(1990) 09 KAR CK 0001

In the Karnataka High Court

Case No : S.T.R.P. No. 46 of 1987

Automobile Products of India Limited APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 13-09-1990

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 20, 28 A, 28 A (2)

Citation : (1991) 81 STC 414

Hon'ble Judges : M.P. Chandrakantaraj, J;K.B. Navadgi, J

Bench : Division Bench

Advocate : K. Ramabhadran for G. Sarangan, for the Appellant; Sri H.L. Dattu, High Court Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

M.P. Chandrakantharaj Urs, J.—The question in this sales tax revision petition arises for decision by us in the following circumstances :

Certain consignment of motor vehicles, viz., Lambretta scooters of 150 cc was carried in vehicle bearing registration mark TNM 7484. When checked at sales tax check-post of Nippani in Belgaum district By the Check-post Officer, he found that as per the Invoice No. 11/30436 to No. 11/30464 dated 27th July, 1983, M/s. Automobile Products of India Ltd., Bhandup, Bombay-78, had issued those invoices to different customers in Bangalore and one in Devaraya Samudra of Kolar District. The invoices also disclosed that Central sales tax at 12 per cent was collected apparently by the seller at Bombay. However, the goods vehicle record, which is one of the documents prescribed to be carried under sub-section (2) of section 28-A of the Karnataka Sales Tax Act, 1957, to accompany goods in transit which are exigible to sales tax in Karnataka, disclosed that the consignee of the vehicles was South India Automotive Corporation Limited, Bangalore. Therefore, the Check-post Officer formed the opinion that there was contravention of the provisions of the Karnataka Sales Tax Act inasmuch as what was really a sale of automobile products between M/s. Automobile Products of

India Limited, Bhandup, Bombay and M/s. South India Automotive Corporation Limited, Bangalore, was being passed as sale in favour of various persons in Bangalore and one in Devaraya Samudra and as such the goods were liable for confiscation or for imposition of penalty in terms of sub-section (4) of section 28-A. He, therefore, issued the show cause notice dated 28th July, 1983, calling upon the driver who was incharge of the vehicle, to show cause why a sum of Rs. 25,000 approximate value of the goods should not be imposed as penalty. He was given 3 or 4 day''s time to pay the said penalty and the goods vehicle and consignment were detained subject to unloading so much of the consignment which was equivalent of Rs. 25,000 in case of failure to pay penalty. It appears, on behalf of the consignor, authorised person of the consignor appeared before the Check-post Officer and submitted that there was no contravention u/s 28-A(2) and as such, any discrepancy found in the goods vehicles record at page 3 was an error committed by inadvertence and the consignment was actually meant for the individual named in the invoices. That explanation was rejected and on the reasoning that the entire exercise was with a view to avoid payment of tax in Karnataka, he proceeded to impose penalty at the proposed rate. Aggrieved by such imposition, appeal was preferred to the Assistant Commissioner of Commercial Taxes (Appeals), Belgaum, who dismissed the appeal. Against that order of dismissal, a further appeal was preferred to the Karnataka Appellate Tribunal in Appeal No. STA 1372/83. By an order dated 29th August, 1986, the Appellate Tribunal dismissed the appeal by a detailed order.

2. In this Court, the only question that falls for our consideration is whether the Check-post Officer could be vested with the jurisdiction of determining the nature of the sale involved in the transaction and on such determination of the nature of the sale as to whether intra-State or inter-State sale, impose penalty under sub-section (4) of the Karnataka Sales Tax Act (hereinafter referred to as "the Act").

3. Section 28-A of the Act reads as follows :

"28-A. Establishment of check-post or barrier and inspection of goods while in transit. - (1) If the State Government consider it necessary 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, be notification, direct the establishment of a check-post or the erection of a barrier, or both, at such place or places as may be notified.

(2) The owner or person-in-charge of a goods vehicle or boat shall carry with him a goods vehicle record, a trip sheet or a log book, as the case may be, and a bill of sale or a delivery note or such other documents as may be prescribed containing such particulars as may be prescribed in respect of the goods carried in the goods vehicle or boat, as the case may be, and produce the same before any officer-in-charge of check-post or barrier or any other officer as may be empowered by the State Government in this behalf. The owner or person-in-charge of a goods vehicle or boat entering the State limits or leaving the State Limits shall also give a declaration containing such particulars, as may be

prescribed, of the goods carried in the goods vehicles or boat, as the case may be, before the Officer-in-charge of the check-post or barrier or the officer empowered as aforesaid and give one copy of the declaration to such officer and keep one copy with him.

(3) At every check-post or barrier, or at any other place when so required by any officer empowered by the State Government in this behalf, the driver or any other person-in-charge of a goods vehicle or boat shall stop the vehicle or boat, as the case may be, and keep it stationary as long as may be required by 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.

Explanation. - For purpose of sub-section (2) and (3), the officer-in-charge of check-post or barrier shall be an officer not below the rank of an Assistant Commercial Tax Officer and not higher in rank than an Assistant Commissioner of Commercial Taxes.

(3-A) Where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee. Where before delivery is taken from him a carrier or bailee to whom goods are delivered for transmission, keeps the said goods in any office, shop, godown, vessel, receptacle, vehicle or any other place of business or any building or place, any officer empowered by the State Government in this behalf shall have 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 carrier or bailee or the person-in-charge of the goods and records shall give all facilities for such examination or inspection and shall if so required, produce the bill of sale or delivery note or other documents referred to in sub-section (2) and give a declaration containing such particulars as may be prescribed regarding the goods and give his name and address and the name and address of the carrier or the bailee and the consignee.

(4) The Officer-in-charge of a check-post or barrier or any other officer not below the rank of an Assistant Commercial Tax Officer and not higher in rank than an Assistant Commissioner of Commercial Taxes may, in respect of any contravention of or non-compliance with the provisions of sub-section (2) or (3) or (3-A) and for which sufficient cause is not furnished, levy a penalty not exceeding the limits specified in sub-section (5). The aforesaid officer may also levy penalty where the declaration made under sub-section (2) is false in respect of the materials furnished therein or where the particulars furnished in the records do not tally with the goods actually being transported or are found to be not relating to such goods :

Provided that before levying any penalty under this sub-section, the officer shall give the person-in-charge of the goods vehicle or boat a reasonable opportunity of being heard.

(5) The penalty leviable under sub-section (4) shall not exceed double the amount of tax leviable in respect of the goods under transport :

Provided that in the case of goods specified in the Second, Third and Fourth Schedules, if the owner or the person-in-charge of the goods vehicle or boat produces proof to show that the goods in question have already suffered the single point tax under this Act, no penalty shall be leviable.

(6) Where the penalty levied is not paid, the officer levying the penalty shall have power to take possession of so much of the goods as in his opinion would be sufficient to meet the amount of penalty levied and retain the same with him until the penalty is paid or for ten days, whichever is earlier. After the expiry of the period of ten days if the penalty is not paid, the officer shall dispose of the goods in public auction and adjust the sale proceeds towards the penalty. If the sale proceeds are more than the penalty, the excess amount shall, after deducting the charges incurred by the State, be refunded in the manner prescribed :

Provided that in the case of perishable goods, the officer may dispose of the same before the expiry of the period of ten days if in his opinion such disposal in necessary.

(7) (a) The person aggrieved by the levy of penalty under this section may, in cases not covered by section 20, appeal -

(i) to the Deputy Commissioner of Commercial Taxes of the area, if the levy is made by an Assistant Commissioner of Commercial Taxes; and

(ii) in other cases to the Assistant Commissioner of Commercial Taxes of the area concerned.

(b) Such appeal shall be dealt with as if it were an appeal filed u/s 20 and the provisions of that section shall apply to such appeal accordingly."

4. It is obvious that the intendment of the section is to prevent the movement of goods exigible to tax within or without the State with a view to avoid payment of tax. Therefore, it is made clear in sub-section (2) that the carrier of such goods must necessarily have in his possession certain prescribed documents. If such documents were not carried, power is conferred on the Check-post Officer to retain the goods and the vehicle and subject the person-in-charge of the vehicle to the proceedings under that section and impose penalty for contravention of sub-section (2), (3) or (3-A). In our opinion, the plain language employed in the section as well as in its intendment does not clothe the Check-post Officer with jurisdiction to make an assessment as long as the documents carried in the vehicle satisfy the requirement of the prescription made under sub-section (2) of

section 28-A of the Act or the Rules made under the Act.

5. From a perusal of annexure A, the show cause notice, we find that all the documents were carried. The only discrepancy was between the invoices which indicated the persons who had made the purchase and paid the inter-State sales tax and the goods vehicle record which disclosed that the delivery was not to be made to those persons but to some other concern in Bangalore. Whether such an entry in the goods vehicle record was a mistake or not, to our mind, it appears to be immaterial. We find from the order of the Appellate Tribunal that it totally misdirected itself in treating the penalty order as if it was an assessment order passed by a competent assessing authority and looked into the question whether the sale was intra-State sale or inter-State sale. That perhaps was due to the mistake originally committed by the Check-post Officer and perpetuated by the other appellate authorities.

6. Assuming for a moment that indeed the documents carried by the vehicle in question did disclose a sale between the seller in Bombay, manufacturer of the vehicles, and M/s. South India Automotive Limited at Bangalore who had to take delivery of those scooters, then the information so gathered by the Check-post Officer could at best be utilised to bring to tax by the concerned authority at Bangalore where M/s. South India Automotive Corporation Limited would be a registered dealer. Any mistake made as claimed, as we have already expressed, cannot clothe the Check-post Officer with jurisdiction to do something which he was not expected to do under the provisions of section 28-A of the Act. His job was to ascertain whether the prescribed documents accompanied the vehicle and the goods which in turn were liable to tax under the Act. Anything else he did would be without jurisdiction and we have no hesitation to state, that on account of his total misdirection, there was improper exercise of jurisdiction and the order of the Appellate Tribunal, the first appellate authority as well as Check-post Officer are, therefore, liable to be quashed and they are accordingly quashed.

7. In the circumstances of the case, there will be no order as to costs.

8. Petition allowed.

