(2007) 11 KL CK 0049

In the High Court Of Kerala

Case No : WA No. 1613 of 2007

T.A. Moideen Shaw and U.D. Joy APPELLANT

Vs

Sales Tax Officer and Others RESPONDENT

Date of Decision : 21-11-2007

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 29, 29(2), 30, 30B(1), 30B(2)
Kerala General Sales Tax Rules, 1963 — Rule 17(3), 35B

Citation : (2007) 11 KL CK 0049

Hon'ble Judges : H.L. Dattu, C.J;K.M. Joseph, J

Bench : Division Bench

Advocate : Arikkat Vijayan Menon, for the Appellant; No Appearance, for the Respondent

Final Decision : Dismissed

Judgement

H.L. Dattu, C.J.—First appellant is the owner of a lorry bearing Registration No. KL-0C-1296. Second appellant is the driver of the said vehicle.

2. The appellants in this Writ Appeal has called in question the correctness or otherwise of the order passed by the learned Single Judge in O.P. No. 36098/01 dated 19.3.2007. By the impugned order, the learned Single Judge has rejected the Original Petition. However, taking into consideration the facts and circumstances of the case, has reduced the penalty imposed by the Sales Tax Officer, Punalur.

3. Facts in nut-shell are:

The consignor at Tamil Nadu had entrusted the work of carrying rectified liquor (spirit) in the lorry owned by the first appellant. Second appellant was the driver of the goods vehicle. At the time of entry of the said vehicle into the State of Kerala, the person in charge of the vehicle, had obtained a transit pass as required u/s 30B of the KGST Act on 19.6.1999 at 17.45 hours.

4. The person in charge of the goods vehicle did not surrender the transit pass so

obtained at the last check post before his exit from the State.

5. The Sales Tax Officer, Punalur had issued a notice to the first petitioner dated 12.1.2000. In that, it was alleged that the first appellant though had obtained a transit pass at the entry check post, had not surrendered the said transit pass at the last check post and, therefore, a presumption would arise that the goods were either sold or distributed within the State of Kerala. In the notice itself, it was informed to the first appellant, that if desires, he may file his reply, if any.

6. The first appellant has filed this reply before the Sales Tax Officer, Punalur after receipt of the notice issued u/s 30 of the Act dated 12.1.2000. In the reply so filed, the stand of the appellant was that, the transit pass was carried by the Company people who were following the appellants'' vehicle and, therefore, they were not responsible for not surrendering the transit pass issued by the entry check post Officer. Apart from this defence, the appellant had not taken up any other defence in the reply filed to the notice issued by the Sales Tax Officer, Punalur. The defence offered by the appellant in his reply dated 22.1.2000, is as under:

The true fact is like this load was taken along with Tamil Nadu Police, Excise people along with responsible Officers of the Company M/s. Kesarval Spring and same load was delivered on 21.6.1999 to Kesarval Spring Distilleries Pvt. Ltd., Goa, and a copy of letter received from the above mentioned Company is enclosed herewith for your ready reference. If necessary, the original can be obtained by you from the Company itself.

7. Along with the Reply dated 22.1.2000, the appellants had produced a "Goods Received Note" dated 21.6.1999. The said note was issued by the consignee, namely M/s. Kesarval Spring Distilleries Pvt. Ltd. In the said Note, it is stated that they have received 12,000 bulk litres of rectified spirit sent by M/s. Dharani Sugars and Chemicals Limited vide Invoice No. 38 dated 18.6.1999 through tanker No.KL-10-C-1296.

8. The Sales Tax Officer, not being satisfied with the explanation so offered by the appellants, had initiated proceedings in exercise of his powers u/s 30B(3) of the KGST Act, 1963 read with Rules 35B and 17(3) of the KGST Rules, 1963 by issuing notice dated 28.10.2000. In the said Notice, the allegation against the appellants was that, though they had obtained a transit pass at the entry check post, the same was not surrendered at the last exit check post in the State and, therefore, there is a presumption that the goods were sold within the State of Kerala and thereby evading payment of tax due to the State of Kerala under the Act. After receipt of the notice, the appellant had filed his objections. In that again, apart from stating that the transit pass was in the possession of the persons who were following the goods vehicle, no other defence was offered by the appellants. Though a mention was made with regard to the issuance of a Certificate by the Inspector of Excise, Goa for reasons best known, the Certificate was not produced before the Sales Tax Officer.

9. The Sales Tax Officer has now passed an order of assessment for the assessment year 1999 - 2000 dated 30.11.2000 and in that, has quantified the tax liability against M/s. Dharani Sugars and Chemicals (P) Ltd., Thirunelveli and the copies were sent to the appellants. In that assessment order, the assessing authority has quantified the tax payable at Rs.1,20,000/=, surcharge in a sum of Rs.12,000/= and also has imposed a penalty of Rs.2,40,000/=. Aggrieved by the orders of assessment so passed, the appellants, namely the owner of the goods vehicle and the driver in charge of the goods vehicle, had filed a Revision Petition before the Deputy Commissioner of Commercial Taxes, Kollam. It appears that before the said Officer, the petitioners had produced a Certificate issued by the Inspector of Excise-in-Charge of the consignee dated 21.6.1999. The first Revisional Authority has rejected the Revision Petition filed by the owner and the person-in-charge of the goods vehicle, but while doing so, has not referred to the Certificate produced by the appellants. Aggrieved by the said order, the appellants had carried the matter by filing a second Revision Petition before the Commissioner of Commercial Taxes, Thiruvananthapuram. The said authority by its order dated 20.11.2001 has rejected the Revision Petition. Aggrieved by the said order, the appellants had filed an Original Petition before this Court in No. 36098/01. The learned Single Judge, considering all the averments made by the learned Counsel appearing for the petitioners, has come to the conclusion that the petitioners have failed to prove that the goods carried in the vehicle, in fact, was transported outside the State. Accordingly, the learned Single Judge has rejected the Original Petition and thereby confirmed the orders passed by the assessing authority, first revisional authority and also the second revisional authority. That is how the owner and the person-in-charge of the vehicle are before us in this Writ Appeal.

10. Shri Harisankar V. Menon, learned Counsel appearing for the appellants would submit that u/s 30B of the Act, Sales Tax Authorities can raise a presumption, if for any reason, the transit pass obtained by the owner or person-in-charge of the goods vehicle does not surrender the same at the last check post point and the said presumption is a rebuttable presumption and the same has been rebutted by the appellants by producing the Certificate issued by the Inspector of Excise-in-charge of the consignee Distillery. Therefore, it is submitted that the Sales Tax Authorities under the KGST Act and the learned Single Judge are not justified in quantifying not only the tax liability, but also in levying penalty under Sub-section (3) of Section 30B of the KGST Act. In aid of the said submission, learned Counsel invited our attention to the Certificate issued by the Inspector of Excise which was produced for the first time before the first Revisional Authority.

11. The question that arise for our consideration and decision is, whether the Assessing Authority and the second Revisional Authority are justified in quantifying the tax liability against the appellants and also levying penalty u/s 30B of the Act.

12. Section 29 of the KGST Act provides for establishment of check posts and inspection of goods in transit.

13. Section 30 of the Act provides for the regulation of transport of notified goods. Section 30B provides for transit of goods through the State and issue of transit pass. The aforesaid provision is as under:

30B. Transit of goods through the State and issue of transit pass:- (1) When a vehicle or vessel carrying goods from any place outside the State and bound for any place outside the State passes through the State, the owner or driver or person in charge of such vehicle or vessel shall obtain a transit pass in the prescribed form for such goods from the Officer-in-charge of the first check post after his entry into the State and deliver it to the Officer-in-charge of the last check post before his exit from the State.

(2) If the owner or driver or person in charge of such vehicle or vessel fails to deliver the transit pass for such goods referred to in Sub-section (1) to the last check post, it shall be presumed that such goods which are liable to tax under this Act have been delivered within the State for sale. Provided that where the goods carried by such vehicle or vessel are, after their entry into the State, transported outside the State by any other vehicle or conveyance, the onus of proving that goods have actually moved out of the State, shall be on the owner or driver or person in charge of the vehicle or the vessel, as the case may be.

(3) Where it is presumed under Sub-section (2) that the goods carried in a vehicle or vessel have been delivered within the State for sale by the owner or driver or person in charge of the vehicle or vessel, such owner or driver person in charge of the vehicle or vessel shall be jointly or severally liable to pay tax which shall be assessed and recovered in accordance with the relevant provisions of this Act, irrespective of the limit of any turnover together with an amount of penalty not exceeding twice the amount of such tax as may be assessed, after having given to the person or persons aforesaid an opportunity of being heard by the assessing authority under whose jurisdiction the check post is situate.

(4) Where any person consigns any goods or transports any goods from another State into the State and where the particulars furnished in the declaration prescribed in Clause (b) of Sub-section (2) of Section 29 are false or the consignee or purchaser stated therein is found to be bogus or non-existent or is not traceable or denies such purchase, it shall, unless the consignor or the owner of the vehicle or the person in charge of the vehicle proves to the satisfaction of the assessing authority that the particulars furnished in the declaration are true, be presumed that such goods which are liable to tax under this Act have been sold in the State by the consignor or the owner of the goods or the owner or driver or person in charge of the vehicle or the person in charge of the goods or all of them jointly and they shall be jointly or severally liable to pay tax on such sales which shall be assessed and recovered in the manner provided in Sub-section (3).

(5) For the purpose of this Section, the owner or driver or person in charge of the vehicle or vessel shall, unless he is a registered dealer under this Act, be deemed to be a registered dealer for assessment of tax under this Act.

(6) Where the goods enter the State by way of import from foreign countries through any airport or sea-port and the goods are transported to a place outside the State through a vehicle or vessel, the transit pass shall be obtained from the first check post or from the Office of the Commercial Taxes Department nearer to the air-port or sea- port, as the case may be, and the provisions in Sub-section (1) to (5) shall apply accordingly.

14. Sub-section (1) of Section 30B of the KGST Act mandates that when a vehicle or vessel carrying any goods from outside the State and bound for any place outside the State passes through the State, the owner or the person-in-charge of the goods vehicle shall obtain a transit pass in the prescribed form for such goods from the Officer-in-charge of the first check post after his entry into the State and deliver it to the Officer-in-charge of the last check post before his exit from the State.

15. Sub-section (2) of Section 30B of the Act provides for consequences of not surrendering the transit pass at the last check post before the vehicle goes out of the State. The said provision allows the Sales Tax Officer to raise a presumption that goods liable to tax under the Act have been delivered in the State, if for any reason the owner or the person-in-charge of the vehicle does not surrender the transit pass. The proviso appended to Sub-section (2) of Section 30B of the Act shifts the burden on the owner or the person-in-charge of the goods vehicle that after the entry of the vehicle into the State and if the goods are transported outside the State contained in that vehicle, the onus to prove that the goods have actually moved outside the State, shall be on the owner or on the person-in-charge of the goods vehicle.

16. Sub-section (3) of Section 30B of the Act provides for the procedure for quantification of the tax liability and also for payment of penalty, if for any reason the Sales Tax Officer presumes under Sub-section (2) of Section 30B of the Act that the goods vehicle after its entry into the State from outside the State had not left the boundary of the State and the person-in-charge of the goods vehicle had not surrendered the transit pass. Before levying any tax or penalty, Sub-section (3) provides that an opportunity of hearing requires to be given to the owner or person-in-charge of the goods vehicle. The other Sub-sections are not relevant for the purpose of this case. Therefore, they need not be noticed for disposal of the Writ Appeal.

17. In the instant case, the goods were moving from Thirunelveli in the tanker belonging to the first appellant. Second appellant was the driver or person-in-charge of the goods vehicle. When the goods vehicle entered into the borders of the State of Kerala, the person-in-charge of the goods vehicle had obtained a transit pass as required u/s 30B of the Act. Since the transit pass was not

surrendered at the exit check post, the Sales Tax Officer who issued the transit pass was of the opinion that since the transit pass had not been surrendered in the exit check post, the goods carried in the tanker or goods vehicle must have been sold or distributed in the State of Kerala itself and, thereby, evading payment of tax due to the State. The burden is on the owner or person-in-charge of the goods vehicle to rebut the presumption raised by the Sales Tax Officer as provided under Sub-section (2) of Section 30B of the Act. Before the Sales Tax Officer, it was the case of the assessee that since he was not carrying the transit pass and since the same was carried by the Company Officials who were following the tanker, the liability should not be fastened on the owner or the person-in-charge of the goods vehicle. It is for the first time that before the first Revisional Authority the assessee produced the Certificate said to have been issued by the Inspector of Excise who was in charge of the consignee Distillery. In our view, by mere production of the said Certificate issued by the Inspector of Excise, the appellants cannot contend that they have discharged the burden which was cast upon them under the proviso to Sub-section (2) of Section 30B of the Act. It is expected of the appellants not only to have produced documentary evidence by way of rebuttal presumption, but also to prove the same. In the instant case, the owner or the person-in-charge of the goods vehicle has not called upon the Excise Officer who has issued the Certificate, to give his evidence in support of the Certificate so produced. We reiterate that mere production of a document would not satisfy the requirement of proving a document before the authority. Taking these aspects of the matter in view, the second Revisional Authority before whom the said document was produced, has observed that, since the appellants have failed to prove that the goods carried in the tanker was transported outside the State, cannot be believed.

18. Section 30B of the Act is inserted in the Act only to see that a goods vehicle coming from outside the State, goes outside the State without selling or distributing the goods within the State. The Legislature has provided for issuance of a transit pass whenever a goods vehicle enters the entry check post of the State. The person-in-charge of the goods vehicle or the owner of the goods vehicle is expected to surrender the transit pass at the last check post in the State. If for any reason, he fails to surrender it, Sub-section (2) of Section 30B of the Act provides that a presumption can be drawn that the goods carried in the vehicle is delivered within the State. In the instant case, since the appellants did not surrender the transit pass as required under Sub-section (2) of Section 30B of the Act, the Sales Tax Officer and the Revisional Authorities were justified in raising a presumption that the goods in the vehicle must have been sold in the State and thereby evading the tax due to the State.

19. Having gone through the orders passed by the Authorities below and also the learned Single Judge, we are of the view that none of the Authorities or the learned Single Judge has committed any error whatsoever which would call for our interference. Therefore, the Writ Appeal requires to be rejected and it is rejected.

Ordered accordingly.

