

(2011) 03 KAR CK 0050
In the Karnataka High Court
Case No : STA. No. 4 of 2010

Lakshmi Automobiles

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 04-03-2011

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 22 A (1), 28 A (2), 28 A (4)

Citation : (2012) 50 VST 516

Hon'ble Judges : Ravi Malimath, J;N. Kumar, J

Bench : Division Bench

Advocate : K. Shashidharan for M/s. Kamath and Kamath, for the Appellant;

Final Decision : Dismissed

Judgement

N. Kumar, J.—This appeal is by the assessee challenging the order passed by the revisional authority to set aside the order passed by the appellate authority and restore the order passed by the assessing authority who had imposed duty, penalty and interest. The Commercial Tax Officer checked Bus No. KA 26 4755 on May 1, 2002 at J. C. Road, Bangalore, in respect of 30 cases of automobile parts. The driver person incharge of the vehicle tendered an invoice-cum-delivery challan No. LA/STR/012340 dated November 4, 2000 issued by the dealer in favour of M/s. Naveen Associates, No. 30/23, Archana Complex, J. C. Road, Bangalore. On verification of the documents tendered, the Commercial Tax Officer noticed that the invoice is dated November 4, 2000 and the date of actual transportation was May 1, 2002. Though the movement of the goods was from outside the State, the documents were not got checked at the entry check-post or at any other check-post as required under the provisions of section 28A(2) of the Karnataka Sales Tax Act, 1957. On comparison of the value noted on the goods with the value mentioned on the invoice, the same did not tally. Therefore, the Commercial Tax Officer rejected the documents, levied penalty of Rs. 2,21,130 u/s 28A(4) of the KST Act. Aggrieved by the same, the dealer preferred an appeal. The appellate authority was of the view that the person accompanying

the goods was travelling as a passenger in the bus. He was not aware that the bus has to be stopped in the entry check-post point and therefore, it was of the view it cannot be said that it was an attempt to evade the tax under the Act. Insofar as, discrepancy regarding the value of the goods is concerned, he was of the view that certain percentage of discount was allowed, i.e., to the extent of 35 per cent and as the goods were taken back as the purchaser did not accept the goods, the imposition of penalty is not proper and therefore he set aside the order of the assessing authority. In a suo motu revision initiated by the Additional Commissioner of Commercial Taxes u/s 22A(1) of the KST Act, 1957, he found that the said reasons recorded by the appellate authority is not only erroneous, but perverse and it is prejudicial to the Revenue and therefore he set aside the order of the appellate authority and restored the original order. It is against the said order, the present appeal is filed.

2. The learned counsel for the appellant assailing the impugned order contended that when the appellate authority has passed a reasoned order, the revisional authority committed a serious error in interfering with the said order, for which, he had no jurisdiction and therefore submits that the order passed by the revisional authority is to be set aside.

3. From the aforesaid facts it is clear that in the first place, automobile parts were transported through a public carrier. It was carried in a bus. The invoice was dated November 4, 2000, whereas, the goods were moved on May 1, 2002. By no stretch of imagination, it can be a typographical error as sought to be made by the assessee, which has been accepted by the appellate authority. It is clear that there was a deliberate intention to evade the tax and with some documents, which show that the transportation of the goods is not a valid invoice. Therefore, the revisional authority was justified in setting aside the order of the appellate authority and there was no contravention of section 22A(1) of the KST Act, 1957. It is not in dispute that ignorance of law is not an excuse. Merely because a person carrying the goods did not know the law or did not thought it fit to get down and get the necessary seal of the check-post authorities, it would not absolve him from the law to strictly comply with the statutory provisions and therefore here again the reasoning of the appellant authority is perverse, which was rightly set aside by the revisional authority. Insofar as the discrepancy in the amount is concerned, the amount mentioned in the invoice is Rs. 6,14,250 and according to the appellate authority, there is a 35 per cent discount, which is not supported by any material on record. From the aforesaid facts, it is obvious that there is a clear attempt on the part of the dealer to evade payment of sales tax. Merely because, the purchaser did not accept the goods after it was brought to Bangalore from Maharashtra, is not a reason to take a lenient view in the matter, as rightly held by the revisional authority. In order to see such attempts do not repeat in future, it is of utmost importance that such tendencies have to be curbed and accordingly, we do not see any justification to interfere in the impugned order. Hence, the appeal is dismissed.