(1996) 02 KAR CK 0021

In the Karnataka High Court

Case No : S.T.A. No''s. 8 and 8A of 1994

Nath Steel and Non-ferrous Re-rolling Mills and another — APPELLANT

Vs

Additional Commissioner of Commercial Taxes and another — RESPONDENT

Date of Decision : 20-02-1996

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 22 A, 28 A (4)

Citation : (1997) 104 STC 118

Hon'ble Judges : S. Rajendra Babu, J;R.V. Raveendran, J

Bench : Division Bench

Judgement

R.V. Raveendran, J.—These appeals are directed against an order of the revisional authority dated October 15, 1993 passed u/s 22A of the Karnataka Sales Tax Act, 1957 (for short, "the Act").

2. On September 4, 1990, vehicle lorry bearing No. TCE 9505 was checked at the Tumkur Road Sales Tax Check-post (Inward). The check-post authority found that the documents in regard to the following two consignments were not in order :

(a) Consignment of 56 bales of cotton yarn belonging to the appellant in STA No. 8 of 1994. The pro forma Invoice dated September 1, 1990 tendered by the driver showed the appellant as the consignor and consignee and the value of the consignment as Rs. 22,176 and the transportation was by way of stock transfer from Bombay to Bangalore. Another documents accompanying the said consignment (that is bill No. 180 dated July 13, 1990) under which the appellant had purchased the goods showed the value of 98 bales as Rs. 3,84,650 and corresponding value for 56 bales was Rs. 2,19,800. Therefore, he inferred that the documents were not in order.

(b) In regard to another consignment of 29 boxes of plastic hangers, the invoices tendered (Nos. 30 and 32 dated September 1, 1990) disclosed that one M/s. Amrit Plastics, Bombay was the consignor and M/s. Pyralal Private Ltd., Bombay (Appellant No. 2 in STA No. 8A of 1994) was the consignee and that the delivery was to be effected to M/s. Pramodh Silk Industries, Bombay. He therefore inferred that the documents did not pertain to the said consignment transported from Bombay to Bangalore.

3. The check-post officer called upon the Driver to file objections immediately and as it was not filed, he levied a penalty of Rs. 8,792 in regard to the consignment of cotton yarn and Rs. 11,954 in regard to the consignment of plastic hangers by order dated September 6, 1990, passed u/s 28A(4) of the Act. Feeling aggrieved, the appellants herein filed two appeals.

4. The first appellant contended that the value of 56 bales of cotton yarn which was being transferred by way of stock transfer was Rs. 2,21,760, but by mistake "zero" was omitted and consequently, the value was mentioned as Rs. 22,176 in the pro forma invoice, that it was a clerical error and there was no intention to evade payment of tax. The second appellant contended that it had its head office at Bombay and a branch at Bangalore, that the Bombay office had purchased plastic hangers from Amrit Plastics under invoice dated September 1, 1990 and the goods were sent to Bangalore by way of stock transfer and the lorry receipt clearly showed that the second appellant was the consignor and consignee; and by mistake, it was noted in the bill as "delivery to Pramodh Silk Industry, Bombay" and that there was no intention to evade tax. They also contended that these facts were not explained to the check-post officer leading to levy of penalty. The appellate authority, before whom necessary documents were produced, examined the same and the documents accompanying the consignments and accepted me said explanations. Consequently, he set aside the orders of penalty and levied a nominal penalty of Rs. 1,000 for not explaining these facts to the check-post officer.

5. The revisional authority, in exercise of his powers of revision u/s 22A of the Act, issued show cause notice dated May 21, 1993 and thereafter passed an order dated October 15, 1993 setting aside the order of the appellate authority and restoring the penalty orders passed by the check-post officer. The revisional authority held that production of faulty documents with a wrong value in the case of first appellant and production of a document showing that the goods were deliverable at Bombay being transported to Bangalore in the case of the second appellant, were lapses which could not be considered as either clerical mistakes or mistakes on account of oversight and consequently, the order of the appellate authority were prejudicial to the interests of revenue. Feeling aggrieved, the appellants have filed these appeals.

6. It is seen that the consignments of the first appellant was accompanied not only by a pro forma invoice, but also the original invoice under which the first appellant purchased the goods from M/s. Malwa Cotton Spinning Mills Ltd., showing the full price. If there was any intention to avoid tax, the first appellant would not have enclosed the original invoice showing the cost at which the first appellant had purchased the consignment. The explanation of the first appellant that in the pro forma invoice, the value was wrongly mentioned as Rs. 22,176

instead of Rs. 2,21,760 on account of clerical error appears to be reasonable. Similarly, the explanation that the invoice in favour of the second appellant contained a wrong endorsement for delivery at Bombay, also satisfactorily explains the matter. The transportation was by way of stock transfer and the lorry receipt clearly showed that the appellants were the consignors and consignees in regard to their respective consignments. Having examined the documents, the appellate authority satisfied himself that there was no intention to avoid tax and consequently levied a nominal penalty of Rs. 1,000 in each case for not explaining the facts to the check-post officer. The said order did not call for revision. There is no error in the order of the appellate authority nor is it prejudicial to the interest of the Revenue. The mere fact that the matter was not explained to the check-post officer properly was not by itself sufficient to revise the order of the appellate authority. In fact, that has been note of by the appellate authority in levying nominal penalty of Rs. 1,000. Therefore, the order of the revisional authority cannot be sustained.

7. Consequently, these appeals are allowed. The order of the revisional authority is set aside and the order of the appellate authority is restored.

8. Appeals allowed.

