(2014) 04 KAR CK 0127

In the Karnataka High Court

Case No : Sales Tax Revision Petition Nos. 216 of 2011, 150 and 151 of 2012

State of Karnataka APPELLANT

Vs

Shilpi Wire Rope (Private) Limited RESPONDENT

Date of Decision : 24-04-2014

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 23(1), 28A, 28-A, 28-A(2), 28-A(4)

Citation : (2014) 79 KarLJ 317 : (2014) 75 VST 426

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

Judgement

Dilip B. Bhosale, J.—These sales tax revision petitions u/s 23(1) of the Karnataka Sales Tax Act, 1957 (for short, ''the Act'') are preferred against the order dated 17th August, 2010 passed by the Karnataka Appellate Tribunal, at Bangalore (for short, ''the Tribunal'') in STA Nos. 92 to 94 of 2006, whereby the appeals were allowed and the order of penalty levied u/s 28-A(4) of the Act was set aside with a further direction to the Check-Post Officer to refund to the respondent-assessee the penalty collected from them.

1.1 The appeals before the Tribunal were directed against the order dated 28th November, 2005 passed by the Joint Commissioner of Commercial Tax (Appeals) (for short, ''the First Appellate Authority'') in KST.AP. Nos. 253-255/2005-06 u/s 28-A(4) of the Act by the respondent-assessee. The Appellate Authority by this order disposed of the appeals with certain modification.

In these revision petitions, the petitioner has formulated the following questions of law for our consideration, which read thus:

1. Whether on the facts and in the circumstances of the case and in law, the Karnataka Appellate Tribunal is right in allowing the appeals and setting aside the penalty order levied u/s 28-A(4) of the Act by the Check-post Officer?

2. Whether on the facts and in the circumstances of the case and in law, the Karnataka Appellate Tribunal is justified in relying on the decision of N. Subramanya v. Commissioner of Commercial Taxes in Karnataka, Bangalore 1997(43) Kar. L.J. 390 (HC) (DB)?

2. The respondent-assessee is a Private Limited Company and a registered dealer under the provisions of the Act. It is engaged in the business of manufacture and sale of electrical wires. The assessee had purchased iron and steel from M/s. Rastriya Ispat Nigam Limited, Visakhapatnam which were to be delivered in the State of Karnataka in three goods vehicles bearing Nos. CAW-331, MEZ-6219 and MYA-9090. The goods, which were to be delivered in the State of Karnataka at the premises of the assessee in three vehicles, were valued at Rs. 1,82,012/-, Rs. 2,06,094/- and Rs. 2,05,347/-. Though they were to be delivered at the premises of the assessee, in fact they were delivered at the premises of one M/s. Miki Steel Works Private Limited, Attibele. While the goods were being unloaded, they were intercepted by the Mobile Check-post Officer. When the Officer demanded necessary documents from the drivers of the vehicles, they produced invoices, all dated 30-11-2002 of M/s. Rastriya Ispat Nigam Limited, Visakhapatnam Steel Plant raised in favour of the assessee i.e. M/s. Shilpi Wire Rope Private Limited with the address of the assessee at Bangalore. When the Officer verified those documents, he found that they were not valid documents for transportation of goods from the premises of the assessee-M/s. Shilpi Wire Rope Private Limited, KIADB Industrial Area, Attibele, Bangalore to the premises of M/s. Miki Steel Works Private Limited, Attibele where the goods were unloaded. In view thereof, the Officer issued goods consignment endorsement to confirm the transaction. It is very interesting to note that in response thereto, the authorised representative of the assessee appeared before the Check-post Officer and agreed to pay the penalty amount and accordingly paid the penalty. The Check-post Officer also accepted the offer of the authorised representative of the Company and passed the impugned order.

3. We have heard Sri T.K. Vedamurthy, learned Government Pleader for the Revenue. None appears for the respondent-assessee though served.

4. In the backdrop of the facts mentioned above, the Check-post Officer as well as the First Appellate Authority levied penalty as contemplated by Section 28-A(4) of the Act holding that it was a case of ''no documents'' for movement of goods from the premises of the assessee to the premises of M/s. Miki Steel Works Private Limited. As a matter of fact, the assessee did not produce any valid documents as contemplated by Section 28-A(2) of the Act till the order was passed by the Check-post Officer. Before the Appellate Authority, for the first time, the assessee filed Form II and that too a photocopy thereof. The document produced (Form II) before the Appellate Authority was not original. In view thereof and also in view of the fact that the valid documents as contemplated by Section 28-A(2) were not produced by the assessee when the vehicles were intercepted or before the Check-post Officer, the Appellate Authority dismissed

the appeals.

5. The Tribunal allowed the appeals having noticed that a photocopy of Form II was filed before the Appellate Authority and in view of the judgment of this Court in N. Subramanya''s case. We would like to reproduce the cryptic reasons recorded by the Tribunal for allowing the appeals filed by the assessee, which read thus:

9. Issue No. 1.--Section 28-A(2) of KST Act prescribes documents to be carried by the owner or person-in-charge of goods vehicle. All the three goods vehicles were checked at the time of unloading of the goods at M/s. Miki Steel Works Private Limited, and noticed that the appellant produced the documents issued by M/s. Rastriya Ispat Nigam Limited, Bangalore to the appellant, whereas the goods were being taken for unloading at the different place. Further it was observed that there were no documents like Form II or a Delivery Note in Form 39 for transportation of goods from the appellant''s place at the premises of M/s. Miki Steel Works Private Limited, Attibele, where the goods were being unloaded. It is only before the FAA the appellant produced xerox copy of Form II to substantiate his claim that the goods were moving for job work to the premises of M/s. Miki Steel Works Private Limited, Attibele, which is not as a result of sale.

10. The learned Counsel referred to the decision of N. Subramanya''s case, where it is held that "Petitioner produced several documents before the FAA. But the same were not considered on the ground that they were produced belatedly........ In a situation involved u/s 28A of the Act, the requisite documents may be produced even before the Appellate Authority and the revenue should not act too technically while rejecting the documents....... The circumstances clearly indicate that there has been a failure of justice and the petitioner had no proper opportunity at all to prove his case.

We are of the considered opinion that the penalty levied u/s 28-A(4) of the Act is not in justified and hence the issue raised is answered in the negative and in favour of the appellant.

6. From perusal of the reasons recorded by the Tribunal, it is clear that the Tribunal did not consider the appeals in proper perspective and got impressed with the production of the photocopy of Form II before the Appellate Authority by the assessee for the first time. Even, the reliance placed on the judgment in N. Subramanya''s case, on the face of it, was misplaced.

7. Section 28-A(2) of the Act provides that the owner or person in-charge of goods vehicle is supposed to carry certain documents, as specified in clauses (a) to (e) of sub-section (2) of Section 28-A. Admittedly, none of the documents specified in sub-section (2) were produced by the assessee when the vehicles were intercepted or before the Check-post Officer. Section 28-A(4) provides that the Officer in-charge of Check-post, in case of any contravention, or non-compliance with provisions of sub-section (2) or (3) or (3-A) or (3-B), for which sufficient cause is not furnished, levy penalty which shall not be less than the

amount of tax leviable but shall not exceed one and half of the amount of tax leviable in respect of the goods under transport in contravention of the clause (d) or (e) of sub-section (2), if the dealer registered under the Act accepts that he is a consignor or consignee of the goods. The assessee, in the present case, chose not to contest the matter before the Officer in-charge of check-post and they volunteered to pay penalty. In this backdrop, in our opinion, the Tribunal committed a grave error of law in allowing the appeals based on the judgment of this Court in N. Subramanya''s case which has no application to the facts of the present case. The findings of fact and the proposition of law carved out by the Tribunal, in our opinion, are perverse and hence the order of the Tribunal deserves to be set aside. In the circumstances, both the questions of law are answered in favour of the Revenue and against the assessee. Accordingly, the revision petitions are disposed of with no order as to costs.

