(1990) 10 KAR CK 0056

In the Karnataka High Court

Case No : Sales Tax Revision Petition No. 92 of 1990

Kela Brothers APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 08-10-1990

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

Citation : (1992) 86 STC 405

Hon'ble Judges : M.P. Chandrakantaraj Urs, J;M. Ramakrishna, J

Bench : Division Bench

Judgement

M.P. Chandrakantaraj Urs, J.—Admittedly, the documents required in terms of sub-section (2) of section 28-A read with rule 23-D of the Karnataka Sales Tax Rules, 1957, were not carried by the transporter as a result of which the penalty came to be levied. Before us, the only question canvassed by learned counsel Sri Bhat is that they were produced subsequently at the time of hearing after notice to the consignor and, therefore, in view of the decision of this Court in the case of Sree Hajee Ahmed Bava v. Assistant Commercial Tax Officer [1985] 60 STC 328, he drew our attention to the ruling of the Division Bench in paragraph 34, the penalty was uncalled for. We are unable to see such a proposition. The passage in para 38 is as follows :

"The substituted provisions provide for opportunity to the person aggrieved to show cause or to produce the documents, and the power to levy penalty is purported to be exercised only in cases where the person concerned fails to furnish sufficient cause for the contravention or non-compliance with the provisions of sub-section (2) or (3) or (3A) of section 28-A. They also provide for sufficient safeguards to the person concerned, to appeal against the order levying penalty to the higher authorities as provided under the Act. But, this power has to be exercised strictly in cases where the goods leviable to tax under the KST Act are involved and in respect of which there is suspected evasion of tax. We are, therefore, of the view that the impugned provisions are not beyond the legislative competence of the State."

However, our attention was drawn to another passage in the same judgment which occurs at paragraph 34 which is as follows :

"The documents required to be produced by the driver or person-in-charge of the goods, if not produced even after allowing sufficient time, the checking officer has absolute and unlimited power to detain the vehicle if he is not satisfied as to the explanation and the bona fides of the owner or with the inspection of the documents, and proceed to levy penalty not exceeding double the amount of tax leviable in respect of the goods under transport."

2. The above passage does not amount to stating that the person-in-charge of the vehicle or someone else may produce the documents required to be carried under sub-section (2) of section 28-A of the Act subsequently in any proceeding initiated. All that the learned Judges have said is that the Check Post Officer may detain the vehicle if the required documents are not produced after granting of time. That granting of time is not initiation of proceedings, but granting of time to the person-in-charge of the vehicle whether it is driver or someone else to produce the prescribed documents that should accompany the goods in transit. Therefore, the learned counsel cannot derive any support from the cited decision. If his view has to be accepted by us, then, it will amount to rendering sub-section (2) of section 28-A nugatory.

3. There is no merit in this petition. It is rejected.

4. Petition dismissed