(2014) 09 KAR CK 0225

In the Karnataka High Court

Case No : STRP No. 102/2011

State of Karnataka APPELLANT

Vs

Gati Ltd. RESPONDENT

Date of Decision : 04-09-2014

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 28A, 28A(2), 28-A(2), 28-A(4)

Citation : (2014) 80 KarLJ 281

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

Bench : Division Bench

Advocate : S. Sujatha, AGA, Advocate for the Appellant; K.M. Shivayogiswamy, Advocate for the Respondent

Judgement

1. The State has preferred this appeal against the order passed by the Karnataka Administrative Tribunal reducing the penalty imposed u/s 28-A(4) of the Karnataka Sales Tax Act (for short the Act'') to Rs. 10,000/-.

2. The respondent is a transporter having its branches all over India he was transporting "Flame Arrestors" packed in 7 wooden cases on 10.1.2005 in vehicle No. HR-55-B-7521 which was checked by the Check Post Officer and found that the goods valued at Rs. 3,62,918/- was not supported by documents prescribed as per the provisions of Section 28-A(2) of the Act, except the G.C. Note, Sale Bill No. 092 and Delivery Challan 132. Therefore, notice was issued proposing penalty u/s 28-A(4) of the Act in contravention of the provisions of Section 28-A(2) of the Act. The respondent filed statement of objections. Over ruling the objections the Asst. Commercial Tax Officer imposed the penalty of Rs. 1,30,650/- which is triple the rate of tax 36% of the total value of the goods. Aggrieved by this order, respondent preferred an appeal which came to be dismissed. Aggrieved by the said order he preferred an appeal to the Tribunal. Though the Tribunal confirmed the finding of both the authorities that there is violation of the provisions of Section 28-A(2) of the Act, it was of the view as mens rea was essential to levy maximum penalty in contravention of the

provisions of the Act and in the instant case mens rea is absent, relying on the judgment of this Court in Larsen And Toubro Limited Vs. Addl. Commissioner of Commercial Taxes, Zone-1, Bangalore reported in 124 STC 2001 page 321, reduced the penalty to Rs. 10,000/- as done in the said case. Aggrieved by the said order, the State is in appeal.

3. We have heard the learned counsel for both the parties. Subsequent to the judgment cited supra Section 28-A(4) has undergone a substantial change by way of an amendment. This Court had an occasion to consider and interpret the aforesaid provision in the case of State Of Karnataka Vs. M/S. Camellia Clothing Ltd., in STRP No. 71/2011 dated 2.3.2012 wherein it was held as under:-

"6. The instant case falls u/s 28A(2) i.e., when the vehicle carrying the goods were intercepted and the documents were demanded though the documents were produced, they did not pertain to the goods, which they were carrying. Though correct documents were produced at the time of reply to the show cause notice, the non-compliance of the statutory provision is established. There was a violation of Section 28A(2). Therefore, Clause (b) of sub-Section 4 of Section 28A is attracted. The minimum penalty leviable is not less than double the amount of tax leviable. Therefore, the Tribunal had no jurisdiction to reduce the tax to Rs. 10,000/- ignoring the aforesaid mandatory provision. In the case of Larsen and Toubro Limited, on which reliance is placed, as the law stood then did not prescribe the minimum penalty leviable, therefore in that case this Court was justified in reducing it to Rs. 10,000/- as the discretion was vested with the Court. In view of the amended provision set out above, the discretion vested is only in respect of imposition of penalty above two times the tax payable and less than the three times the tax payable The said discretion cannot be exercised either to impose tax less than the two times or more than the three times. The said order passed is in violation of the aforesaid mandatory statutory provision and accordingly, it cannot be sustained and requires to be set aside. Hence, we pass the following:"

4. In the light of the aforesaid judgment the impugned order passed by the Tribunal cannot be sustained. However, as held in the aforesaid case discretion is conferred on the authorities in respect of imposition of penalty about two times the tax payable and less than three times the tax payable. Having regard to the facts of this case, we are of the view, justice would done by imposing minimum penalty i.e., double the tax payable. Therefore levying of penalty triple the tax payable is set aside and it is modified and reduced to double the tax payable.

5. In that view of the matter, we pass the following:

ORDER

a. Revision petition is partly allowed.

b. The impugned order passed by the Tribunal is hereby set aside.

c. The order of the Assessing Authority is restored but the penalty payable is only double the tax payable and not triple the tax payable as ordered by the Assessing Authority.

d. If the Petitioner-Revenue has collected triple the tax, it is liable to refund 1/3rd of the tax so collected.