CHECK POST OFFICER & ORS.

Vs.

RESPONDENT:
K. P. ABDULLA BROS.

DATE OF JUDGMENT:
23/11/1970

BENCH:
SIKRI, S.M.
BENCH:
SIKRI, S.M.
MITTER, G.K.
HEGDE, K.S.
GROVER, A.N.
RAY, A.N.

CITATION:
1971 AIR 792 1971 SCR (1) 817
1970 SCC (3) 355
CITATOR INFO :
RF 1977 SC2279 (27)
R 1984 SC 981 (8)

ACT:
Madras General Sales Tax Act, 1959-Section 42 sub-section (3)--Power to confiscate all goods and levy penalty in lieu at check post--If ancillary or incidental to legislate, on taxes on the sale or purchase of goods-Constitution of India, Seventh Schedule, List II, Entry 54-Interpretation of entries.

HEADNOTE:

By sub-s. 3 of s. 42 of the Madras General Sales Tax Act, 1959, the Officer-in-charge of a 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.

On the question whether the power to confiscate 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 a provision which is ancillary or incidental to them power to legislate in respect of taxes on the sale or purchase of goods in entry 54 of List II of the Seventh Schedule to the Constitution,

HELD : A taxing entry confers power upon the legislature to legislate for matters ancillary or incidental, including provisions for preventing evasion of tax. But the 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. [819 H-820 B; 820 E]

Commissioner of Commercial Taxes & Ors., v. R. S. Jhevar & Ors., [1968] 1 S.C.R. 148, held inapplicable.

United Provinces v. Mst. Atiq Begum & Ors., [1940] F.C.R. 110; Navinchandra Mafatlal v. Commissioner of Income-tax, Bombay City, [1955] 1 S.C.R. 829 and Balaji v. Income-tax Officer, Special Investigation Circle, [1962] 2 S.C.R. 983, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 2012 and 201 of 1969.

Appeals from the judgment and order dated September 23, 1968 of the Madras High Court in Writ Appeals Nos. 106 and 107 of 1968.

A.K. Sen and A. V. Rangam, for the appellants (in both the appeals).

T. A. Ramachandran, for the respondent (in both the appeals), 10-L694SupCI/71 The Judgment of the Court was delivered by Shah J. Motor Lorry No. K.L.R. 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 maids, 20 bags of flour and 20 bags of Khandsari 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 maid a and Khandsari 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 to M/s. K. P. Abdulla & Bros. the owners of the goods to pay Rs.

1,000'as penalty in lieu of confiscation. The owners of the goods then moved a petition in the High Court of Madras challenging the validity of s. 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 Officer 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.

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, direct 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 section 43 and 44;

Provided that before ordering confiscation the officer shall give the person affected an opportunity of being heard and make an inquiry 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 goods 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-s. (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-s. (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.

Entry 54 of List II of the Seventh Schedule to the Constitution authorises the State Legislature to legislate in respect of taxes 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*(1); *Navinchandra Mafatlal v. The Commissioner of Income-tax, Bombay City*(2); and *Balaji v. Income-tax Officer, Special Investigation Circle*(3)., A taxing entry therefore confers power upon the Legislature to legislate for matters ancillary or incidental including provisions for preventing evasion of tax. Subsections (1) & (2) of S. 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-s. (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 subclauses. Sub-section (3) assumes that all goods carried in a vehicle near a check post are goods which have been sold within 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. 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 is unwarranted. In any event power conferred by sub-s. (3) to seize and confiscate add 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) & (iii) of sub-s. (3) of s. 42, stands in danger of having- his goods forfeited. Power under sub-section (3) of S. 42 cannot be said to be ancil- lary or incidental to the power to legislate for levy of sales tax.

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*,(4). That case arose under s. 41(2) of the Madras General Sales Tax Act 1 of 1959, and this Court struck down the power conferred under the Madras General Sales Tax Act, 1959, 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 (1) [1940] F.C.R. 110 (2) [1955] 1 S.C.R. 829 (3) [1962] 2 S.C.R. 983

(4) [1968] 1 S.C.R. 148 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.

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.

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

Y.P.

Appeals dismissed.