(2014) 02 KAR CK 0117

In the Karnataka High Court

Case No : S.T.A. No. 22 of 2010

M/s. Hajee Timber Complex — APPELLANT

Vs

Additional Commissioner of Commercial Taxes Zone-1 — RESPONDENT

Date of Decision : 12-02-2014

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 20(5) 22A(1) 22-A(1) 22-A(i) 24

Citation : (2014) 2 AKR 198 : (2014) 44 GST 56 : (2014) 78 KarLJ 318 : (2014) 69 VST 347

Hon'ble Judges : Dilip B. Bhosale, J;B. Manohar, J

Bench : Division Bench

Advocate : Vani H, for the Appellant; T.K. Vedamurthy, HCGP, for the Respondent

Judgement

B. Manohar, J.—This appeal is filed u/s 24 of the Karnataka Sales Tax Act, 1957 (for short ''the KST Act'') challenging the order dated 5.5.2009 in No. ZAC-1/ MNG/SMT-08/08-09 passed u/s 22-A(1) of the KST Act by the Addl. Commissioner of Commercial Taxes, Zone-1, Bangalore, setting aside the order passed by the Joint Commissioner of Commercial Taxes (Appeals), Mangalore (for short ''the Appellate Authority'') and levying penalty u/s 28-A(4)(b) of the KST Act. Brief facts of the case leading to filing of this appeal as under:

The appellant is a registered dealer both under the Karnataka Sales Tax Act as well as the Central Sales Tax Act trading in timber and plywood. On 4.3.2002, he had dispatched two consignments from Mangalore to Bangalore containing 300 plywood sheets in a lorry bearing Registration No. KA-19-C-6655 along with two invoices and two delivery challans. In the first delivery note, the place of delivery was mentioned as D. No. 159, Ramesh Building, Seshadripuram, Bangalore and in another delivery note, it was mentioned as No. 18. Mosque Road, Bangalore. However, the address of consignee was mentioned as M/s. M.M. Housing Pvt. Ltd., Infantry Road, Bangalore. While the said goods were being unloaded at Seshadripuram, Bangalore, the respondent/Authority intercepted the said goods vehicle and the person in-charge of the goods vehicle produced two delivery notes bearing No. 1269924 and 1269925 both dated 4.3.2002 along with the invoices bearing No. 169 and 170 dated 4.3.2002, which were issued by the appellant/firm situated at Mangalore. The respondent/Authority found that in violation of Section 28-A(2)(b) of the Act, the goods were delivered in favour of M/s. Amar Glass and Plywood situated at No. 139/9, Seshadripuram, Bangalore, though in the said delivery note, some other name has been mentioned. The name of M/s. Amar Glass and Plywood was not mentioned either in the delivery note or in the invoice. Accordingly, imposed penalty of Rs. 10,682/- u/s 28-A(4) of the KST Act as per the order dated 6.3.2002. Being aggrieved by the order of penalty passed by the respondents, the appellant preferred an appeal u/s 20(5) of the KST Act before the Appellate Authority. The Appellate Authority after considering the matter in detail, found that the goods in question are covered by valid documents prescribed under the KST Act and Rules made thereunder. In the invoices produced before the Authority, they have clearly recorded about the tax collection. There was no attempt to evade tax due to the Government. Accordingly, the Appellate Authority held that the penalty imposed u/s 28-A(4) of the KST ACT is contrary to law and set aside the same by allowing the appeal.

2. After lapse of more than seven years, the Additional Commissioner of Commercial Tax issued a notice dated 30.3.2009 u/s 22-A(i) of the KST Act to revive the order passed by the Appellate Authority contending that the order passed by the Appellate Authority is erroneous and prejudicial to the interest of the government revenue. In pursuance to the said notice, the appellant filed objections contending that the goods were covered by the valid documents. The goods under transport are tax suffered goods and there is no attempt for evasion of tax and sought for dismissal of the revision petition.

3. The Revisional Authority without considering the objections filed by the appellant, by its order dated 5.5.2009 overruled the objections raised by the appellant and set aside the order passed by the Authority and imposed penalty u/s 28-A(4) of the KST Act for violation of Section 28-A(4)(b) read with Rule 23-B of the Rules. The appellant being aggrieved by the order passed by the Revisional Authority has filed this appeal.

4. Smt. H. Vani, learned Advocate appearing for the appellant contended that the order passed by the respondent/Authority is contrary to law. The appellant had sold the plywood to the dealer in Bangalore. He had dispatched two consignments in a goods vehicle along with invoices and delivery challans. The check post Authorities verified the same. However, while the said goods were being unloaded at Seshadripuram, Bangalore, the respondent/Authority intercepted and verified the documents. Admittedly, a part of plywood was to be delivered at Seshadripuram and the remaining part of the plywood was to be delivered at Mosque Road, Bangalore. In view of restriction of movements of the lorries at Mosque Road, the plywood was being unloaded in the godown situated at Seshadripuram. The provisions of the Act do not prohibit the delivery of goods other than the place of purchaser. The goods in transit were the tax suffered

goods. The appellant has not violated any of the provisions of Section 28-A(2)(3) read with Rule 23-B of the Rules. As a matter of fact, the appellant had delivered the goods at the instructions of the consignee. In the instant case, both the purchaser and the consignee are one and the same. The purchaser had instructed the driver of the lorry to deliver the goods at a place convenient to him. There is no evasion of tax or misrepresentation of facts. The respondent has completely overlooked the delivery notes as well as the invoices. The Appellate Authority, after considering the matter in detail, set aside the penalty imposed by the Commercial Tax Officer. The Revisional Authority without examining the matter in detail reviewed the said order, which is contrary to law. The order passed by the Appellate Authority is not prejudicial to the interest of the Revenue and sought for allowing the appeal by setting aside the order dated 5.5.2009 passed by the Additional Commissioner of Commercial Taxes, Bangalore.

5. Sri Vedamurthy, learned HCGP supported the order passed by the Revisional Authority and contended that the appellant has violated Sections 28-A(2)(b) and (d) of the KST Act read with Rule 23-B of the Rules. The appellant ought to have unloaded the goods at Mosque Road, Bangalore instead of unloading the goods at Seshadripuram, Bangalore, which is contrary to law. The penalty imposed is in accordance with law and sought for dismissal of the appeal.

6. We have carefully considered the arguments addressed by the learned counsel for the parties and perused the orders impugned and other documents.

7. After hearing the learned counsel for the parties, the only point that arises for our consideration in this appeal is:

Whether the appellant has violated Section 28-A(2)(b) & (d) of the KST Act?

8. During the course of arguments, the Advocate appearing for the appellant made available the original records relating to the delivery note in Form No. 39 dated 4.3.2002 and two invoices dated 4.3.2002. The delivery notes sent by the appellant was endorsed by the Checkpost Authority at Puttur. In the delivery note, a part of the goods was to be delivered at Seshadripuram, Bangalore and the remaining goods was to be delivered at Mosque Road, Bangalore. The name of consignee was mentioned as M/s. M.M. Housing Pvt. Ltd., Infantry Road, Bangalore. Further in the invoice also same thing was mentioned and sale tax has also been levied on the said goods. The main contention of the appellant is that in view of restriction in the movement of lorries at the Mosque Road, the purchaser had instructed to unload the goods at Seshadripuram and in the process of unloading the goods at Seshadripuram, the said vehicle was intercepted by the Authorities and found that the goods were being unloaded violating Section 28-A(2)(b) & (d) of the KST Act and Rule 23-B of the Rules and imposed penalty. On an appeal filed by the appellant, the Appellate Authority after considering the matter in detail and on verification of the records, found that there is no violation of any of the provisions of the Act. The goods in transit were duly covered by the relevant documents specified u/s 28-A(2) of the KST

Act. The goods were accompanied with the delivery notes as well as invoices and the taxes are collected on the bills. However, the Revisional Authority on verification of the records found that the order passed by the Appellate Authority is prejudicial to the interest of the Revenue and initiated revisional proceedings u/s 22A(1) of the KST Act. The reasons assigned by the Revisional Authority to set aside the order passed by the Appellate Authority is erroneous in law. No document has been produced to show that the order passed by the Appellate Authority is prejudicial to the interest of Revenue and it is erroneous in law. As stated earlier, the goods in transit were fully covered by two delivery notes as well as two invoices. A part of goods was to be delivered at Seshadripuram, Bangalore and the remaining part of the goods was to be delivered at Mosque Road, Bangalore. In view of restriction of movement of the lorries in the Mosque Road, the goods were directed to be unloaded at Seshadripuram, Bangalore. The invoices produced by the appellant clearly disclose that since the goods were transported from Mangalore, the tax was collected on the bill and there is no attempt on the part of the appellant for evasion of tax and the penalty cannot be imposed u/s 28A(4) of the Act on the ground of violation of any of the provisions u/s 28-A(2) of the Act and Section 28(3) of the KST Act read with Rules 23-B of the Rules. On verifying the original records, we found that there is no violation of any of the provisions of the Act. The interest of government is fully protected. We find that the order passed by the Revisional Authority is contrary to law. There is no allegation with regard to evasion of tax. The only allegation is that instead of delivering the goods at Mosque Road, it was unloaded at Seshadripuram Bangalore. Therefore, we find that the order passed by the Revisional Authority cannot be sustainable. The revisional power can be invoked, only if any order prejudicial to the interest of the revenue is passed by the Authorities. In the instant case, there is no such allegation. The Appellate Authority, after considering the matter in detail set aside the order of imposing the penalty. Hence, we find that there is no infirmity or illegality in the said order. The order passed by the Revisional Authority cannot be sustainable. Accordingly, we pass the following:

ORDER

The appeal is allowed. The order dated 5.5.2009 passed in No. ZAC-1/MNG/SMT-08/08-09 on the file of the Addl. Commissioner of Commercial Taxes Zone-1, Bangalore is set aside and the order passed by the Appellate Authority is confirmed.