(2015) 06 KAR CK 0002

In the Karnataka High Court

Case No : S.T.A. No. 10 of 2011

Clean Foods Ltd. APPELLANT

Vs

Commercial Tax Officer RESPONDENT

Date of Decision : 02-06-2015

Acts Referred:

Karnataka Value Added Tax Act, 2003 — Section 53(12), 64(1)

Citation : (2015) 52 GST 249 : (2016) 87 VST 38

Hon'ble Judges : Ravi V. Malimath and P.S. Dinesh Kumar, JJ.

Bench : Division Bench

Advocate : H.R. Kambiyavar and G. Rabinathan, Advocates, for the Appellant; C.S. Patil, A.G.A., for the Respondent

Judgement

P.S. Dinesh Kumar, J.—Appellant, in this proceeding is calling in question the order dated 08.12.2010 passed by the Additional Commissioner of Commercial taxes in SMR proceedings bearing No. ZAC-1/BGM/SMR-07-10-11 imposing a penalty of Rs. 2,27,865/-. Briefly stated the facts of the case are that the appellant, a manufacturer and exporter of mango pulp sought to transport 68.8 metric tons of his product from Kolikopp Village, Post Tarihal, Distt. Belgaum to Mumbai. The vehicle was intercepted in the check-post at Nipani and a tax of Rs. 2,27,865/- was imposed. A proposition notice was served and after receiving appellant''s response, the Commercial Tax Officer, Bangalore, vide order dated 12.09.2009 confirmed the proposed penalty of Rs. 75,955/-. Appellant challenged the same before the Joint Commissioner of Commercial Taxes (Appeals), Belgaum Division, Belgaum, who vide order dated 11.10.2006 allowed the appeal and set aside the penalty order passed at the check-post. Subsequently, the Commercial Tax Department in the suo motu to proceedings vide order dated 08.12.2010 took up the matter for re-consideration and held that the order in appeal passed by the Joint Commissioner was not tenable in law and accordingly set aside the same and penalty order under Section 53(12) of the Act was restored whereby the penalty of Rs. 75,955/- came to be confirmed. In these circumstances, the appellant has preferred this appeal raising the following question of law:

"Whether the Additional Commissioner of Commercial Taxes, Zone I, Bangalore/ the third respondent herein was right in invoking the provisions of Section 64(1) of the KVAT Act and set aside the order passed by the Joint Commissioner of Commercial Taxes (Appeal), Belgaum/the second respondent herein?"

2. While admitting this appeal, this Court has framed the following question of law:

"Whether on the facts and in the circumstances of the case of the appellant the Addl. Commissioner of Commercial Taxes, Zone-1, Bangalore, the third respondent herein, was right in having invoked the provisions of Section 64(1) of KVAT Act and set aside the order passed by Joint Commissioner of Commercial Taxes (Appeals), Belgaum, the second respondent herein and restore the check-post penalty levied by the Commercial Tax Officer, the first respondent herein?"

3. We have heard Sri H.R. Kambiyavar, for Sri Rabinath and Sri M. Thirumalesh, learned counsel appearing for the appellant and Sri C.S. Patil, learned Additional Government Advocate appearing for the respondent/State and perused the records.

4. Learned counsel for the appellant contends that though the goods were being transported with valid documents, the check-post authorities have illegally imposed the penalty and the same was rightly set aside by the appellate authority. During the course of hearing, he has placed for consideration of this Court, copies of the documents which were said to be in the possession of the driver of the lorry along with the goods at the time when vehicle was intercepted. Learned counsel draws our attention to delivery note (Form VAT-515) and submits that the appellant was transporting Mango Pulp for the sake of export evidenced by the invoice dated 07.03.2006 wherein it is stated that the goods were sought to be exported to a Company called Al Marai Company Limited, Riyadh. Placing reliance on the invoice and the delivery note of the learned counsel for appellant submits that since the goods in question were meant for export and it was clearly spelt out in the invoice as such, the respondent-authorities at the check-post were not justified in imposing the penalty so also in the SMR proceedings.

5. Per contra, learned Additional Government Advocate supports the impugned order and prays for dismissal of the appeal.

6. The delivery note clearly indicates the name of the consignor as the appellant and the consignee as Pepsico India Holdings Private Limited, Gurgoan, Haryana. The invoice dated 07.03.2006 also shows the name of Pepsico India Holdings Private Limited, Gurgaon, Haryana. Thus, the invoice is raised in the name of Company situated in India. However, in one of the columns it is mentioned that export is sought to be made to Riyadh. Therefore, prima facie, the documents which were available at the check-post as also before the Addl. Commissioner

who conducted the suo moto proceedings would clearly indicate that the appellant sought to transport goods from Belgaum to Mumbai and the consignee of the goods was M/s. Pepsico India Holdings Private Limited, Gurgoan. In the light of the documents produced by the appellant himself which clearly indicate the names of the consignor and consignee are two Indian companies.

7. Perusal of the documents would lead us to an irresistible inference that the transaction is within the country. Therefore, the argument on behalf of the appellant that the goods were being exported directly by the consignor cannot be countenanced.

8. Section 64(1) of the Act reads as follows:

"64. Revisional powers of Additional Commissioner and Commissioner.--(1) The Additional Commissioner may on his own motion call for and examine the record of any order passed or proceeding recorded under this Act, and if he considers that any order passed therein by any officer, who is not above the rank of a Joint Commissioner, is erroneous in so far as it is prejudicial to the interest of the revenue, he may, if necessary, stay the operation of such order for such period as he deems fit and after giving the person concerned an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment or directing a fresh assessment."

9. Above provision clothes the Additional Commissioner with power to call for and examine the record of any order passed or proceedings recorded under this Act, and if he so considers that such an order requires any interference, the same may be appropriately dealt with.

10. Exercising the suo moto review powers, the Additional Commissioner has rightly recorded the finding of Appellate Authority and restored the penalty imposed in original proceedings. No exception can be taken to the findings recorded and conclusions arrived at by the Additional Commissioner. In the circumstances, we are of the considered view that the substantial question of law raised for consideration has to be held against the assessee. Accordingly, the appeal fails and stands dismissed.

Ordered accordingly.