(2012) 08 KAR CK 0400

In the Karnataka High Court

Case No : Sales Tax Appeal No. 21 of 2010

Omega Elevators APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 02-08-2012

Acts Referred:

Citation : (2013) 75 KarLJ 113

Hon'ble Judges : K. Sreedhar Rao, J;B. Manohar, J

Bench : Division Bench

Advocate : K.S. Suryanarayana, for the Appellant; Sujatha, Additional Government Advocate, for the Respondent

Judgement

K. Sreedhar Rao, J.—The assessee is a public limited company in Ahmedabad and its Branch Office at Bangalore dealing in sale of lifts and lift parts. On 1-9-2008 the lift materials were dispatched in a lorry by the head office of the assessee. On 6-9-2008, when the goods were in the process of unloading one consignment at Chamarajpet, a mobile check-post squad inspected the same. They found that the goods were not accompanied by the sale invoice and delivery note. A memo was issued to the assessee on 6-9-2008 levying a penalty of Rs. 3,82,868/-. The AO passed an order on 16-9-2008 holding that the transaction of local sale from Branch Office at Basavanagudi to the customer at Chamarajpet amounts to resulting in violation of Section 53 of the Karnataka Value Added Tax Act, 2003 (for short, ''Act'') and imposed penalty on the entire consignments found in the lorry. The fact reveals that the assessee had given an explanation on 16-9-2008 at 4.30 p.m. The order was passed by the AO at 4.00 p.m. The assessee aggrieved by the order filed an appeal before the Joint Commissioner of Commercial Taxes (Appeals-I), Bangalore. The Joint Commissioner held that there is no violation to levy penalty under the Act. It is also found that the assessee had filed the returns subsequently and paid the tax and allowed the appeal on the ground that the AO has passed the order without giving opportunity thus set aside the order of AO.

2. The Revenue being aggrieved by the said order filed a revision before the Additional Commissioner of Commercial Taxes, Zone-1, Bangalore. The Additional Commissioner in Revision found that the order of the Appellate Authority is illegal and adverse to the interest of the Revenue for the reason that the materials disclose that the goods were not accompanied by the sale invoice and delivery note at the time of check. It is also found that the documents were not checked and sealed at exit check-post and the seal is not visible on the documents. The documents do not disclose that it is an inter-State sale and found that the transaction is a local sale effected to branch at Bangalore. Thus the Additional Commissioner in Revision confirmed the order of penalty and set aside the order of Appellate Authority. The assessee being aggrieved by the said order has filed this appeal.

3. The Counsel for the appellant submitted that in the normal course of business, the Branch Office at Bangalore would procure the order and communicate to the head office and they would manufacture according to the specification and deliver the goods to the customer. The contract is a work contract. In the instant case, the goods in question was transported from the head office to its Branch Office at Bangalore and the goods were delivered at Chamarajpet. Therefore, the question of lorry receipt does not arise. The issue of sale bill and delivery note arises only after completion of sale since it is a work contract. Therefore, the question of non-compliance of Section 53 of the Act does not arise. It is further submitted that the assessee had filed the returns and paid the tax as required under law. There was no intention to evade the tax. In the circumstances, when it is inter-State sale, the question of application of the Act does not arise at all. The order of levy of penalty by the AO is bad in law.

4. The Counsel for the department, per contra, submitted that the requirement of Section 53 of the Act insists that any goods transported should be accompanied by sale invoice and delivery note indicating the particulars of the consignee. In the instant case, the sale is effected by the branch office to the customer at Bangalore and it is a local sale. Therefore, the Act applies to the transaction and the order passed by the AO is in accordance with law.

5. Section 53(12) of the Act mandates that before penalty is levied, an opportunity should be given to the defaulter and if the explanation does not constitute sufficient cause, then penalty has to be levied. In the instant case, ten days time to be given for submitting explanation. The order in question is passed before the expiry of ten days time. In fact, just half an hour prior to submission of the explanation, the order was passed in haste. The order passed by the AO is in violation of the principles of natural justice. The Appellate Authority had found that there is no violation of Section 53 of the Act.

6. The following substantial question of law would arise for consideration:

Whether the transaction in question amounts to inter-State sale or not?

The provision of KVAT Act does not apply and the contra finding of the Revisional

Authority in this regard is perverse and contrary to the materials on record. When the AO has not considered the materials and not given proper opportunity, it would not be fair to impose the penalty. In that view of the matter, the revision order dated 16-12-2009 passed in No. ZAC-I/BCD-I/SMR-60/09-10 by the Additional Commissioner of Commercial Taxes, Zone-1, Bangalore is set aside and the matter is remanded to the Assessing Officer to consider the matter afresh and pass appropriate order in accordance with law after giving proper opportunity to the assessee. The AO need not be influenced the observations, if any, made by the Revisional Authority.

