(2008) 02 KAR CK 0024

In the Karnataka High Court

Case No : Writ Petition No. 21968 of 2001

The Sub-Divisional Engineer, Microwave Maintence, Bharat Sanchar Nigam Ltd.	APPELLANT
Vs	
The Deputy Commissioner for Transport, Belgaum Division and The Taxation Authority and The Regional Transport Officer	RESPONDENT

Date of Decision : 25-02-2008

Acts Referred:
Karnataka Motor Vehicles Rules, 1989 — Rule 34A

Citation : (2008) 4 KCCR 2230

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : S.N. Rajendra, for the Appellant; Niloufer Akbar, AGA, for the Respondent

Judgement

N.K. Patil, J.—Petitioner in this petition is the Sub-Divisional Engineer, Microwave Maintenance at Bharat Sanchar Nigam Limited, a Government of India Enterprise. Petitioner, questioning the correctness of the impugned order dated 28th March 2001 bearing No. DCT:TAX:APL No. 19:BGM:2000-01 passed by first respondent vide Annexure G, has presented the instant writ petition.

2. The facts of the case are that, petitioner is the registered owner of Motor Vehicle bearing No. KA-04/M-1207 which was purchased in the year 1990 for the Sub Divisional Engineer, Microwave Maintenance, Sirsi, North Karnataka. Since the said vehicle was old and had crossed its prescribed life, petitioner filed an application in Form No. 30 under Rule 34-A of the Karnataka Motor Vehicles Act before the second respondent and informed the said authority that, the said vehicle was not good for use and therefore, has been scrapped due to non-motor able condition and surrendered the documents pertaining to the vehicle on 25th July 1998 vide Annexure A. Thereafter, the said vehicle was auctioned by way of public auction under due intimation to the second respondent vide Annexures B and C for having sold the vehicle and handed over to the highest bidder, one Sri.

I.K. Agnihotri, Hallikeri Chawl Haliyal Road, Dharwad on 24th August 1998. Be that as it may.

3. After lapse of nearly eighteen months, the second respondent has issued the show cause notice on 3rd August 2000 intimating that, when the Inspector of the second respondent Department inspected the premises on 31st January 2000, they did not find the vehicle in the place where it was kept and therefore, petitioner was called upon to show cause as to why tax should not be collected from them for the period from 1st August 1998 to 31st October 2000 vide Annexure D. Immediately after the receipt of the said show cause notice vide Annexure D dated 3rd August 2000, petitioner has sent a reply dated 18th August 2000 stating that they are not liable to pay the tax. The second respondent, instead of considering the same, without proper application of mind and without looking into relevant material available on file has issued the demand notice for a sum of Rs. 47,442/- and directed the petitioner to pay the said demand amount within seven days from the date of receipt of the said communication cum notice dated 4th September 2000 vide Annexure F. Assailing the correctness of the said demand notice cum communication dated 4th September 2000 vide Annexure F, petitioner herein has filed the appeal on the file of the first respondent - Deputy Commissioner for Transport, Belgaum Division, Belgaum vide Annexure G. The said appeal had come up for consideration before the Appellate Authority on 28th March 2001 and the Appellate Authority without conducting any enquiry, with reference to the relevant material available on file, and without affording sufficient opportunity to the petitioner has proceeded to accept the demand notice issued by the second respondent and dismissed the appeal filed by petitioner holding that, petitioner is liable to pay the tax amount as demanded by second respondent. Being aggrieved by the impugned order passed by the first respondent on the appeal filed by petitioner, petitioner herein has presented the instant writ petition seeking appropriate reliefs, as stated supra.

4. I have heard learned Counsel appearing for petitioner and learned Additional Government Advocate appearing for respondents.

5. After careful evaluation of the original records made available by both the counsel, after perusal of the impugned show cause notice cum communication issued by second respondent and the order passed by the Appellate Authority, it is manifest on the face of the same that, the respondents have committed grave error and illegality in proceeding to issue the demand notice and confirmation of the same by the appellate authority without conducting proper enquiry in strict compliance of the relevant provisions of the Act and Rules, resulting in serious miscarriage of justice to the petitioner.

6. It is significant to note that, it is the case of the respondents that, when the Inspector of the respondent''s Department had made the inspection on 31st January 2000, they did not find the scrapped vehicle in the place where it was kept. Here, it is pertinent to note that, the Inspection report submitted by the

concerned Officer was in the month of January 2000 and the show cause notice of demand issued by the competent authority is in the month of August 2000, calling upon the petitioner to have his say in the matter, after lapse of nearly seven months. After receipt of the said notice, petitioner has filed the detailed objections narrating all the facts and setting out the reasons as to how petitioner is not liable to pay the tax and requested the competent authority to drop the proceedings holding that, they are not liable to pay the tax and to dispose of their case.

7. Further, it emerges from the material available on record that, it is the case of the petitioner that, they have sent the communication dated 24th August 1998 intimating the respondent - authority that, they have already sold the vehicle by way of public auction, and confirmed the same in favour of the highest bidder, one Sri. I.K. Agnihotri and handed over the vehicle to him. In spite intimating the same, before initiating the proceedings, the competent authority has not made any sincere efforts nor has the said authority applied the mind nor verified as to whether there is any truth in the statements made by the petitioner regarding sale of the scrapped vehicle by way of public auction in favour of Sri. I.K. Agnihotri. On the contrary, the jurisdictional competent authority and the first respondent being the Appellate Authority have accepted the report submitted by the Inspector on 31st January 2000 in toto and proceeded to issue the demand notice without conducting proper enquiry. The first respondent has also mechanically confirmed the same and dismissed the appeal filed by petitioner by committing the same error without assigning cogent reasons and without recording specific finding.

8. The Appellate Authority has only culled out the entire history of the case and the stand taken by the petitioner in the memorandum of appeal and has failed to record its own finding. Therefore, in view of non conduct of proper enquiry and for not taking decision on the basis of the relevant material available on file and proceeding to initiate action after lapse of nearly 18 months, the impugned order passed by the Appellate Authority is not sustainable.

9. More over, it is not the case of respondent authorities also that, they have initiated any proceedings against the jurisdictional Inspector who was duty bound to monitor and keep vigil on the vehicle in his custody and intimate as to whether the vehicle was in tact in the place where it was kept. The respondent authorities have also not made any sincere efforts to find out the veracity or otherwise of the statements made by petitioner in their reply It was the specific case of petitioner before the authorities that, they have auctioned the vehicle in question by initiating the proceedings after duly notifying the same in the National newspaper which had wide circulation in the said area. That information also petitioner has made available to the authorities. All these relevant material and clinching evidence which would have had bearing on line decision taken by the authorities have not been looked into nor considered by both the authorities.

10. Having regard to the facts and circumstances of the case, as stated supra,

the writ petition filed by petitioner is disposed of as follows:

I] The writ petition filed by petitioner is allowed in part;

II] The impugned communication cum demand notice vide Annexure F dated 4th September 2000 bearing No. 27:98-99-2000 issued by the second respondent and the impugned order dated 28th March 2001 bearing No. DCT:TAX:APL: No. 19:BG M:2000-01 on the file of the Deputy Commissioner for Transport, Belgaum Division, Belgaum - Appellate Authority vide Annexure G are hereby set aside;

III] Matter stands remitted back to second respondent to reconsider the matter afresh and to take appropriate decision in accordance with law after affording opportunity to the petitioner and to proceed further in the matter on the basis of the relevant material available on file and dispose of the same, as expeditiously as possible, at any rate, within a period of four months from the date of receipt of a copy of this order.

