(1991) 01 KAR CK 0073

In the Karnataka High Court

Case No : Special leave petition by the State against this judgment was dismissed by the Supreme Court on 12th July, 1991, in S.L.P. (Civil) No. 10091 of 1991 : See 1991 83 STC Frsc 2, Sl. No. 7.) S.T.A. No. 24 of 1987

Subjan APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 18-01-1991

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 22 A, 28 A (2), 28 A (4), 28 A (5)

Citation : (1993) 90 STC 218

Hon'ble Judges : K.B. Navadgi, J;K. Shivashankar Bhat, J

Bench : Division Bench

Advocate : G. Sarangan and Gajendra Rao, for the Appellant; H.L. Dattu, HCGP, for the Respondent

Judgement

K. Shivashankar Bhat, J.—The appellant as a driver of the vehicle was carrying liquor from Bannerghatta Road to Yeshwanthpur within Bangalore City. According to the appellant the vehicle was parked at the shop of the consignee at Yeshwanthpur, that is, M/s. Srinivasa Wine Stores. At that time the Assistant Commercial Tax Officer (Intelligence) seized the vehicle and asked for the documents. Since they were not produced penalty of Rs. 36,000 was levied. This order was reversed by the Assistant Commissioner on appeal by the appellant. The appellate authority found that the vehicle was checked on June 26, 1985 and the order levying penalty was dated June 28, 1985. But, as per the order copy kept in the records it is indicated that the order dated June 28, 1985 was received by the driver on June 26, 1985 and therefore the proceedings are found to be irregular. The appellate authority further stated that :

"The appellant has secured and produced copies of the excise permit and the invoice which agree with the description and quantity of the goods found by the Assistant Commercial Tax Officer at the time of check. The excise permit is issued on the same day when the check was made at 5 p.m. and it is also noticed from the said permit that the excise fees was remitted in the treasury the same day. Therefore, the excise permit cannot be rejected as one produced subsequently, since although it was produced subsequently it was for reasons that the proprietor had kept the same with him but was available and the driver had done his job of only transporting the goods. Therefore, the excise permit should be treated as pertaining to the said consignment only. It is also seen that the appellant has produced the invoice for the said goods issued by M/s. Bangalore Grapes Winery Pvt. Ltd. to Sri Hanumanthappa, M/s. Srinivasa Wine Stores, which contains reference to the said permit and also agrees with the description of the goods. Therefore, it has to be said that the consignment was not one that was not covered by documents such as invoice and excise permit, but the driver only failed to produce them on demand although they were available right at the time of check. If only the Assistant Commercial Tax Officer had initiated the proceedings against the consignee, Srinivasa Wine Stores, Yeshwanthpur, in front of whose shop the goods were checked the documents would have either been produced within a reasonable time or if any irregularity was practised by the said dealer it would have come to light conclusively and the levy of penalty would have been justified; contrarily the Assistant Commercial Tax Officer subjecting the uninformed driver to the levy of penalty; under the circumstances it is not proper, since documents like invoice and the excise permit are shown to have been available in respect of the said consignment and their non-production right at the time of check appears to be for reasonable cause as explained by the appellant, no contravention of section 28-A(2) of the Karnataka Sales Tax Act, 1957, is therefore involved. Consequently the levy of penalty is uncalled for and the same is set aside. The amount shall be refunded to the appellant."

This order was reversed by the Joint Commissioner u/s 22-A of the Karnataka Sales Tax Act on the ground that there was a mistake in the order which was prejudicial to the interest of the Revenue because the documents were produced subsequently.

2. In S.T.A. 6 of 1984 (Prakash Roadlines (P) Ltd. v. Commissioner of Commercial Taxes) [Reported in Prakash Roadlines (P) Ltd. Vs. Commissioner of Commercial Taxes in Karnataka, as well as in S.T.A. 12 of 1985 (Mahaveer Fancy Stores v. Commissioner of Commercial Taxes) [Reported in Mahaveer Fancy Stores Vs. Commissioner of Commercial Taxes in Karnataka, we have taken the view that imposition of penalty is not a matter of course u/s 28-A and the authority will have to consider the explanation offered by the person concerned for the non-production of the documents. Section 28-A(4) itself creates a discretionary power and at the same time provides for an opportunity to the person to show cause against the levy of penalty for non-compliance with the provisions of section 28-A(2). Further, the quantum of penalty need not be the maximum in all cases.

3. In the instant case the order of the Joint Commissioner suffers from all these infirmities. He has imposed the penalty solely on the ground that the documents

are produced subsequently and that the explanation of the appellant cannot be considered and then, proceeded to affirm the order of the original authority imposing the maximum penalty. We are of the view that this order of the Joint Commissioner cannot be sustained having regard to the scheme and object of section 28-A(5) of the Act.

4. Appeal is accordingly allowed.

5. Appeal allowed.

