(2011) 01 KAR CK 0223

In the Karnataka High Court

Case No : S.T.R.P. 74 of 2009

State of Karnataka APPELLANT

Vs

G.R.B. Dairy Foods Pvt. Ltd. RESPONDENT

Date of Decision : 20-01-2011

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 28 A (2) (a)

Citation : (2011) 42 VST 360

Hon'ble Judges : Ravi Malimath, J;N. Kumar, J

Bench : Division Bench

Advocate : T.K. Veda Murthy, High Court Government Pleader, for the Appellant;

Final Decision : Dismissed

Judgement

N. Kumar, J.—This is a State''s petition against the order passed by the Karnataka Appellate Tribunal in S.T.A. No. 1383/2004 dated November 11, 2008 whereunder a penalty order passed by the check-post officer was quashed.

2. The Karnataka Appellate Tribunal in detail has set out the facts of the case and in law governing the case on hand and by a considered order, has set aside the penalty imposed by the check-post officer. What could be gathered therefrom is, the goods originated from Miraj. Its destination was Hosur in Tamil Nadu. The goods were in fact under transit. In the course of inter-State trade from the State of Maharashtra to the State of Tamil Nadu at Karnataka, at the time of the vehicle check of the vehicle at Tumkur Road check-post (inward), Arasinakunte, Nelamangala Taluk. Therefore there was no liability to pay any tax to the State of Karnataka under the Karnataka Sales Tax Act. However, the lorry receipt, cash credit, memo was not tendered for checking at the entry check-post as required u/s 28A(2)(a) of the Karnataka Sales Tax Act, 1957. On the ground of contravention of the aforesaid provision penalty was imposed. The said order imposing penalty was challenged by the assessee before the first appellate authority, who reduced the penalty to 50 per cent. It is against that order, the assessee preferred a second appeal in the Karnataka Appellate Tribunal.

3. The Karnataka Appellate Tribunal, in the light of the aforesaid undisputed facts came to the conclusion that, there was no liability to pay tax under the Karnataka Sales Tax Act. There is no question of evasion of any tax payable to the State of Karnataka. Therefore there cannot be any attempt to evade any tax involved in so far as the State of Karnataka is concerned. Therefore, the levy of impugned penalty is not in consonance with the provisions of the Karnataka Sales Tax Act. It was also held, there is no discrepancy between the sales invoice tendered before the check-post officer and the goods under transit. Likewise there is no discrepancy between the entries in the lorry receipt and the documents under transit. The only discrepancy is between the invoice raised by the first inter-State seller to the second inter-State seller in the course of sale in transit. Such discrepancy can only have effect of rejection of the claim of exemption on the second inter-State sale which would result in a levy of tax under the Central Sales Tax Act on the subsequent seller, namely, Sheh Motilal Suresh Kumar. That aspect of the matter has absolutely no relevance to the levy of the impugned penalty. Therefore, relying on the said judgment of this court, it set aside the penalty imposed.

4. In the facts of the case, we do not see any justification to interfere with the well considered order as it is not a case of attempt of evasion of tax or non-payment of tax when there was no tax liability at all under the provisions of Karnataka Sales Tax Act.

5. No merits. Dismissed.

