(2005) 06 KAR CK 0084

In the Karnataka High Court

Case No : Writ Petition No. 15174 of 2005

N. Selvamani APPELLANT

Vs

State of Karnataka and Others RESPONDENT

Date of Decision : 30-06-2005

Acts Referred:

Constitution of India, 1950 — Article 265
Karnataka Sales Tax Act, 1957 — Section 28 AA (4), 28 AA (5), 5 (5)

Citation : (2005) 3 KCCR 203 SN : (2007) 8 VST 699

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : T.K. Lakshmisha and P. Gayathri, for the Appellant; Niloufer Akbar, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—The order dated September 30, 2003, copy at annexure A to the petition, passed by the third respondent-the Commercial Tax Officer, under which certain tax payable under the Karnataka Sales Tax Act, 1957, was determined as also certain penalties levied is sought to be quashed by filing this writ petition.

2. The submission of Sri Lakshmisha, learned Counsel for the petitioner, is that the petitioner is the owner of a goods carriage vehicle ; that he had allowed his vehicle for transportation by a company located at Mangalore for transporting their goods; that while the vehicle was transporting certain goods belonging to the said person which had been checked at the check-post and the authorities under the Act on noticing certain irregularities had foisted certain tax liability and the petitioner being called upon to make good the tax liability and penalty, as the owner of the vehicle, which was carrying the goods, the learned Counsel for the petitioner submits that the petitioner is aggrieved by this order; that there is no liability on the owner of the vehicle; that the fastening of the liability on the petitioner is without authority of law and therefore the assessment order with

regard to the tax liability as well as the order levying penalty are required to be quashed.

3. The submission of the learned Counsel for the petitioner is that the petitioner is not the Owner of the goods in question and therefore, there was no liability on his part and that he is not accountable for paying the tax on behalf of the owner of the goods. Unfortunately, for the petitioner sub-sections (4) and (5) of Section 28AA specifically indicate that the owner of the vehicle in which goods have been carried and who has failed to produce the relevant documents shall be liable to pay the tax and also by way of penalty, a sum not exceeding twice the tax liability. Section 28AA(4) and (5) of the Act, reads as under:

Section 28AA. Transit of goods by road through the State and issue of transit pass. - (4) If the driver or any other person-in-charge of the vehicle does not comply with Sub-section (2), it shall be presumed that the goods carried thereby have been sold within the State by the owner of the vehicle and shall, notwithstanding anything contained in Sub-section (5) of Section 5, be assessed to tax by the officer empowered in this behalf in the prescribed manner.

(5) If the owner of the vehicle having obtained the transit pass as provided under Sub-section (1) fails to deliver the same as provided under Sub-section (2), he shall be liable to pay by way of penalty a sum not exceeding double the amount of tax leviable on the goods transported.

4. In the light of such enabling provisions, it cannot be contended that levy of tax and penalty is in violation of Article 265 of the Constitution of India. The question as to whether the amount of tax levied is correct or not is a matter which is not necessary to be gone into by this Court in exercise of writ jurisdiction, if the petitioner has not availed of the statutory remedy of appeal. The writ petition is dismissed.

