(1998) 02 AP CK 0003

Andhra Pradesh High Court

Case No: Writ Petition No. 31770 of 1997

Amar Traders		APPELLANT
	Vs	
Assistant Commissioner of Commercial Taxes (Intelligence) II and Another		RESPONDENT

Date of Decision: Feb. 5, 1998

Acts Referred:

- Andhra Pradesh General Sales Tax Act, 1957 - Section 29, 29(3), 29B

Citation: (1998) 111 STC 265

Hon'ble Judges: T.N.C. Rangarajan, J; S.V. Maruthi, J

Bench: Division Bench

Advocate: P. Srinivasa Reddy, for the Appellant; Special Govt. Pleader, for the Respondent

Final Decision: Allowed

Judgement

S.V. Maruthi, J.
This writ petition is filed by Amar Traders, Bidar, seeking a writ of mandamus declaring the action of the first respondent in detaining the goods as illegal and arbitrary and to direct him to release the balance of consignment of 58 bags of Sagar brand gutka.

2. The facts in brief are :

The petitioner is a registered dealer under the Karnataka Sales Tax Act, 1957 (for short, "KST Act") and under the Central Sales Tax Act, 1956. It is engaged in the business of gutka, pan masala, zarda, supari and cigarettes. For the purpose of its business, it has purchased Sagar brand gutka from R.K. Products, Kanpur on credit basis in September, 1997 and received consignment at Bidar. The goods were sold during October, 1997 and he is paying tax under the KST Act which is due by November 20, 1997. He purchased

further 116 bags from the said seller at Kanpur which were despatched vide sale bills and LRs. dated September 26, 1997, September 27, 1997, September 29, 1997 and September 30, 1997 to the petitioner. The goods were transported along with other goods meant for dealers in Hyderabad as per transporters separate challan. The consignment was being transported by South Golden Transport Company from Kanpur to Bidar via Hyderabad where the transporter appears to have arrangement for transhipment. The consignment reached Adilabad check-post on October 7, 1997. u/s 29-B of the Andhra Pradesh General Sales Tax Act, 1957 a transit pass is necessary whenever the goods are required to pass through Andhra Pradesh. It is issued at entry check-post and has to be surrendered at the exit check-post when leaving the border. At the check-post the authority after examining the documents accompanying the consignment should prepare the transit pass as per Rule 46-A of the Andhra Pradesh General Sales Tax Rules, 1957. The Assistant Commercial Tax Officer made out a transit pass mentioning Kodikonda (Anantapur) as exit check-post. After preparing the transit pass respondent No. 2 did not allow the driver to proceed further, but referred the matter to the first respondent. Thereafter first respondent issued detention order dated October 10, 1997 on the ground that he obtained transit pass with Kodikonda as exit check-post and brought the lorry carrying the goods to the headquarter at Hyderabad for enquiry. The petitioner filed a representation to the first respondent on October 20, 1997 explaining that the consignment belongs to it and is under transport from Kanpur to Bidar. He produced all the relevant documents, however, the first respondent refused to release the goods. Aggrieved by the same the present writ petition is filed.

3. In the counter filed by first respondent it is stated that when the goods reached the check-post on enquiry and inspection of Amar Traders, Bidar, by Assistant Commissioner, II Circle, Bidar, on October 15, 1997 it was found that Amar Traders, Bidar, started purchase of Sagar brand gutka from R.K. Products, Kanpur, with effect from September 24, 1997 and that the first invoice was bearing No. 281, dated September 24, 1997 from Kanpur. But, the goods were said to have been received from South Golden Transport, Hyderabad, through New Bidar Goods Transport, Hyderabad, on October 14, 1997 and October 5, 1997 for which the dealer purportedly paid freight charges. The dealers stated that they sent the demand drafts to R.K. Products, Kanpur, after receiving the goods and after sales are effected, through Punjab and Sind Bank, Bidar. The dealer also stated that, they deposited Rs. 50,000 on October 13, 1997, Rs. 1,04,000 on October 14, 1997 and Rs. 30,000 on October 15, 1997 into their bank account No. 800. All these deposits into bank at Bidar, ostensibly for payment to R.K. Products, Kanpur, to obtain demand drafts, started after detention of goods by Assistant Commissioner (C.T.), Intelligence II, Enforcement, Hyderabad, on October 10, 1997. The first despatch of goods itself, in the name of Amar Traders, Bidar, from Kanpur started from September 24, 1997, after Sagar branch gutka relating to Amar General Store, Hyderabad, was detained on September 20, 1997, at South Golden Transport Company, Hyderabad. Under these circumstances, 116 bags of Sagar brand gutka of noted value as per L.Rs. and invoices, covered by 21 L.Rs. of South Golden Transport Company

being transported by Lorry No. UP-78-B-2255, entered the State of A.P. through Integrated check-post, Bhoraj, Adilabad on October 7, 1997. It is also stated that on enquiry by the Commercial Tax Officer V of Enforcement Wing the Assistant Commercial Tax Officer, Integrated check-post, Bhoraj, Adilabad, on October 15, 1997 stated that he enquired with the driver of the vehicle orally, as to his destination, who was reported to have stated as Hyderabad and Bidar, and accordingly after satisfying with the driver''s reply, the Assistant Commercial Tax Officer, Integrated check-post, Bhoraj, Adilabad said to have issued transit pass mentioning Kodikonda as exit check-post. This indicates that transit pass was obtained by misrepresenting the facts deliberately by the driver of the vehicle. The transit pass No. 20651, dated October 7, 1997 was taken for the consignment ostensibly destined for Bidar, but strangely indicating exit check-post as "Kodikonda" in Anantapur district. Kodikonda is neither in the way nor remotely connected to Bidar from any reasonably pliable route. Part of the consignment of gutka in the vehicle No. UP-78-B-2255 was meant to Amar General Store, Hyderabad, and part of gutka was in the name of Amar Traders, Bidar, hence the consignment which was sent to Bidar was suspicious.

4. The argument of the learned counsel for the petitioner is that the goods meant for Bidar were booked at Kanpur and the route is via Hyderabad at Adilabad and a transit pass is to be issued by the Adilabad check-post and hence the driver applied for the transit pass and Kodikonda was mentioned as exit place. It was also argued that the goods were not meant for sale in Hyderabad but they were meant for sale at Bidar and that the first and second respondents do not have any power to detain the goods on suspicion that the goods are meant for sale in Hyderabad in the absence of material to that effect. It is argued that the driver produced all the necessary documents at the time when the lorry entered the check-post and on satisfaction of the documents produced the transit pass was issued, but strangely the exit point was mentioned as Kadikonda. u/s 29-B a transit pass is to be issued by the authority and while issuing the transit pass there is no power to detain the goods. Therefore, the detention of the goods is without any basis.

5. The learned counsel for the respondents contended that under the guise of transporting goods from Kanpur to Bidar they were actually planning to sell the goods at Hyderabad and therefore in exercise of the power conferred u/s 29 of the Act, the goods were detained and therefore the writ should be dismissed.

6. Before considering the arguments of both sides it is necessary to extract the detention order. The relevant portion of the detention order is as follows :

"Information was received that the following consignment of ''Sagar brand gutka'' consigned from Kanpur, partly to Hyderabad and partly to Bidar was checked at Integrated check-post, Bhoraj. The transit pass No. 20651, dated October 7, 1997 was taken for the consignment ostensibly destined for Bidar in form XXXIII(B) but strangely indicating exit check-post is ''Kodikonda'' in Anantapur district. Kodikonda which is neither in the way nor remotely connected to Bidar from any reasonably pliable route. Part of the

consignment in the vehicle was meant to Amar General Store, Hyderabad, and part of the consignment was in the name of Amar Traders, Bidar, hence the consignment which was sent to Bidar was suspicious. The transit pass taken with exit point of Kodikonda check-post, strengthens reasonable suspicion of evasion of tax. The goods also reached Hyderabad in the lorry No. UP-78-B-2255 along with other consignments of footwear and other dealer''s goods which are not about in the route of Bidar.

In the circumstances the gutka covered by the following bills and being transported in vehicle No. UP-78-B-2255 of South Golden Transport Co. (Regd.) is hereby detained pending further probe.''

7. A reading of the order of detention makes it clear that the ground for detention is that the exit check-post is mentioned as Kodikonda which is in Anantapur district and which is neither in any way nor remotely connected to Hyderabad from any reasonable pliable route. A part of the consignment in the vehicle was meant to Amar General Stores, Hyderabad, and a part of the consignment was in the name of Amar Traders of Bidar hence the consignment was said to be suspicious. It is clear from the impugned order that the goods were detained on suspicion apart from the ground that Kodikonda is not a route for Bidar. In the counter it is stated that the transit pass was obtained by misrepresenting the facts deliberately by the driver. Apart from the fact that the case in the counter is entirely different from the case in the detention order, it is to be seen whether on suspicion the goods can be detained under any one of the provisions of the Act. In this context, Sections 29 and 29-B are relevant. It is necessary to point out that in the records we do not find any form 33-A having been filed by the driver for obtaining the transit pass. It is also stated in the counter that the driver has orally stated that the exit point is Kodikonda. Section 29 provides for the establishment of check-post or barrier and inspection of goods while in transit. The relevant portion of Section 29 is Section 29(3)(b)(ii). Section 29 envisages the authority mentioned therein to stop the vehicle at the check-post and examine the contents in the vehicle and inspect all the records relating to the goods carried which are in the possession of the driver or other person-in-charge for the purpose of ascertaining as to whether there was any sale or purchase of goods carried and in case there was sale or purchase of goods carried, whether such sale or purchase is liable to be taxed under the Act. The officer who examines the contents of the vehicle at the entry point has to verify whether the tax has been paid or whether the sale or purchase of the goods carried is for the purpose of payment of tax has been properly accounted for in the bills of sale or delivery of goods or such other document as prescribed. On examination if it is found that Section 29(3)(b)(ii) the sale or purchase of the goods carried for the purpose of payment of tax under the Act has not been properly accounted for in the documents referred to in Section 29(2) with a view to prevent evasion of tax, if the officer is satisfied he can detain the goods.

8. If the officer is satisfied that the relevant particulars mentioned u/s 29(2) are satisfactory and the goods are accounted for then he will have to issue a transit pass u/s 29-B in cases where the vehicle carrying goods is coming from a place outside the State

and going for any other State outside the State and pass is to be obtained by the driver from the officer in-charge of the check-post. He has to deliver the transit pass to the officer in-charge of the last check-post or barrier before his exit from the State failing which it is presumed that the goods carried have been sold within the State.

9. From a reading of Section 29 it is clear that if the officer is not satisfied on examining the goods at the point of entry carried by the vehicle he is entitled to detain the goods. If he is satisfied that the goods have been accounted for properly then he has to issue a transit pass. On the facts of the present case the goods have entered the State of Andhra Pradesh and it is at the stage of obtaining transit pass u/s 29-B of the Act. The detention order states on suspicion that the goods may be sold inside the State of Andhra Pradesh, the goods are detained. A reference to Section 29(3)(b)(ii) makes it clear that it does not enable the officer to detain the goods on suspicion that they are likely to be sold inside the State. It is a case of purchase at Kanpur and the officer is satisfied that the documents relating to purchase of goods are to his satisfaction. Therefore, the ingredients of Section 29(3)(b)(ii) are not satisfied as the power of detention under the said section can be exercised only in cases where the goods have not been properly accounted for and that there is an evasion of tax payable in respect of sale or purchase of goods. Since the order of detention does not say that the goods are not accounted properly or that there is evasion of tax the ingredients of Section 29(3)(b)(ii) are not satisfied and therefore it is not applicable to the facts of the present case.

10. As pointed out in the earlier para the goods have just entered the State of Andhra Pradesh and at the stage of issuing of the transit pass. At the stage of issuing the transit pass if the officer is satisfied he has to issue a transit pass and the person in-charge of the vehicle fails to deliver the said transit pass at the last check-post then there is a presumption that the goods carried by them have been sold within the State. However, Section 29(3)(b)(ii) does not authorise the officer to detain the goods, at the most he can draw a presumption that the goods are sold within the State. However, that stage has not yet arisen on the facts of the present case.

11. In view of the above, since the ingredients of Section 29(3)(b)(ii) of the Andhra Pradesh General Sales Tax Act, 1957 are not satisfied the detention order is quashed and the goods are directed to be released at once.

The writ petition is allowed with costs of Rs. 500.