(2012) 10 KAR CK 0127

In the Karnataka High Court

Case No : STA No. 3 of 2010.

Goyal Ispat — APPELLANT

Vs

Additional Commissioner of Commercial Taxes — RESPONDENT

Date of Decision : 10-10-2012

Acts Referred:

Citation : (2013) 62 VST 238

Hon'ble Judges : K.L. Manjunath, J;B. Manohar, J

Bench : Division Bench

Advocate : Vivekmehata for Atul K. Alur, for the Appellant; K. Vidyavati, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Manjunath, J.—The appellant is questioning the legality and correctness of the order dated October 23, 2009 passed in ZAC-1/DWD/SMR-07/09-10 by the Additional Commissioner of Commercial Taxes, Zone 1, Bangalore, u/s 64(1) of the Karnataka Value Added Tax Act, 2003 (for short, "the Act"). The appellant is a dealer dealing in steel having business at Hubli. During the course of audit, the authorities found from the report of Commercial Tax Officer (Mobile Squad-3), Harihar, that the penalty was levied u/s 53(1) of the Act on the ground that the appellant herein had not complied with the provision of section 53(2) of the Act and an attempt was made to evade the tax. It was verified from the records that when the mobile squad intercepted the goods vehicle carrying 16.995 metric tons of various kinds of iron and steel viz: M S angles, flats, bars and rounds at NH-4, Bypass Davangere on July 9, 2006, the driver of the goods vehicle was found two tax invoices issued by a consignor from Goa one for one metric ton and another for 15.995 metric tons, respectively and the goods were transporting on behalf of the appellant. On enquiry, it was learnt that the goods were to be delivered to the customers of the appellant at Hiriyur.

2. Based on the above facts, the respondent learnt that the appellant without raising the local tax invoice at Hubli was transporting the goods directly from Goa

to Hiriyur only to evade the tax payable at Hubli. Accordingly, the audit authority examining the reply of the appellant by overruling the objections, an order was passed. Against which, the appellant filed an appeal before the appellate authority. The appellate authority allowed the appeal and thereafter the Additional Commissioner of Commercial Taxes, Zone 1, Bangalore, exercising the power vested in him u/s 64(1) of the KVAT Act 2003 took up a suo motu revision.

3. The revisional authority heard the appellant in detail and allowed the revision by setting the order of the appellate authority by order dated October 23, 2009 and the order of the audit authority passed u/s 39(1) of the Act was restored. This order is called in question in this appeal.

4. The appeal was admitted to consider the following substantial questions of law framed in the memorandum of appeal:

(i) Whether, on the facts of the circumstance of the case, the revisional authority was right in coming to the conclusion that, payment of penalty u/s 52 of the KVAT Act, result in estimation of the turnover inspite of the turnover reflected in the books of accounts?

(ii) Whether, on the facts of the circumstance of the case, not challenging the order of penalty will result in estimation of the turnover u/s 39(1) of the KVAT Act?

5. The main contention of the appellant before us is that merely because the order of penalty was not challenged by the appellant cannot be a ground for the revisional authority to hold that an attempt was made by the appellant to evade tax. According to him, the turnover of the appellant had reflected the transaction in question and that the appellate authority having considered the books of accounts of the appellant and having noticed that the transaction in question had been reflected in the books of accounts and returns, the appeal of the appellant had been allowed. Therefore, the revisional authority was not justified in reversing the order of the appellate authority.

6. Admittedly, the goods were dispatched from Goa. The appellant is said to have placed the order from Hubli to be delivered to his customers at Hiriyur. The goods were under transit without the documents. It is the specific case of the appellant that the driver by oversight had not carried the documents. Even if the driver had not carried the documents by oversight, his explanation would have been different. The statement made by the driver before the authorities, when the vehicle was intercepted, has not been placed before the revisional authority. Against the order of penalty, no appeal is filed. If really, if it is a case of non-possessing the documents by the driver by oversight, the appellant could have summoned the documents from the consignor, who had dispatched the goods from Goa. Even if there was an urgency and that he was compelled to pay the penalty, nothing has been prevented from filing an appeal challenging the order of penalty and no such an attempt is also made. Admittedly, the penalty has not been paid by the driver or carrier. But the penalty is paid by the appellant. If the

penalty had been paid by the driver or carrier for their mistake, the matter would have been different. If the appellant for no fault of him was made to pay, the penalty at least, he would have recovered the penalty from the carrier and no such action is taken. Therefore, on the facts and circumstances of the case, the substantial questions of law framed in this appeal do not arise at all. Accordingly, the appeal is dismissed.