(2013) 12 KAR CK 0370

In the Karnataka High Court

Case No : STRP No. 207 of 2011

State of Karnataka APPELLANT

Vs

CICB - Chemicon Pvt. Ltd. RESPONDENT

Date of Decision : 13-12-2013

Acts Referred:

Citation : (2014) 44 GST 54 : (2014) 78 KarLJ 126 : (2014) 71 VST 182

Hon'ble Judges : Rathnakala, J;N. Kumar, J

Bench : Division Bench

Advocate : S. Sujatha, A.G.A, for the Appellant;

Judgement

N. Kumar, J.—The revenue has preferred this revision petition challenging the order passed by the Tribunal, which has reduced the penalty imposed by the lower authorities from Rs. 1,04,113/- to Rs. 10,000/-. When the authorities intercepted the goods vehicle and called upon the person incharge of the goods vehicle to produce Form VAT 515 and invoice and Form 505, the same was not produced. Therefore, the inspecting authority came to the conclusion that there is an attempt to evade tax and finally passed an order u/s 53(12) and levied minimum penalty of Rs. 1,04,113/-, the minimum penalty payable under the aforesaid provisions. Aggrieved by the said order, the assessee preferred an appeal to the 1st Appellate Authority, which dismissed the appeal. Aggrieved by the said order, the assessee preferred a second appeal to the Tribunal. Though the Tribunal confirmed the finding regarding failure to produce the documents at the time of check and held it is an offence liable to be penalized u/s 53(12) of the Act, it further held that there is no clear intention on the part of the assessee to evade the taxes due to the Government and as such, it is not taxable. As the penalty is imposed for technical omissions, a lenient view is called for. Therefore, the penalty imposed was reduced to the nominal amount of Rs. 10,000/-. Aggrieved by the said order, the revenue is in appeal.

2. This Court had an occasion to consider the question whether any discretion is left with the authorities to reduce the quantum of penalty as prescribed under

the aforesaid provision. This Court, in the case of ''State of Karnataka v. M/s. Camellia Clothing Ltd.'' in STRP No. 71/2011 decided on 2.3.2012 interpreting Section 28A(4) of the Karnataka Sales Tax Act, which is in pari-materia with Section 53(12) of KVAT Act, 1953, held that the minimum penalty leviable is not less than double the amount of tax leviable.

3. The Tribunal had no jurisdiction to reduce the tax to Rs. 10,000/- ignoring the aforesaid mandatory provision. In view of the amended provision, the discretion vested is only in respect of imposition of penalty above two times the tax payable and less than three times the tax payable. The said discretion cannot be exercised either to impose tax less than two times or more than three times.

4. Yet another Division Bench of this Court in the case of ''State of Karnataka v. M/s. D-M-E Company (India) P. Ltd.'' in STRP No. 349/2012 decided on 27.8.2013, interpreting Section 53(12)(a)(ii) of the Kvat Act, has held that no discretion is vested in the authority or the Appellate Tribunal to either impose less or reduce the penalty less than double the amount of tax leviable under the provision. Having regard to the language employed in this provision, it is clear that the provision is mandatory in nature and no discretion is vested with the Commercial Tax Officer or the Appellate Tribunal to levy less or reduce penalty under this provision.

5. In the light of the aforesaid provision of law, the Tribunal has committed a serious error in modifying the order of the Joint Commissioner of Commercial Taxes, which had imposed only the minimum penalty payable under the provision and in reducing the same.

For the above said reasons, we pass the following:

ORDER

Petition is allowed. The impugned order passed by the Tribunal is set aside. The order passed by the lower Appellate Authority as well as the original order is restored.

