(2007) 04 KAR CK 0032

In the Karnataka High Court

Case No : S.T.A. Nos. 443 and 444 of 2002, affirmed

Naveen Wines, Hubli APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 13-04-2007

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 12(3)

Citation : (2009) 67 KarLJ 456

Hon'ble Judges : Jawad Rahim, J;R. Gururajan, J

Judgement

Jawad Rahim, J.-This revision petition under Section 23(1) of the Karnataka Sales Tax Act, 1957 and Karnataka Sales Tax Rules, 1957 made thereunder is preferred by the assessee-M/s. Naveen Wines aggrieved by the order passed in STA Nos. 443 and 444 of 2002 by the Karnataka Appellate Tribunal, Bangalore, dated 16-12-2003, vide Annexure-A, confirming the order passed in the first appeal by the Joint Commissioner of Commercial Tax (Appeals), Dharwad Division, Hubli, dated 20-12-2001, vide Annexure-B and consequent confirmation of levy and addition of tax upon assessee for escaped assessment during the assessment years 1994-95 and 1995-96 of the Assessing Authority, i.e., the Deputy Commissioner of Commercial Taxes (Assessment-II), Hubli, dated 15-3-1999, vide Annexures-C and D.

2. The facts manifesting from the records reveal that the revision petitioner is a registered dealer under the Karnataka Sales Tax Act, 1957 in the matter relating to business as retail dealer in liquor. During the assessment year 1994-95 and 1995-96 the Assessing Officer concluded the assessment under Section 12(3) of the Act by adding Rs. 2,40,000/- for the year 1994-95 and Rs. 4,35,540/- for the year 1995-96, noticing that there was suppression of sales. Such an assessment was done on the report of the Deputy Commissioner of Commercial Taxes (Intelligence), who conducted inspection on 13-7-1995 in the premises of Naveen Traders and unearthed certain incriminating records.

3. The incriminating documents seized during the raid indicate the sales turnover

of M/s. Naveen Wines, which documents were concealed in the business premises of its sister concern, namely, Naveen Traders. On the basis of such documents escaped assessment has been done to levy the tax. Aggrieved by the said assessment dated 15-3-1999 the assessee was in an appeal before the Joint Commissioner of Commercial Taxes (Appeals), Dharwad Division, Hubli in KST Appeal No. 112 to 114 of 2000. The Appellate Authority dismissed the appeal by common order dated 20-10-2001 confirming the additions made to the reported turnovers, besides holdings that the seized incriminating documents are reliable and those documents pertain to the business transaction of the revision petitioner.

4. As against the said order the assessee was in second appeal before the Karnataka Appellate Tribunal, Bangalore in STA Nos. 443 and 444 of 2002. Second Appellate Authority has confirmed the assessment and the order of the First Appellate Authority vide its judgment dated 16-12-2003. Aggrieved by this order the assessee is in revision before this Court.

5. We have heard learned Counsel Sri S. Narayana appearing for revision petitioner and Smt. Sujatha, Government Pleader appearing for respondent-Department.

6. The learned Counsel for revision petitioner would contend that the documents seized and received in evidence at exhibits were not found from the place of business of the revision petitioner nor there was any material to hold that the same reflect business transaction of the petitioner.

7. In order to sustain the addition made with regard to turnover relating to business of the petitioner the Assessing Authority has held in para 6 of the order that the facts verifiable on records show that the Deputy Commissioner of Commercial Taxes (Intelligence), Hubli, visited and inspected the place of business of Naveen Traders at Laxmi Complex, Neeligin Road, Hubli on 13-7-1995 at 11.00 a.m. and one Vinayaka P. Akalawadi, the husband of the petitioner was present. In his presence he seized the documents and verified on 2-11-1995. The said person had produced certain ''regular books of accounts'' for comparison. He had also confirmed by his statement before the Inspecting Officer that there was non-accounting of certain transactions, which were actually disclosed in Ex. P. 12. Ex. P. 12 (loose account slips) numbering 25 relating to Naveen Wines, Kalghator, show actual sales between the period 28-3-1995 to 14-6-1995. He admitted that the transaction was regarding sale of liquor in the retail shop and on that basis the TOT concluded evasion of tax to the extent of Rs. 52,158/- and SC in a sum of Rs. 7,824/- and TOT at Rs. 1,304/-. Sri Vinayaka P. Akalawadi, had admitted sales suppression and tax liability thereon, which was evaded and he undertook to pay the sales tax through cheques and he also undertook to get the offence compounded departmentally to avoid prosecution.

8. Sri Narayana, the learned Counsel for petitioner would contend that the

Assessing Officer as also the Appellate Authorities, have failed to notice that the inspection conducted by the Deputy Commissioner (Intelligence) of the Tax Department on 13-7-1995 was at Lakshmi Complex, Neeligin Road, Hubli, which premises neither belong to the petitioner nor it was petitioner''s place of business. Petitioner''s business premises at Deshpandenagar, Hubli, was admittedly not inspected at any time.

9. The alleged incriminating documents pertaining to sale of liquor as retail sales for the relevant assessment period, i.e., 1994-95 and 1995-96 were recovered from the business place of M/s. Naveen Traders, of which Sri Vinayaka P. Akalwadi was the partner. His statement that there was suppression of sale for the said period in the returns filed would not bind the petitioner.

10. The Assessing Authority has based its finding regarding alleged evasion of tax on the inspection report dated 13-7-1995 and recovery of Ex. P. 12 (25 sheets). But, those documents were not referred to the petitioner for her comment and no opportunity was given to her to refute the allegations. The statements given by Vinayaka P. Akalwadi during enquiry by the Assessing Authority, wherein he admitted tax evasion of petitioner concern and undertook to compound the offence, would not bind the petitioner as he had no involvement in the business of the petitioner. The petitioner concern is a proprietary concern.

11. He would also contend that the assessment order at Annexures-C and D and order of the First Appellate Authority at Annexure-B, mainly refers to "admission of guilt" by Vinayaka P. Akalwadi, who is Managing Director of Naveen Traders and was neither the partner nor the proprietor of the petitioner concern. Petitioner had not given any Power of Attorney or authorisation to him to make any submission. Therefore, such statement, even if it is incriminating, cannot be a basis for attributing evasion of tax by the petitioner.

12. Letter extracted in Annexure-B and relied upon by the First Appellate Authority is not of the petitioner and thus could not have been acted upon. The orders impugned and the report, are on the basis of presumption that Vinayaka P. Akalwadi was the Managing Partner, but that has not been established. Since, the petitioner has not been given any opportunity to defend imposition of addition of tax for the relevant period as indicated in the impugned assessment order are not sustainable. The First Appellate Authority as also Second Appellate Authority, has missed to notice this vital point, which has resulted in saddling the petitioner with additional tax and penalty. Such imposition and levy of tax is unsustainable.

13. He would also challenge the imposition of penalty under Section 12(4) of the Act for Rs. 5,000/- each in respect of both assessment years. In this regard, it was urged that imposition of penalty, would necessitate only if there to be admission or proof of evasion of tax. In the instant case as very tax evasion is not established the authorities cannot invoke Section 12(4) of the Act, to levy penalty.

14.Per contra, Smt. Sujatha, learned Government Pleader appearing on behalf of respondent-State would contend that the proposition notice was issued prior to the assessment and in response to which the petitioner had appeared and contested. Our attention was drawn to the statement filed by the petitioner-assessee with regard to the said proposition notice and had in fact, been duly represented.

15. Having heard both sides, we have perused the records.

16. The inspection report dated 13-7-1995 reveals detection of incriminating records pertaining to retail sales of M/s. Naveen Wines. These documents were seized and have been exhibited at Ex. P. 12 (12 sheets) during the enquiry by the Assessing Authority. Though, it is said that petitioner had no notice of such enquiry and that Vinayaka P. Akalwadi had no authority to represent the petitioner, records are to the contrary.

17. It is seen that during the enquiry one Mrs. Varalakshmi Vinayaka Akalwadi, claiming to be the proprietor of the petitioner has filed a statement on 3-2-1997. It is in answer to the show-cause notice issued regarding evasion of tax/ suppression of tax for relevant period 1994-95. She has referred to the finding of the Intelligence Authority during the surprise inspection conducted by it. She has also contended in the said reply that the place from where the documents were seized did not belong to her. The only ground urged in the reply is that the loose slips (Ex. P. 12) seized during such surprise inspection do not form part of the records maintained by the petitioner concern regarding sales turnover. But, there is no specific denial to the fact that the sale turnover reflected in those seized documents (Ex. P. 12), does not pertain to the petitioner''s business. It is also seen that during the inquiry she was represented by the learned Advocate Sri L.G. Urankar and thus, she availed full opportunity to resist the action of the assessment undertaken by the authorities.

18. Also, it is noticed that much before it, she has also appeared before Assessing Authority through her Counsel Sri S.M. Kulkarni and filed the returns. The order sheet maintained by the Assessing Authority shows that during the hearing she had availed full opportunity and it is during this period her husband Vinayaka P. Akalwadi has also been examined. She has not tendered any evidence.

19. The moot question for consideration would be whether the documents at Ex. P. 12 pertain and relate to the business of M/s. Naveen Wines-petitioner herein?

20. Intelligence report shows that the premises of Naveen Traders was inspected on 13-7-1995. Admittedly, it was the business place of M/s. Naveen Traders at Deshpandenagar, Hubli. Petitioner contends that Naveen Wines is not running business at that place. Even if it be so, the question is not where the petitioners are carrying on business, the question is, are the documents seized during the inspection on 13-7-1995 pertain to business transaction of the petitioners. Those documents which have been exhibited reveal are the records disclosing the

business transaction of M/s. Naveen Wines. The seizure of such documents from a different place or from the place of the petitioner''s business, is immaterial. What is material is whether the transaction of retail sale noticeable from Ex. P. 12 (12 sheets) is the actual transaction of retail sale of the petitioner''s business. The Assessing Authority has held enquiry for ascertainment of this fact on the basis of the defence put up by the petitioner. Therefore, it was upto the petitioner to substantiate that the transaction under Ex. P. 12 does not refer to her business concern. That has not been done. But, she has only challenged the proposition notice contending that the documents were seized, not from the place of her business. Such a ground is untenable in the absence of any acceptable evidence, that these documents are not reflecting the transaction of the petitioner. Even the grounds urged in the revision petition are mainly on this aspect. There is no specific denial about the documents or Ex. P. 12. Besides, it is noticed Sri Vinayaka P. Akalwadi, has been representing the petitioner.

21. In fact, several correspondence addressed to the Deputy Commissioner, Tax assessment, Hubli, on behalf of Naveen Wines are signed by Vinayaka P. Akalwadi. Reference could be made to the letter dated 8-5-1997 regarding payment and the statement of KST for the period 1994-95. If he was not representing Mrs. Varalakshmi Vinayaka P. Akalwadi, then it is not explained under what authority he was pursuing tax assessment on behalf of the petitioner.

22. Taking note of these circumstances, we are satisfied that the document-Ex. P. 12 incriminates the petitioner concern for evasion of tax and rightly the authorities have passed order of addition of tax on the basis of undisclosed turnover under these documents and suppression of actual sale in the returns filed during the relevant period 1994-95 and 1995-96.

23. In the result, the order of addition of tax made by the Assessing Authority in a sum of Rs. 2,40,000/- for assessment year 1994-95 and Rs. 4,35,540/- for the assessment year 1995-96 is tenable. Consequently, on proof of evasion of such tax the Assessing Authorities have rightly invoked Section 12(4) of the Act to impose penalty.

24. We therefore, do not find any reason to interfere with the impugned order at Annexure-A passed by the Karnataka Appellate Tribunal in STA Nos. 443 and 444 of 2002, dated 16-12-2003. Consequently, we confirm the order passed by the Joint Commissioner of Commercial Tax (Appeals), Dharwad Division, Hubli, dated 20-12-2001 in No. AP/KST.112-114/99-2000, vide Annexure-B and assessment orders of the Deputy Commissioner for Commercial Taxes (Assessment-II), Hubli, dated 15-3-1999, vide Annexures-C and D.

25. In the result, the petition is dismissed.