(1998) 07 KAR CK 0094

In the Karnataka High Court

Case No : S.T.R.P. No. 9 of 1996

Khoday India Limited APPELLANT

Vs

State of Karnataka and Others RESPONDENT

Date of Decision : 01-07-1998

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 28 A, 28 A (4)

Citation : (1998) 111 STC 783

Hon'ble Judges : S.R. Venkatesha Murthy, J;Ashok Bhan, J

Bench : Division Bench

Advocate : R. Gururajan and M.L.N. Reddy, for the Appellant; K. Sujatha, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Ashok Bhan, J.—This revision petition is directed against the order passed by the Karnataka Appellate Tribunal (hereinafter referred to as "the Tribunal") dated October 30, 1995, passed in T.A. No. 1217 of 1994.

2. Petitioner is engaged in the business of manufacture and sale of Indian-made foreign liquor at its factory situated at Konnayankana Agrahara, Anekal Taluk, Bangalore District. Petitioner had an order from Messrs United Agencies, Bombay, wholesale wine merchants, for supply of 550 cases of Peter Scot whisky of various capacities. Intending purchaser had furnished the import permit from the excise authorities of Maharashtra. Petitioner made an application to the excise authorities in Karnataka for obtaining export permit to send 550 cases of Peter Scot whisky to Maharashtra. In terms of the application, the excise authorities issued the export permit No. ECD/179/PMT/1908/92 dated August 14, 1992 to the petitioner. Petitioner made arrangements to transport the said materials through Shreeji Transport Corporation. The said transporter did not make available a suitable vehicle until August 18, 1992. The goods were despatched on August 18, 1992 along with the bill. The vehicle left the petitioner''s factory at 4.30 p.m. Before the vehicle could leave Bangalore, it

developed some mechanical problems and in those circumstances, the vehicle was brought back to Bangalore for repairs. After getting necessary repairs done, the vehicle left and reached Nippani on August 20, 1992 by which time, the validity of the export permit had expired.

3. The Commercial Tax Officer in-charge of the check-post issued a notice u/s 28-A(4) of the Karnataka Sales Tax Act, 1957 (hereinafter referred to as "the Act"). Petitioner filed its objections. The Commercial Tax Officer-in-charge of the check-post rejected the objections filed by the petitioner and passed an order on August 26, 1992 levying penalty of a sum of Rs. 6,84,000. Aggrieved by the said order, an appeal was filed before the Deputy Commissioner of Commercial Taxes, Bangalore, which was dismissed. Further appeal carried to the Tribunal met with the same fate.

4. Relevant portion of Section 28A of the Act which would require reference for the purpose of the present case is reproduced below :

"28-A. Establishment of check-post or barrier and inspection of goods while in transit.--(1) If the State Government or the Commissioner 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, by 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 obtained from the prescribed authority 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 the 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 vehicle 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 purposes of Sub-sections (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 and any other officer not below the rank of a Commercial Tax Inspector as may be empowered by the Commissioner.

(3A) 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 the 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 to exercise the powers under Sub-section (3) 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.

(3AA)...........

(3B) Where the officer-in-charge of the check-post or barrier, or the officer empowered as aforesaid on interception of the goods vehicle or inspection of any godown, is of the opinion that further verification is necessary with respect to either accuracy of the particulars furnished in the documents accompanying the goods under transport or in transit, or as to the sufficiency and the cause adduced in respect of any contravention of Sub-section (2), he may verify the particulars himself or if it is necessary cause it to be verified by referring the matter to any other officer and if such verification is not likely to be completed within a reasonable time he may direct in writing the carrier or the person in-charge of the goods vehicle or the godown not to deliver the goods until permitted to do so by him or such other officer to whom the matter is referred for verification and allow the intercepted vehicle, if any, to pass through.

(3C)......................

(3D)......................

(4) The officer in-charge of a check-post or barrier or any other officer not below the rank of a Commercial Tax Inspector 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 (3A) or (3B) 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. It is clear from the reading of the opening words of Section 28-A(1) that intention of the Legislature for enacting this section is to prevent the movement of the goods exigible to tax within or outside the State with a view to avoid payment of tax. u/s 28-A(4) of the Act, officer in-charge of the check-post or barrier has been authorised to levy a penalty not exceeding the limits specified in Sub-section (5) in respect of any contravention of or non-compliance with the provisions of Sub-sections (2), (3), (3A) or (3B) of the Act. Sub-clause (2) enjoins upon the owner or person in-charge of the goods vehicle to carry with him a goods vehicle record, a trip sheet or a log book and a bill of sale or delivery note containing such particulars as may be prescribed in respect of the goods carried in the goods vehicle. Under Sub-clause (3), the driver or any other person in-charge of the goods vehicle is required to stop the vehicle on the asking of the officer in-charge of a check-post or barrier and keep it stationary as long as may be required by the said officer to examine the contents in the vehicle and to inspect the records relating to the goods carried. Under Sub-clause (3A), the movement of goods is deemed to commence at the time of such delivery of goods to the carrier or bailee for transmission 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 the goods are delivered for transmission, keeps the said goods in any office, shop, godown, vessel, receptacle, vehicle, etc., the officer has been empowered to enter into and search such office, shop, godown, vessel, receptacle, vehicle, etc. The carrier or bailee or the person in-charge of the goods has been directed to make available all facilities for such examination or inspection. Under Sub-section (3B) where the officer in-charge of the check-post or barrier, or the officer empowered as aforesaid on interception of the goods vehicle or inspection of any godown, is of the opinion that further verification is necessary with respect of either accuracy of the particulars furnished in the documents accompanying the goods under transport or in transit, or as to the sufficiency and the cause adduced in respect of any contravention of Sub-section (2), he may verify the particulars himself or if it is necessary cause it to be verified by referring the matter to any other officer.

6. In the present case, the goods were carried by the petitioner and all the necessary documents were produced by the driver before the officer in-charge of the check-post. The allegation against the petitioner is not that the driver was not possessed of the documents required to be carried by him or that he did not

produce the same on the asking of the officer. The allegation against him is that he was carrying the goods on the basis of export licence which had expired. On this it was presumed that the export licence may have been misutilised for carrying goods from one place to another. If the petitioner was guilty of such an offence, then he could be penalised under any other provision but not under Sub-clause (4) of Section 28A of the Act. Otherwise also, this finding is conjectural and a guess work. There is not even an iota of evidence to show that the export licence was misutilised by the petitioner. In the absence of such an evidence, the inference drawn by the authorities below is held to be without any evidence. Petitioner had not violated the conditions mentioned in Sub-clause (2) of the Act.

7. Admitted case of the parties is that Sub-clause (3), (3A) or (3B) had not been contravened or violated. There is no allegation against the petitioner that the petitioner or the driver of the goods vehicle was trying to evade the payment of tax under the Act. The only thing found against the petitioner is that it was carrying the goods on the basis of an export permit which had expired. In our view that by itself would not entitle the respondents to penalise the petitioner u/s 28-A(4) of the Act. It would not authorise or clothe the check-post officer the jurisdiction u/s 28A. His duty was to ascertain whether the prescribed documents accompanying the vehicle and the goods carried by it had been subjected to tax or not. In case there was any attempt to evade tax, the jurisdiction u/s 28A could be invoked and not otherwise. In our view, the check-post officer had exceeded his jurisdiction. The exercise of jurisdiction u/s 28-A(4) of the Act is held to be improper. This Court in Automobile Products of India Limited v. State of Karnataka [1991] 81 STC 414 : (1993) 37 KLJ 44 considered the scope of Section 28-A(4) of the Act and it held as follows :

"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 Subsection (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 28A of the Act or the Rules made under the Act."

It was further held :

"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 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 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 28A 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 stale, 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."

8. In our view, the Division Bench in the aforesaid judgment correctly enunciated the law on the point. We respectfully follow the said view.

9. The revision is accepted. The orders of the authorities below are set aside and the penalty levied is quashed. Petitioner shall be entitled to costs which is assessed at Rs. 1,000.