(2013) 08 KAR CK 0084

In the Karnataka High Court

Case No : Sales Tax Revision Petition No. 349 of 2012

State of Karnataka APPELLANT

Vs

D-M-E Company (India) Private Limited RESPONDENT

Date of Decision : 27-08-2013

Acts Referred:

Citation : (2013) 77 KarLJ 309 : (2014) 71 VST 178

Hon'ble Judges : Dilip B. Bhosale, J;B. Manohar, J

Bench : Division Bench

Advocate : S. Sujatha, for the Appellant; Narayan Shenoy, for the Respondent

Final Decision : Allowed

Judgement

Dilip B. Bhosale, J.—We have heard learned Counsel for the parties. We admit the revision petition to consider the following question of law and by consent, heard forthwith for final disposal: Whether the Tribunal has power/jurisdiction to reduce the penalty leviable u/s 53(12)(a)(ii) of the Karnataka Value Added Tax Act, 2003 and whether sufficient cause was shown for not carrying the delivery note in Form VAT 505 with the consignment?

This revision is preferred against the order dated 30-9-2011 passed by the Karnataka Appellate Tribunal at Bangalore in STA No. 686 of 2011, whereby, the appeal filed by the respondent was partly allowed. The Tribunal while confirming the order dated 25-10-2010 passed by the Appellate Authority, reduced the penalty imposed by the Commercial Tax Officer u/s 53(12)(a)(ii) of Karnataka Value Added Tax Act, 2003 (for short, ''the Act'') from Rs. 2,06,554/- to Rs. 5,000/-. 2. The respondents are Private Limited Company and a registered dealer under the provisions of the KVAT Act, 2003. On 13-2-2010, they were transporting some goods worth Rs. 8,26,217/-, for exhibition to Mumbai in a lorry bearing Registration No. KA-01 C-9447. The goods were checked by the Check-post Officer at Tumkur Road, Bangalore, on 13-3-2010. When documents were verified by the Check-post Officer, a delivery note in Form VAT 505 as prescribed under the Karnataka Value Added Tax Rules, 2005 (for short, ''the Rules''), was not there in the documents. When the Check-post Officer demanded the delivery note which was mandatory for the respondent to carry, they failed to produce the same in support of the movement of goods. The Check-post Officer, therefore, levied penalty of Rs. 2,06,554/-, after following the due procedure. Since there is no dispute that the procedure contemplated was followed while levying the penalty, we are not entering into further details.

3. It has also come on record and not disputed before us that the respondent was not carrying a delivery note in Form VAT 505 along with their goods as contemplated by Rule 157(1) of the Rules. As a matter of fact, the respondents in their letter dated 15-3-2010, addressed to the Commercial Tax Officer, accepted that the delivery note in Form VAT 505 was not accompanied with the consignment. Therefore, the only question that remained for the Authorities to consider was, whether sufficient cause was shown for not carrying the delivery note in Form VAT 505 and whether the action of levying penalty was correct? We have independently examined the relevant provisions in the light of the admitted facts. We are of the opinion that neither the Commercial Tax Officer nor the Tribunal has any power to reduce the penalty than what is prescribed u/s 53(12)(a)(ii) of the Act.

4. Clause (b) of sub-section (2) of Section 53 of the Act provides that the owner or person in charge of goods vehicle shall carry with him, such documents as may be prescribed, or notified by the Commissioner in respect of the goods carried in the goods vehicle. Section 53(12)(a)(ii) of the Act provides that, the officer in charge of a check-post or a barrier or any other officer in respect of any contravention of, or non-compliance with, the provisions of sub-section (2), for which sufficient cause is not furnished, levy a penalty which in cases other than those falling under sub-clause (i) of clause (a) of sub-section (12) of Section 53, shall not be less than double the amount of tax leviable but should not exceed three times the amount of tax leviable in respect of the goods under transport. In the present case, we are not concerned with sub-clause (i) and proviso to sub-clause (ii) of clause (a) of sub-section (12) of Section 53 of the Act.

5. A conjoint reading of sub-clause (ii) of clause (a) of sub-section (12) of Section 53 and Section 53(2) of the Act, to the extent, it is necessary, would show that if the owner or a person in charge of a goods vehicle is not carrying with him such document as may be prescribed in respect of the goods carried in the goods vehicle, and if sufficient cause is not furnished for not carrying the prescribed documents, the officer in charge of a check-post can levy a penalty which shall not be less than double the amount of tax leviable.

6. The document referred to in sub-section (2) of Section 53 of the Act to be carried along with the goods or to be carried by the owner or person in charge of a goods vehicle, are prescribed under Rule 157 of the Karnataka Value Added Tax Rules, 2005. Admittedly, in the present case, delivery note in Form VAT 505, as prescribed under Rule 157, was not accompanied with the consignment or

carried either by the owner or a person in charge of the goods vehicle. When the officer in charge of the check-post demanded the prescribed documents, the respondent did not show any cause to the concerned authority for not carrying the delivery note with the goods/consignment. The respondent do not dispute that it is mandatory to carry delivery note in Form VAT 505 as provided for under Rule 157 of the Rules. The respondent, as a matter of fact has admitted/ accepted that they were not carrying delivery note in Form VAT 505, before the Commercial Tax Officer and paid the penalty imposed on him. Thereafter, he challenged the order of imposing penalty before the 1st Appellate Authority. The 1st Appellate Authority confirmed the order of Commercial Tax Officer.

7. The Appellate Tribunal though confirmed the findings of both the Authorities below on the point of default committed by the respondent, reduced the penalty as aforementioned, and in this backdrop, the question, as framed by us, was raised by learned Counsel for the petitioner. In support, she placed reliance upon the unreported judgment of this Court dated 2-3-2012 in STRP No. 71 of 2011 (State of Karnataka v. Camellia Clothing Limited, Bangalore 2013(76) Kar. L.J. 556 (HC) (DB)). In this case, the Division Bench was considering the provisions of the Karnataka Sales Tax Act, 1957. in particular, Section 28A(4) thereof. From bare perusal of the provisions contained in Section 28A(4) of the said Act, to the extent it is necessary, it is clear that the provisions contained therein are pari materia with the provisions contained in Section 53(12)(a)(ii) of the Act. This Court after considering the provisions contained therein are pari materia with the provisions contained in Section 28A(4), observed that the Tribunal had no jurisdiction to reduce the penalty/tax overlooking the mandatory provisions contained therein. It is further observed that no discretion is vested with the authority and/or the Tribunal, so as to exercise discretion in imposing tax/penalty less than two times or more than three times the amount of tax leviable in respect of the goods under transport. We are in agreement with the view taken by the Division Bench in the said case.

8. From bare perusal of the provisions contained in Section 53(12)(a)(ii) of the Act, it is clear 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 this 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 in the Commercial Tax Officer or the Appellate Tribunal to levy less or reduce penalty under this provision. In the circumstances, the order of the Appellate Tribunal deserves to be set aside. Order accordingly. The question of law formulated by us, is accordingly answered in favour of the petitioner and against the respondent.

Petition stands allowed.

