(2007) 03 KL CK 0023

In the High Court Of Kerala

Case No : O.P. No. 36098 of 2001

T.A. Moideen Shaw and Another — APPELLANT

Vs

Sales Tax Officer and Others — RESPONDENT

Date of Decision : 19-03-2007

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 30B(2), 30B(3)

Citation : (2007) 2 KLJ 657

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : Arikkat Vijayan Menon, for the Appellant; C.K. Govindan, GP, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The petitioners are challenging Ext. P9 order in revision issued by the Commissioner of Commercial Taxes confirming demand of tax and penalty in respect of a consignment of rectified spirit. The consignment originated from Thirunelveli and entered Kerala at the Aryankavu Check Post and was to pass through Kerala to reach Goa. However, the petitioners did not surrender the transit pass issued in Form 27 C at the exit boarder Check Post at Bengara Manjeswaram. Since transit pass was not surrendered at the exit boarder Check Post of the State, presumption of local delivery and sale in Kerala was drawn u/s 30B(2) of the KGST Act and tax and penalty were levied under Sub-clause (3) of Section 30B of the Act. Against this, petitioners filed first revision before the Deputy Commissioner and being unsuccessful second revision was filed before the Commissioner which was also rejected vide impugned order. I heard counsel for the petitioners and Government Pleader appearing for the respondents.

2. It is conceded that petitioners did not surrender the transit pass at the boarder Check Post and therefore, presumption of local delivery and sale in the State is available in this case u/s 30B(2) of the KGST Act. However, the case of the petitioners is that they have produced secondary evidence regarding receipt

of goods at Goa i.e. by the consignee and so much so, the presumption available u/s 30B(2) stands rebutted. Even though petitioners have relied on decision of the Supreme Court in Sodhi Transport Co. and Anr. v. State of Uttar Pradesh and Anr. (1986) 62 STC 381, I do not think there is any need to go into whether petitioners are entitled to rebut the presumption with other evidence in this case because I am of the view that having regard to the other statutory documents required for transport of the item in this case namely, rectified spirit, the evidence produced by the petitioners i.e. a certificate from the Excise official at Goa, is inadequate to prove the claim. The item transported i.e. rectified spirit which was not denatured but potable is a sensitive commodity requiring Excise documents for its transport across the country. The consignee has to obtain a licence for import from Excise authorities in Goa and then he has to take transit permit from Excise authorities in Kerala and Karnataka and export permit from the State wherefrom rectified spirit is sourced i.e., Tamil Nadu. In fact in the Sales Tax Check Post there is also an office of State Excise functioning and therefore, besides Sales Tax documents, Excise documents used for transport should be entered there when item transported is rectified spirit. Strangely, the petitioners have no case that they declared the goods at the exit Check Post or surrendered the Excise transport pass which is a requirement under the Abkari laws. The petitioners have no explanation about any Excise licence or pass used for sourcing and transporting of rectified spirit through Kerala. In fact even the only document which is a certificate issued by a lower level Excise official at Goa, was not produced in adjudication proceeding and petitioners obtained it for production only at the stage of revision. Moreover, the goods have passed the entry and exit Check Post in Karnataka wherefrom petitioners should have obtained Excise documents for transport of goods through the State about which also petitioners are silent. In the circumstances, I am of the view that the document produced by the petitioners is not sufficient to rebut the presumption available u/s 30B(2). When presumption of local sale and delivery is provided under the statute, if at all it has to be rebutted with other evidence, it has to be proved with adequate material which should convincingly prove the transaction contrary to the statutory presumption. Since petitioners have not produced any Excise documents obtained in Kerala and Karnataka and proved transport through these States before goods allegedly reached Goa, there is no scope for accepting petitioners'' case that the document produced by the petitioners i.e. certificate issued by the Excise Inspector, Goa is sufficient to prove that goods reached Goa.

3. In the circumstances, I find no ground to interfere with the orders issued u/s 30B(3) of the KGST Act which is confirmed in two levels of revision. However, I feel the case calls for reduction of penalty which petitioners are entitled only if tax with reduced penalty is paid within a reasonable time. In the circumstances, impugned order is modified by confirming the levy of tax but reducing the penalty from Rs. 2,40,000/- to Rs. 1,20,000/-, provided the arrears of tax and the reduced penalty are paid on or before 30-4-2007. However, if tax and

reduced penalty are not paid as above, then the reduction in penalty granted will stand automatically vacated on expiry of last date provided for payment and respondents can proceed to recover full penalty with tax.

The O.P. is disposed of as above.

