

(1995) 08 KAR CK 0016
In the Karnataka High Court
Case No : Writ Appeal No. 2063 of 1991

Assistant Commercial Tax Officer and Another	APPELLANT
Vs	
Ruby Traders	RESPONDENT

Date of Decision : 24-08-1995

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 28 A, 28 A (4)

Citation : (2003) 133 STC 175

Hon'ble Judges : M.L. Pendse, C.J.;A.J. Sadashiva, J

Bench : Division Bench

Advocate : Srinivasamurthy, High Court Government Pleader, for the Appellant;
J. Jeshtmal, for the Respondent

Final Decision : Allowed

Judgement

M.L. Pendse, C.J.—On September 14, 1989 at the check-post of Zalki Cross, Indi Taluk a goods vehicle bearing registration No. ADD 1132 was intercepted. The vehicle was in-charge of the driver Nagaraj. The vehicle was searched and was found to carry various quantities of goods. The duty officer called upon the driver to produce the documents for the goods found in the truck. The driver could not produce a single document. The duty officer thereupon served notice upon the driver as prescribed u/s 20-A(4) of the Karnataka Sales Tax Act, 1957 (for short "the Act"), to show cause why penalty of Rs. 62,510 should not be levied. The statement of the driver was recorded and the driver conceded that though he contacted the transporter at Bombay he was not in a position to produce any valid document to indicate that the goods were in transit. After considering the statement of the driver the A.C.T.O. imposed a penalty of Rs. 62,510 and directed that the goods shall not be released unless the penalty amount was paid.

2. Amongst the goods found in the truck were Navalgin tablets contained in 35 cartons. The respondent Ruby Traders are carrying on business at Madras and/ preferred writ petition under article 226 of the Constitution in this Court on December 26, 1989 claiming that the order imposing penalty has to be set" aside

as the levy of penalty in respect of 35 cartons of Nalgin tablets was unsustainable. The penalty levied in respect of the 35 cartons of Nalgin tablets was Rs. 38,260 and it is part of the total penalty of Rs. 62,510. The contention of the respondent was that the goods were purchased in Bombay from one S.K. Traders and were handed over to the transporters, Deccan Madras Transports for delivery at Madras. The respondent claims that Ruby Traders were both consignors and consignees of the goods and the mere fact that the driver did not have the necessary documents at the time of the search would not make the respondent liable to pay the sales tax as claimed by the impugned order. The writ petition was resisted by the appellants who inter alia, pointed out that what was demanded by the impugned order was not the sales tax but the penalty for not carrying the requisite documents while passing through the State. The respondents also pointed out that the copies of the alleged invoices produced by the respondents are not genuine documents because on enquiry it was found that the Bombay sales tax number mentioned in the copy of the invoice was not that of S.K. Traders but one of M/s. Abdul Hussain Kareemullah Bhoy. In respect of this claim the respondents relied on a letter received by the Deputy Commissioner of Commercial Taxes, North Zone, Belgaum, from the Deputy Commissioner of Sales Tax, Enforcement (B) dated February 17, 1990.

3. The learned single Judge by order dated September 13, 1990 came to the conclusion that though the truck driver did not carry any document, the respondents are not liable for payment of penalty because there was no dispute that respondent carries on business at Madras and respondent is not a fictitious person. The learned single Judge was impressed by the fact that the respondent is a registered dealer in Madras and claims the consignment was meant to be delivered at Madras in view of the invoices produced. The learned judge overlooked the objection of the appellants that the documents produced in support of the petition were not genuine. The learned Judge in the light of the findings arrived at by him directed that the levy of penalty was unwarranted so far as the goods claimed by the respondents. The trial Judge also imposed costs of Rs. 500 on the appellant. The order of the learned single Judge is under challenge now.

4. The learned Government Pleader appearing on behalf of the appellant submitted that the order of the trial Judge suffers from serious infirmity. It was contended that the officer at the check-post was entitled to levy penalty in the absence of production of valid documents by the driver of the goods-vehicle. The counsel further submitted that the documents relied upon by the respondent in support of the application filed three months after the date of levying penalty were not genuine documents and though that fact was demonstrated before the learned Judge the same was by-passed and no reference was made to that fact in the order. Learned Government Pleader submitted with considerable merit that the levy of penalty cannot be faulted and the respondent was not entitled to any relief in the writ petition.

The counsel for the respondent, on the other hand, submitted that it was not open for the State Government to demand sales tax in respect of goods which were in transit from the State and in support of this contention reliance was placed on a decision of this Court reported in *Prakash Roadlines (P) Ltd. Vs. Commissioner of Commercial Taxes in Karnataka*. The learned counsel also urged that it was not demonstrated that the copies of the invoices produced were not genuine.

5. Section 28-A(4) of the Act inter alia, provides that the officer-in-charge of the check-post may in respect of any contravention of or non-compliance of the provisions of Sub-sections (2), (3), (3-A) and (3-B) for which sufficient cause is not shown, levy penalty. Sub-section (5) prescribes that the penalty leviable under Sub-section (4) shall not exceed double the amount of tax leviable in respect of the goods under transport. The perusal of Sub-sections (2), (3), (3-A) and (3-B) of the Act makes it clear that the owner or person-in-charge of a goods vehicle shall carry with him the trip sheet or a bill of sale or delivery note containing particulars of the goods carried in the vehicle and produce the same before the officer at the check-post. The driver is required to stop the vehicle at the check-post and produce the documents for inspection. The sub-section also provides that in case the officer has any suspicion that the goods found in the vehicle are not for transit purposes then the officer is entitled to seize the goods. It is not in dispute that the officer at the check-post noticed that the driver of the goods vehicle had no documents whatsoever to sustain the claim that the goods of the respondent were in transit from Bombay to Madras. As the driver did not carry the requisite documents as prescribed by Section 28A the officer was entitled to levy penalty under Sub-section (4). We are unable to appreciate how the powers exercised by the officer to levy penalty can be found fault with.

6. The contention of learned counsel for the respondent that the State Government is not entitled to recover tax is not relevant because the impugned order levies penalty and not tax and it is hardly necessary to refer to the distinction between the tax amount and penalty. The penalty was levied for failure to conform to the requirements of Sub-sections (2), (3), (3A) and (3-B) of Section 28A of the Act. The penalty has no element whatsoever of tax. The reliance by learned counsel on the decision of this Court is, therefore, misconceived.

7. The learned Government Pleader contended and in our judgment, with considerable merit that there is serious doubt about the genuineness of the copies of the invoices produced by the respondents. The letter produced by him to which we have referred to earlier in this judgment leaves no manner of doubt that the copy of the invoice is not genuine. The sales tax number mentioned in the invoice by the S.K. Traders is NIC-5402 and the letter makes it clear that the said number has been allotted to M/s. Abdul Hussain Karimbhoy and not to S.K. Traders. It is, therefore, obvious that the documents produced by the respondents in support of the relief claimed in the petition are not genuine. In

these circumstances, in our judgment, the learned Judge was in error in relying upon the uncorroborated claim of the respondent that the goods found in the vehicle were the goods of the respondents and which were in transit from Bombay to Madras. In our judgment, the respondents were not entitled to any relief and the petition ought to have been dismissed.

8. Accordingly, the appeal is allowed and the impugned order of the learned single Judge dated September 13, 1990 is set aside and W.P. No. 5 of 1990 filed by the respondents stand dismissed.

The respondents shall pay the costs of the appellant throughout.