

(2011) 06 KAR CK 0011
In the Karnataka High Court
Case No : S.T.A. No. 55 of 2009

Hysum Steels

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 23-06-2011

Acts Referred:

Karnataka Value Added Tax Act, 2003 — Section 53 (12), 53 (12) (a) (ii)

Citation : (2012) 51 VST 106

Hon'ble Judges : V.G. Sabhahit, J;Ravi Maumath, J

Bench : Division Bench

Advocate : Vani, for the Appellant; S. Sujatha, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

V.G. Sabhahit, J.—This appeal is by the assessee being aggrieved by the order dated February 12, 2009 passed by the Additional Commissioner of Commercial Taxes, Zone I, Bangalore in No. ZAC-1:MNG:SMR-04/08-09 T. No. 1151/08-09 wherein the penalty imposed by the appellate authority has been set aside and the order passed by assessing authority imposing penalty at three times the value of tax has been revised and penalty u/s 53(12)(a)(ii) of the Karnataka Value Added Tax Act, 2003 has been imposed. The material facts necessary for the disposal of this appeal are as follows :

2. The consignment belonging to the assessee was being transported from Bhatkal to Mangalore comprised of 19,955 kgs. of M.S. tor steel having purchased the same under Bill Nos. 339, 338 and 340 from M/s. Anzaf Trading Company, Bhatkal. The said M.S. tor steel was being transported to Mangalore in the lorry when intercepted at Udupi check-post on February 7, 2008 it was found that the quantity of the M.S. tor steel found in the lorry was less than the quantity of 19,955 kgs., as that the lorry contained only 16,350 kgs. M.S. tor steel and therefore the driver of the lorry prayed for reducing of penalty and sought time to produce the document. After show-cause notice was issued the

order was passed by the Commercial Tax Officer on February 8, 2008, by rejecting the explanation given by the appellant that en route Bhatkal to Mangalore 10,050 kgs. of M.S. tor steel had been unloaded at Syriar. However, penalty of Rs. 47,926 was imposed being 1 1/2 (I) times the value. Being aggrieved by the same, an appeal was preferred by the appellant therein before the Joint Commissioner of Commercial Taxes (Appeals), Bangalore, u/s 62 of the KST Act, 1957 which was allowed by the order dated October 18, 2008 and the order passed by the Commercial Tax Officer, the original authority, was set aside holding that deficit of the quantity of M.S. steel found has been explained and thereafter a show-cause notice was issued by the revisional authority as to why for the reasons recorded herein penalty at the maximum amount leviable at three times the tax in terms of section 53(12)(a)(ii) of the KVAT Act, 2003 should not be imposed and so far as penalty was proposed to be reduced to which the appellant submitted the reply and thereafter the revisional authority by the order dated February 12, 2009 held that the orders passed by the appellate authority and the original authority were prejudicial to the revenue of the State and enhanced the penalty as proposed in the show-cause notice by imposing penalty of maximum three times of the amount of tax u/s 53(12)(a)(ii) of the Act. Being aggrieved by the said order passed by the original authority this appeal is filed.

2. We have heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents.

3. The learned counsel appearing for the appellant has taken us through the order passed by the original authority, the appellate authority and also the revisional authority and submitted that the deficit in the quantity of M.S. tor steel at the time of inspection has been satisfactorily explained by producing the purchase invoice for having sold the M.S. tor steel en route to Bhatkal to Mangalore at Sheriyar and that the tax collected has already been paid and deposited with the Department. The revisional authority was not justified in imposing the maximum penalty of three times and therefore the order passed by the first appellate authority and the assessing authority were erroneous.

4. The learned Government Advocate appearing for the respondents argued in support of the order passed by the revisional authority.

5. We have given careful consideration to the contentions of the learned counsel appearing for the parties and scrutinized the material on record.

6. The material on record would clearly show that there was deficit in the quantity of M.S. tor steel contained in the lorry only it was intercepted at Udupi en route Bhatkal to Mangalore is not in dispute. According to the assessee the said deficit has been explained and according to the original authority the explanation could not be accepted as the same did not give the description of the M.S. tor steel. However, the appellate authority allowed the appeal and set aside the order passed by the assessing authority holding that the deficit has been

satisfactorily explained. It is clear from the perusal of the order passed by the revisional authority that the order passed by the first appellate authority was erroneous and setting aside the original order imposing penalty is justified. It is clear that the deficit in the quantity of M.S. tor steels at the time of interception of the lorry at the check-post at Udupi is not disputed and the explanation for deficit of the quantity is not satisfactory as the driver did not produce the invoice for having sold 10,050 kgs. at Syriar en route Bhatkal to Mangalore and only after the show-cause notice was issued the said invoice was produced and therefore the order of the authority setting aside the order of the first appellate authority is justified. We do not find any ground to interfere with the order. However, imposition of penalty at the maximum of thrice the amount payable towards the tax is wholly unreasonable as it is well-settled that mere fact that it is the discretion of the original authority. It is clear from the provisions of section 53(12)(a)(i) and (ii) the penalty leviable should not be less than the rate of tax but subject to maximum of three times the tax and it is the discretion of the original authority or the authority imposing the penalty as to what is the amount of penalty to be imposed and mere fact that the discretion has been exercised to impose penalty at 1 1/2(I) times in this case would not by itself a ground to exercise revisional jurisdiction and enhance the penalty to three times. However, having set aside the order passed by the appellate authority it is clear that the maximum penalty imposed by the revisional authority at three times the rate of tax is arbitrary. Having regard to the facts and circumstances of the case and it would be just and reasonable to reduce the penalty to 1 1/2 times as proposed by the original authority and imposition of penalty at Rs. 47,926 imposed by the original authority u/s 53(12) of the Karnataka Value Added Tax Act is entitled to be restored. Accordingly, the appeal is allowed in part. The order passed by the revisional authority dated February 12, 2009, setting aside the order passed by the first appellate authority dated October 8, 2008 is confirmed. However, penalty imposed is reduced to the amount imposed by the original authority at Rs. 47,926.