(2014) 04 KAR CK 0077

In the Karnataka High Court

Case No : Sales Tax Revision Petition No. 106 of 2011

State of Karnataka APPELLANT

Vs

S. Mehaboob Khan RESPONDENT

Date of Decision : 24-04-2014

Acts Referred:

Karnataka Value Added Tax Act, 2003 — Section 53, 53(12), 53(12)(a)(i), 53(2)(d), 54(1)(b)

Citation : (2014) 79 KarLJ 446 : (2014) 75 VST 419

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

Bench : Division Bench

Advocate : T.K. Vedamurthy, High Court Government Pleader, Advocate for the Appellant; Sriyuths Sheik Mourthuja, K. Mahalingam and Malashree, Advocate for the Respondent

Judgement

B. Manohar, J.—The State Government has filed this revision petition u/s 65(1) of the Karnataka Value Added Tax Act, 2003 (hereinafter referred to as ''the KVAT Act'') challenging the order dated 16th April, 2010 made in STA No. 259 of 2007 passed by the Karnataka Appellate Tribunal, Bangalore (for short, ''the Tribunal''), wherein the Appellate Tribunal set aside the order passed by the Joint Commissioner of Commercial Tax (Appeals), DVO I and III, Bangalore (hereinafter referred to as ''the First Appellate Authority'') as well as the Mobile Check-post Authority. The respondent is a transporter transporting goods from Delhi to Tamil Nadu through Bangalore. On 18-2-2006 at about 6.00 a.m., the vehicle bearing Registration No. HR-63/A-4685 was intercepted by the Commercial Tax Officer, Mobile Check-post 2 (hereinafter referred to as the ''CTO'') near Featherlite Factory at Mysore Road. The said vehicle was carrying certain consignment which is taxable under the Act. The CTO asked the person in-charge of the vehicle to tender the documents pertaining to the consignment carried in the said goods vehicle. The person in-charge of the goods vehicle had failed to tender the necessary documents pertaining to the consignment carried in the vehicle. Accordingly, the CTO issued GCE Notice dated 18-2-2006 and asked the person in-charge of the vehicle to station the goods vehicle at Control Room for physical verification of quantity and value of the goods. However, the driver of the said goods vehicle refused to accept GCE notice. At about 11.30 a.m. one Sri Mehaboob Khan, who claims to be the representative of the transporter appeared before the CTO and received the GCE notice and also tendered the documents with a letter stating that in view of ignorance and illiteracy of the driver who was the person in-charge of the goods vehicle and also due to language problem, he could not produce the documents and he made available the Xerox copies of some documents viz., Trip Sheet and 41 L.Rs. On receipt of the said documents, the CTO noticed that there was no seal or signature of the entry check-post. The transporter has not produced the transit pass in duplicate since the goods were being transported from one State to another. The original documents and seal and signature of the check-post of other States were also not made available. It is the duty of the person in-charge of the goods vehicle to produce the documents as and when demanded by the Officers. There is delay of 5 hours in producing the documents without necessary particulars. Accordingly, the CTO rejected the said documents and issued notice on 1-3-2006 for imposing penalty u/s 53(12) of the Act.

2. In pursuance of the said notice, the respondent filed objections to the said notice. Further the respondent has paid the penalty amount of Rs. 2,46,187/- on 8-3-2006. The objections filed by the respondent-transporter was considered by the CTO and found that the goods that were carried in the goods vehicle were auto parts, electrical goods, hardware items, tiles, etc. Out of 41 consignments, 6 consignments were to be delivered at Bangalore and the remaining goods were to be delivered at Chennai after valuing the goods as per Section 53(12)(a)(i) of the KVAT Act and imposed a penalty of Rs. 7,67,696/- by its order dated 1-3-2006. The transporter being aggrieved by the order of penalty imposed by the CTO, preferred an appeal before the First Appellate Authority u/s 62(6) of the KVAT Act.

3. The First Appellate Authority after examining the matter in detail found that the respondent is transporting the taxable goods without having necessary documents. The goods were not checked at the entry point, the seal of entry check-post was also not available on the Xerox copies of the documents produced by the transporter. Further the goods are being transported inter-State. Once the said goods enter the State of Karnataka, the person in-charge of the goods vehicle after furnishing necessary information about the goods in transit from inter-State ought to have obtained transit pass in duplicate containing the particulars of the goods and the said transit pass has to be surrendered at the exit point. In the instant case, the transporter failed to obtain the transit-pass. Apart from that, as and when the authorised person demanded the documents, the person in-charge has failed to furnish necessary documents as per Section 53(2)(d) of the KVAT Act. However, after lapse of five hours, the said documents were made available stating that the necessary documents were left by the driver in a Dhaba inadvertently. Thereafter he had collected and produced the

same. A contrary stand had been taken before the First Appellate Authority as well as the CTO. Accordingly, the First Appellate Authority while upholding the order passed by the CTO allowed the appeal in part and reduced the penalty from Rs. 7,67,696/- to Rs. 2,81,250/-, directed the transporter to pay the difference of penalty amount. The respondent being aggrieved by the order passed by the First Appellate Authority, preferred an appeal before the Karnataka Appellate Tribunal. The Appellate Tribunal without examining the matter in detail, held that there is no allegation regarding the said documents being forged documents. The Tribunal further held that the non-production of the documents at the time of interception and in view of the production of the said documents after a lapse of 51/2 hours, is not a ground for imposing penalty. Accordingly set aside the order passed by the CTO and directed the CTO to refund the penalty amount by its order dated 16th April, 2010. The State Government being aggrieved by the order passed by the Karnataka Appellate Tribunal, preferred this revision petition.

4. The revision petition is admitted to consider the following questions of law:

1. Whether in the facts and circumstances of the case, the order passed by the Karnataka Appellate Tribunal is correct in accordance with law?

2. Whether in the facts and circumstances of the case, the Tribunal was right in law in setting aside the penalty order merely on the ground that the documents have been tendered at the entry check-post?

3. Whether in the facts and circumstances of the case, the Tribunal was right in law in relying on the decision of WS Telesystems Limited, Bangalore v. Additional Commissioner of Commercial Taxes, Zone II, Bangalore and Another 2001(51) Kar. L.J. 162 (HC) (DB) which is totally not relevant and not applicable to the facts of the case?

4. Whether in the facts and circumstances of the case, the Tribunal was right in law in holding that if the value of the goods transported is not ascertainable from the documents, no penalty could be levied?

5. Whether in the facts and circumstances of the case, the impugned order passed by the Tribunal is sustainable in law?

5. Sri T.K. Vedamurthy, learned HCGP appearing for the State Government contended that the order passed by the Appellate Tribunal is contrary to law. When the said goods vehicle was intercepted by the CTO attached to the Mobile squad, the person in-charge of the goods vehicle failed to produce the necessary documents. Admittedly the goods are being transported from Delhi to Madras. It is the responsibility of the person in-charge of the goods vehicle to produce the relevant records when the Authorised Officer of the Check-post demanded the documents. In the instant case, the goods vehicle was intercepted at about 6.00 a.m., during which time, the driver of the said goods vehicle did not produce any documents. Accordingly, GCE notice was issued. However, at about 11.30 a.m.,

the respondent produced the Xerox copies of some documents, which did not contain seal and signature of the entry check-post. The transporter has violated Section 53(2)(d) of the Act. Apart from that, the transporter has not obtained transit pass at entry check-post. In view of that, the CTO after examining the matter held that the transporter has not complied with the relevant provisions of the Act, he has not given sufficient cause for non-production of the same and accordingly, imposed penalty. The said order was confirmed by the First Appellate Authority with certain modification. The Appellate Tribunal without assigning any reason, held that the penalty cannot be imposed solely on the ground that after lapse of 51/2 hours the transporter produced the Xerox copies of the documents. However, the Tribunal held that the said documents are not bogus documents and hence, the CTO erred in imposing penalty and set aside the same which is contrary to law. Hence, he prayed for allowing the revision petition setting aside the order of the Tribunal.

6. On the other hand, learned Counsel appearing for the respondent argued in support of the order passed by the Karnataka Appellate Tribunal and contended that the driver is from Haryana and he does not know Kannada language. Due to ignorance, inadvertently he has left the necessary documents pertaining to the goods vehicle in a Dhaba. Subsequently, he got the same and produced the same. For delay in producing the documents, the penalty cannot be imposed and sought dismissal of the revision petition.

7. We have carefully considered the arguments addressed by the learned Counsel for the parties and perused orders impugned in the above revision petition.

8. The records clearly disclose that when the CTO demanded the necessary documents with regard to the transportation of taxable goods, the person in-charge of the goods vehicle, who was carrying certain consignment, has not produced the necessary documents. After lapse of 5 hours, certain Xerox copies have been produced such as Trip Sheet and 41 L.Rs. On verification of the said documents, it was noticed that the seal and signature of the entry check-post was not available on the said documents. The seal and signature of the check-post of other States were also not available in the said documents, though the goods were being transported from Delhi to Chennai via Bangalore. Further, the person in-charge had not obtained transit pass in duplicate containing such particulars of the consignment in the goods vehicle. The transporter has not complied with Sections 53(2)(d) and 54(1)(b) of the KVAT Act. No sufficient cause has been shown for non-production of the documents. Section 53(2)(d) reads as under:

"53. (2)(d) on entering the State limits, report at 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 in this behalf".

The reading of the said provision makes it clear that the transporter has not complied with the above said provision.

9. Rule 157 of the KVAT Rules provides for the carrying the documents along with the goods and produce the same when it was demanded by the Authorised Officer. The Xerox copy of the documents produced by the transporter were not in accordance with Rule 157 of the KVAT Rules. Further, Section 54(1)(b) provides that the driver or any person in-charge of the vehicle shall furnish necessary information and to obtain the transit pass for transportation of the goods inter-State. The relevant provision reads as under:

"54. (1)(b) imported into the State from any place outside the country and such goods are being carried to any place outside the State,

the driver or any other person in-charge of such vehicle shall furnish the necessary information and obtain a transit pass in duplicate containing such particulars as may be prescribed, from the officer in-charge of the first check-post or barrier after his entry into the State or after movement has commenced from the State, as the case may be, or from the officer empowered for the purposes of Section 53, upon interception of the goods vehicle after its entry into the State or after movement has commenced, as the case may be".

The above said provision makes it mandatory on the part of the person in-charge of the goods vehicle transporting in inter-State to obtain the transit pass at the entry check-post and surrender the same at the last check-post. The documents produced by the transporter does not contain the transit pass. If the driver or any other person in-charge of the vehicle do not comply with sub-section (2) of Section 53, it shall be presumed that goods carried thereby have been sold within the State by the owner of the vehicle and shall, irrespective of whether he is a taxable person, be assessed to tax by the officer empowered in this behalf in the prescribed manner. If the person failed to produce necessary documents, the officer in-charge of the check-post has to impose penalty u/s 53(12)(a)(i) of the KVAT Act. In the instant case, the CTO after examining the matter in detail has imposed penalty. However, the imposition of penalty was not in accordance with law. Accordingly, the First Appellate Authority while upholding the order of penalty imposed by the CTO modified the same. We found no infirmity or irregularity in the order passed by the First Appellate Authority. The order passed by the Appellate Tribunal is contrary to law and cannot be sustained under law. Mere production of the document at subsequent point of time will not absolve the responsibility of the person in-charge of the vehicle to produce the relevant records with the seal and signature of States as well as the States in which the goods have been entered. The Tribunal has not examined the matter in detail and has not taken into consideration violation of Sections 54(1)(b) and 53(2)(d) of the Act by the transporter. Hence, the order passed by the Karnataka Appellate Tribunal cannot sustain and the same is required to be set aside. Hence, the questions of law framed in this revision petition are answered in favour of the State Government.

Accordingly, we pass the following:

ORDER

The appeal is allowed. The order dated 16th April, 2010 passed by the Tribunal made in STA No. 259 of 2007 is set aside.

Parties to bear their own costs.