(2012) 07 KAR CK 0031

In the Karnataka High Court

Case No : Sales Tax Revision Petition No''s. 29 and 102 of 2010

State of Karnataka APPELLANT

Vs

Shell India Marketing Private Limited RESPONDENT

Date of Decision : 27-07-2012

Acts Referred:

Citation : (2013) 75 KarLJ 217

Hon'ble Judges : K. Sreedhar Rao, J;B. Manohar, J

Bench : Division Bench

Advocate : N. Shivayogiswamy, for the Appellant; P. Nagasundaramurthy for Sree Ranga Associates, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

K Sreedhar Rao, J.—The assessee is a registered dealer in petroleum products functioning at Chennai in Tamil Nadu. The assessee has got several registered outlets at Bangalore. The five tankers were transporting petroleum products on 28-11-2007 and intercepted at Hosur Road Check-post by the Sale Tax Authorities. It was found that the particulars in the sale bill and delivery note were handwritten. The particulars of the consignee at Bangalore were also not written in the delivery note and sale bill. A notice was issued to the driver, who was the person incharge of the vehicle. It is explained that since there was failure of power supply, the sale bill and delivery note were handwritten. The assessee also produced the materials to show that the sale was not in the nature of inter-State sale and it was a branch transfer. The Check-post Authorities rejected the explanation and levied penalty. In appeal, the Joint Commissioner confirmed the order of levy of penalty. The Tribunal allowed the appeal of the assessee holding that the transaction was only the branch transfer and not inter-State sale and thus set aside the penalty levied by the Commercial Tax Officer, Hosur Road Check-post (Inward), Attibele, Bangalore. The State being aggrieved by the said order has filed this revision petition. The following substantial question of law that arises for consideration:

Whether the finding of the Tribunal that the transport of goods was in the inter-State sale and not a branch transfer and whether the Tribunal was grossly erred in assessing the material on record and given perverse finding while setting aside the levy of penalty?

2. The Tribunal in paras 12, 14 and 15 has made the following observations.--

12. We hold the above issue in the negative for the following reasons -- It is a admitted that the appellant is a registered dealer under the Karnataka Value Added Tax Act, 2003 and filing monthly returns admitting the monthly taxes to the tune of over Rs. 10.00 Crores. It is also not in dispute that the goods were being moved from Chennai Branch to Bangalore vide branch transfer note and delivery note in Form JJ, dated 27-11-2007. It is also not in dispute that the vehicle numbers disclosed in those documents are the same vehicles involved in the check-post proceedings. It is also not in dispute that the Check-post Officer had issued the GC Endorsement pointing out only two defects viz., handwritten serial numbers in the delivery note and non-mentioning of the Tax Identification Number (TIN). The appellant in his reply dated 28-11-2007 filed on 30-11-2007 has confirmed that while preparing the documents for dispatching the goods on 27-11-2007, the power supply was disrupted at the branch and hence the documents were handwritten and also serial number in Form JJ was handwritten in the peculiar situation with no intention to evade any taxes. The appellant had also urged that the TIN of the appellant was self-printed on the reverse of the branch transfer note along with all the State Tax Identification Numbers and the place of delivery disclosed in the documents is belonging to the appellant himself and all the transactions are accounted in the books of accounts and had also urged that as per the law laid down in the case of Supreme Industries Limited v. State of Karnataka, 1987 (31) Kar. L.J. 34 (Tri.) (DB) -- mere non-mentioning of serial number in the documents relating to the goods in transit is only a technical defect which do not render the invoice as defective. When a reputed dealer makes submission that too in a peculiar circumstances due to power failure, the documents were handwritten, it was not correct on the part of the Check-post Officer to have unnecessarily doubted at least on the reasonable submission which were supported by the documents and the unimpeachable transactions and documents were explained.

14. We have verified the records and found that for all the addresses shown in the documents tendered by the appellant before the Check-post Authority titled as common sales invoice and stock transferred documents are found tallied with the branch addresses maintained by the appellant supported by branch certificates issued by the concerned authorities. As rightly contended by the learned Counsel for the appellant, the request for issue of the branch certificate have been granted during the years 2005 and 2006 itself by remitting appropriate branch registration fees and hence no adverse conclusions can be drawn in the appellant''s case involving any doubt as to the bona fide of the transactions.

15. Further the Division Bench of the Hon''ble High Court of Karnataka in the case of N. Subramanya v. Commissioner of Commercial Taxes in Karnataka, Bangalore, 1997 (43) Kar. L.J. 390 (HC) (DB) has held that the Appellate Authorities should not be too technical in considering the later production of the documents and that it is permissible for an assessee to furnish documents even before the Appellate Authority and the revenue should not act too technically while rejecting the documents. In the instant cases the learned First Appellate Authority has failed to consider all the documents placed by the appellant before him involving bona fides of the appellant as well as genuineness of the transactions both of which were initially doubted by the Check-post Officer. Further, the Honorable High Court of Karnataka in the case of Shyam Textiles (P.) Ltd. and another Vs. Commissioner of Commercial Tax, Karnataka, Bangalore, has held that: "levy of penalty u/s 28-A was not maintainable just for the reason that the delivery note tendered before the Check-post Officer was not in the prescribed form without a finding that there was an attempt to evade tax". Hence we come to a definite conclusion that the levy of penalty is not justified in these cases.

3. The assessment of documentary materials by the Tribunal is essentially a question of fact. It is evident that the assessee has branch outlets in Bangalore. The assessee has been transporting the petroleum products to its branch outlets from Chennai regularly. The assessee is not permitted to sell the petroleum products from outlet other than the branch outlets. Therefore, the finding recorded by the Tribunal is sound and proper and that does not call for interference. The substantial question of law is against the petitioner, Accordingly, the petition is dismissed.

The penalty is directed to be refunded to the respondent.

