

(2014) 07 KAR CK 0043

In the Karnataka High Court

Case No : Sales Tax Revision Petition No. 5 of 2012

State of Karnataka

APPELLANT

Vs

RCI Logistics Private Limited

RESPONDENT

Date of Decision : 03-07-2014

Acts Referred:

Karnataka Value Added Tax Act, 2003 — Section 53, 53(12), 53(12)(a)(ii), 53(2)(b)

Citation : (2014) 79 KarLJ 608

Hon'ble Judges : N. Kumar, J;B. Manohar, J

Bench : Division Bench

Advocate : R. Devdas, Additional Government Advocate, Advocate for the Appellant; Atul K. Alur, Advocate for the Respondent

Judgement

N. Kumar, J.—This revision petition is filed by the State challenging the order passed by the Karnataka Appellate Tribunal setting aside the order of penalty imposed on the assessee on the ground that in law no penalty could be imposed even though the consignment is not unloaded at the point of destination. M/s. RCI Logistics Private Limited is a transport company having its Head Office at Hubli. They were transporting a consignment of 11,280 dozen supra flexi revite (MED) tooth brush, valuing Rs. 4,95,295/- from Surat to Hubli. The bill was issued in favour of Colgate Palmolive (India) Limited, C/o. Swamy Sons Agencies, Hubli whose TIN Number was 2903050192. Instead of unloading the goods at Hubli, it was carried further beyond Hubli. The vehicle bearing No. KA-40-4227 was intercepted at Shidlagatta-Kolar Road on 16-10-2009. On enquiry, the driver of the goods vehicle explained that these goods have been brought from Surat, Gujarat and he was directed to deliver the goods in Tiruchy of Tamil Nadu. Therefore, a notice came to be issued asking him to show cause as to why penalty should not be levied. The contravention being, goods have travelled beyond Hubli on the strength of the bill which was valid only upto Hubli. The reply was filed stating that the driver of the vehicle by mistake carried the vehicle further more towards Tiruchy. In the meanwhile, he wanted to see his ailing father in his native place i.e. Shidlagatta. At the time of interception of the

goods vehicle, the goods were not been unloaded. This is a transaction from Gujarath to Karnataka against "C" Form and there was no intention to evade the tax. Neither the consignor nor the consignee had contravened the provisions of Karnataka Value Added Tax Act, 2003. After holding an enquiry the Assessing Authority over ruled the objections and imposed penalty of Rs. 1,85,763/-. Aggrieved by the said order, the transporter/assessee preferred an appeal to the First Appellate Authority.

2. The First Appellate Authority was of the view that the authorities have failed to establish beyond doubt that there was a clear intention to evade the tax in the State of Karnataka. The transaction in question is not beyond suspicion also. Therefore, he modified the penalty and reduced it to Rs. 1,23,824/-. Aggrieved by the said order the assessee preferred an appeal.

3. The Tribunal held, as the assessee was carrying all the valid documents at the time of interception and subsequently in the proceedings, he has produced "C" Forms showing that they have been returned to Hubli traders, because of the fault of the lorry driver, the goods came upto Shidlagatta, though it was required to be unloaded at Hubli. Therefore, when once "C" Forms are shown, there was no intention to avoid the tax in the business of inter-State sales and therefore, it set aside the order imposing penalty holding that there is no contravention. Aggrieved to the said order, the State has preferred this revision petition.

4. The learned Additional Government Advocate appearing for the State contended that the documents carried by the vehicle shows that the goods were transported from Surat to Hubli. The goods ought to have been unloaded at Hubli. Without unloading at Hubli, the goods were being transported to Tirchy. When the vehicle had been parked in the Kolar Road at Shidlagatta, the vehicle was intercepted. When the driver was called upon to produce the documents, he produced documents to show that the goods were transported from Surat to Hubli, but he had no document to show for transporting the goods from Hubli onwards and therefore, in the light of the aforesaid admitted facts, there is contravention u/s 53(2)(b) and accordingly, the authorities imposed penalty u/s 53(12) of the Act. Merely because, after that interception and commencement of the proceedings, the goods were delivered to the dealer at Hubli and "C" Forms were issued, makes no difference in law. It also demonstrates a clear intention to evade tax and therefore, he submits the order passed by the Tribunal requires to be set aside.

5. Per contra, the learned Counsel appearing for the assessee submits, admittedly the goods were transported from Surat to Hubli with valid documents. The said documents were shown to the authorities, when the vehicle was intercepted at Shidlagatta. It is also on record that the driver delivered the goods back at Hubli to the dealer and "C" Forms have been issued. Therefore, in no way the State has suffered any loss of tax. There was no intention to evade payment of tax. Therefore, the Tribunal was justified in setting aside the order on the ground that there is no contravention nor there is a provision for imposing

penalty for such contravention and therefore, no case for interference.

6. This revision petition came to be admitted on 12-8-2013 and the following questions of law are framed for consideration:

(a) As to whether the Tribunal was right in cancelling the minimum penalty imposed due to violation of Section 53(2)(b) of the Karnataka Value Added Tax Act, 2003 on the premise that there was no intention to evade tax by the person in-charge of the goods vehicle? and

(b) As to whether the Tribunal is right in holding that the provisions of Section 53(12)(a)(ii) of the Karnataka Value Added Tax Act, 2003 is not attracted?

7. The facts are not in dispute. The lorry bearing No. KA-40-4227 was carrying consignment of 11,280 dozen supra flexi revite (MED) tooth brush of the value of Rs. 4,95,294/- from Surat to Hubli. The bill was issued in favour of Colgate Palmolive (India) Limited C/o. Swamy Sons Agencies, Hubli whose TIN number was 2903050192. It is also not in dispute that the said consignment was to be unloaded at Hubli. It was not done. It was carried further. When the vehicle was parked in the Kolar Road at Shidlagatta, the authorities intercepted the vehicle and called upon the driver to produce the documents. He produced all documents to show that the goods were transported from Surat to Hubli. He did not possess any document to show transportation of the goods from Hubli to Shidlagatta. Now, the question for consideration is, could the transporter carry the consignment with the documents which showed the destination as Hubli, beyond Hubli.

8. Section 53 of the Act deals with establishment of check-post and inspection of goods in movement which reads as under:

"53. Establishment of check-posts and inspection of goods in movement.--(1) If the Government or the Commissioner considers it necessary, with a view to prevent or check evasion of tax under this Act in any place or places in the State, it or he may, by notification, direct the establishment of a check-post or the erection of a barrier, or both, at such place or places as may be notified.

(2) The owner or person in-charge of a goods vehicle or a boat, ship or similar vessel shall:

(a) carry with him a goods vehicle record, a trip sheet or a log book, as the case may be; and

(b) carry with him such documents as may be prescribed, or notified by the Commissioner in respect of the goods carried in the goods vehicle or boat, ship or similar vessel; and

(c) report at the first check-post or barrier situated on the route ordinarily taken from the place in the State, from which the movement of the goods commences to its destination and produce the documents referred to in clauses (a) and (b) before any officer-in-charge of check-post or barrier, or any other officer as may

be empowered by the Government or the Commissioner in this behalf, and obtain the seal of such officer affixed thereon, and in respect of a bill of sale, give one copy thereof and, in respect of a delivery note, give a copy marked as original, to such officer and carry and retain with him the other copy until termination of movement of the goods; and

(d) on entering the State limits, report to the first situated check-post or barrier and, on leaving the State limits, report at the last situated check-post or barrier and give a declaration containing such particulars as may be prescribed in respect of the goods carried in the goods vehicle or boat, ship or similar vessel, before any officer-in-charge of the check-post or barrier or any other officer as may be empowered by the Government or the Commissioner in this behalf; and

(e) stop the vehicle or boat, ship or similar vessel, as the case may be, and keep it stationary as long as may be required by the officer-in-charge of the check-post or barrier or the officer empowered as aforesaid, to examine the contents in the vehicle or boat, ship or similar vessel and inspect all records relating to the goods carried, which are in the possession of such driver or other person in-charge, who shall, if so required, give his name and address and the name and address of the owner of vehicle or boat, ship or similar vessel".

9. The sole object of establishment of these check-posts is to prevent or check evasion of tax payable under the Act. Therefore, sub-section (2) of Section 53 provides, the owner or person-in-charge of a goods vehicle shall carry with him a goods vehicle record, a trip sheet or a log book and carry with him such documents as may be prescribed or notified as may be prescribed in respect of the goods carried in the goods vehicle and report at the first check-post or barrier situated on the route ordinarily taken from the place in the State from which the movement of goods commences to its destination, produce the documents and to obtain the seal of such officer affixed thereon and also furnish a copy of the same to him. Further on entering the State limits, report to the first situated check-post or barrier. On leaving the State limit, report to the last situated check-post or barrier and give a declaration containing such particulars as may be prescribed in respect of goods carried in the goods vehicle. Stop the vehicle and keep it stationary as long as may be required by the officer-in-charge of the check-post or barrier to examine the contents in the vehicle, inspect all records relating to the goods carried, which are in the possession of such driver or other person in-charge, who shall, if so required, give his name and address and name and address of the owner of vehicle.

10. The present case falls under Rule 157(1)(b) of the Karnataka Value Added Tax Rules, 2005. The retail invoice of the goods carried in the vehicle clearly gives the name of the consigner as Trim Plastics Private Limited, 207, New Industrial Estate (Extension), Road No. 6/F, Udyognagar, Udhna, Surat-394210. The name of the consignee is, Colgate Palmolive (India) Limited C/o. Swami Sons Agencies, Godown No. 2, Kalebudde W/H, 75/2C, P.B. Road, Gabbur, Hubli, Karnataka. Therefore, the consignee copy issued by the RCI Logistics Private

Limited Transporter shows address of delivery as door delivery and the consignee name and address is mentioned as above is mentioned in the consignee copy. Therefore, the said document is a valid document to carry the goods till it reaches the consignment i.e., Hubli. After Hubli, the consignment is carried onward by the transporter. At the time of its interception at Kolar Road in Shidlagatta, there was no valid document as required under law authorizing transporter to transport the goods beyond Hubli and therefore, there is a contravention of Section 53(2)(b) of the Act.

11. It is not in dispute that the vehicle had been parked i.e., on the Kolar Road near Shiddlaghatta. It is not in between Surat and Hubli. It is beyond Hubli at a distance of 400 kms. The statement of the driver discloses that he was proceeding towards Tirchy and the vehicle was parked about 50 kms., away from the border of Tamil Nadu. The vehicle had travelled from Hubli to Shiddlaghatta without a valid document. Therefore, there is contravention of Section 53(2)(b) of the KVAT Act.

12. The learned Counsel for the assessee relied on the judgment of this Court in the case of Lundbeck India Private Limited Vs. Additional Commissioner of Commercial Taxes, , and on an unreported judgment of this Court in the case of State of Karnataka Vs. G.R.B. Dairy Foods Pvt. Ltd., , in STRP No. 74 of 2009, decided on 20-1-2011. We have gone through the aforesaid two judgments. Those judgments have no application to the facts of this case. Both the cases are not the cases where a vehicle had travelled beyond destination without valid documents. Further it was contended that it is a bona fide mistake committed by the driver of the vehicle. The bona fides could be gathered from the facts that the lorry was brought back to Hubli. The consignment was unloaded and "C" Forms have been issued. Therefore, there was no intention to evade tax. If there was no intention, then penalty cannot be imposed. In support of the case, reliance was placed on the judgment of this Court in the case of Ws Tele Systems Ltd. Vs. Additional Commissioner of Commercial Taxes in Karnataka, Zone-II, Bangalore and another, , wherein it was held as under:

"The levy of penalty cannot be sustained, because for levying penalty even under the taxing statutes, it is incumbent upon the department to prove a guilty intention on the part of the assessee or taxpayers in not complying with the statutory requirements".

13. The Hon"ble Apex Court in the case of Guljag Industries Vs. Commercial Taxes Officer, , dealing with the penalty provision in the Rajasthan Sales Tax Act, held as under:

"There is dichotomy between contravention of Section 78(2) of the Rajasthan Sales Tax Act, 1994, which invites strict civil liability on the assessee and the evasion of tax. When a statement of import/export is not filed before the Assessing Officer it results in evasion of tax, however, when the goods in movement are carried without declaration Form S.T. 18-A/18-C then strict

liability comes in, in the form of Section 78(5). Breach of Section 78(2) imposes strict liability u/s 78(5) because goods in movement cannot be carried without Form S.T. 18-A/18-C.

The object behind enactment of Section 78(5) is to emphasise loss of revenue and to provide a remedy for such loss. It is not the object of that section to punish the offender for having committed an economic offence and to deter him from committing such offences. The penalty imposed u/s 78(5) is a civil liability. Willful consignment is not an essential ingredient for attracting the civil liability as in the case of prosecution.

Section 78(2) is a mandatory provision. If the declaration Form S.T. 18-A/18-C does not support the goods in movement because it is left blank then in that event, Section 78(5) provides for imposition of monetary penalty for non-compliance. Default or failure to comply with Section 78(2) is the failure or default of a statutory civil obligation and proceedings u/s 78(5) is neither criminal nor quasi-criminal in nature. The penalty is for statutory offence. Therefore, there is no question of proving of intention or mens rea as the same is excluded from the category of essential element for imposing penalty. Penalty u/s 78(5) is attracted as soon as there is contravention of statutory obligations. Intention of the parties committing such violation is wholly irrelevant".

Therefore, the argument that when there is no intention to evade tax and in fact "C" Forms are issued and penalty is imposed is without any substance.

In the instant case, the transporter is transporting the goods from Surat to Hubli. The consignee has paid transportation charges for the same. The consignment copy clearly shows the place where the goods have to be unloaded. The transporter is from Hyderabad. If the driver employed by the transporter fails to unload the goods in Hubli and carries the goods nearly 400 kms., beyond Hubli, his explanation that by a bona fide mistake it was carried thus far cannot be accepted. More over the driver of the vehicle has categorically stated that he was asked to transport the goods to Trichy in Tamil Nadu and that is why the lorry was parked in the border of Tamil Nadu at Shiddlaghatta. Therefore, it is clear the transporter resorted to the above modus operandi to hoodwink the authorities at the check-post and wanted to pass on the goods to the dealer in Tamil Nadu without paying any tax in the State of Karnataka. It is a different matter if the vehicle was intercepted and the vehicle was brought back to Hubli, goods were unloaded and "C" Forms were issued, it is an afterthought. In that view of the matter, the Assessing Authority was fully justified in imposing the penalty for contravention of carrying the goods without valid documents. The First Appellate Authority was not clear in his mind, though he observed that the conduct of the transporter results in suspicion but nonetheless he reduced the penalty. The said order of the First Appellate Authority is unsustainable. Either the penalty is payable or not payable. In one breadth he cannot say there is no contravention and in another breadth he cannot say the conduct of the transporter is suspicious and reduce the penalty. The Tribunal was in total error

in holding that the transporter was carrying the goods with valid documents. The documents which were carried in the vehicle had no validity beyond Hubli to transport the said consignment from Hubli to Shiddlaghatta. This aspect is completely missed by the Tribunal. In that view of the matter, the order passed by both the Appellate Authorities are unsustainable.

Hence, we pass the following order:

- (1) The questions of law are answered in favour of the State and in favour of the Assessing Authority.
- (2) The petition is allowed.
- (3) The impugned orders passed by the Karnataka Appellate Tribunal as well as First Appellate Authority are hereby set aside.
- (4) The order passed by the Assessing Authority is restored.
- (5) The parties to bear their own costs.