Ganapathy Enterprises Vs. State

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Court : Karnataka

Decided On : Mar-27-2001

Reported in : [2001]124STC42(Kar)

Judge : M.F. Saldanha and ;R. Gururajan, JJ.

Acts : Karnataka Sales Tax Act, 1957 - Sections 28A; Karnataka Sales Tax Rules, 1957

Appeal No. : S.T.R.P. No. 205 of 1996

Appellant : Ganapathy Enterprises

Respondent : State

Advocate for Def. : B. Anand, Additional Government Adv.

Advocate for Pet/Ap. : S.V. Subramanyam, Adv.

Disposition : Petition partly allowed

Judgement :
ORDER

M.F. Saldanha, J.

1. We have heard the petitioner's learned advocate as also the learned Government Advocate on merits.

2. It is unnecessary for us to recount in detail the facts and circumstances relating to the imposition of the penalty in this case which amounts to Rs. 26,240. The petitioner's learned counsel did submit that having regard to the nature of the transactions and, the fact that according to the petitioner the goods were virtually being moved from the warehouse to the persons to whom they were to be entrusted for sale, namely, the dealers, that the imposition of the penalty itself is unjustified. Though we have heard the learned advocate on both sides, we refrain from recording any findings with regard to this contention principally because there is some ambiguity with regard to the correct nature of the transaction and secondly because the petitioner's specific case was not stated in so many terms at the earliest point of time. Under the circumstances, we have not entertained the first head of challenge.

3. On behalf of the petitioner however, the learned counsel has advanced a second submission whereby he points out to us that an amount of Rs. 26,240 which is the penalty imposed on the petitioner is the maximum that is leviable under the circumstances. The submission canvassed is that where the law envisages discretion in an authority, that it must be demonstrated that the discretion is correctly and judiciously exercised and that the order passed is not bereft of these factors. What is pointed out is that there is not a single word in the order justifying the imposition of a deterrent fine. The learned Government Advocate submitted that the movement of goods unaccompanied by requisite documents does ultimately result in loss of revenue in the ultimate analysis and that such clandestine transactions must be severely punished as a deterrent to other like minded persons. He therefore submitted that no special reasons are necessary for the award of the maximum penalty.

4. We do agree that there is considerable substance in what is pointed out by the learned Government Advocate but it is equally necessary for the concerned authority to state in so many words that penalty of a certain intensity is being imposed for the reasons set out. If the case justifies the imposition of a heavy penalty then the stating of reasons justifying the gravity of the punishment must be specified and in the absence thereof, it could be construed as a mechanical application of the power invested in the authority which would again be vulnerable

on the ground of arbitrariness. The petitioner's learned counsel is therefore on very sound footing when he points out to us that there is nothing to indicate that the petitioner has defaulted earlier or that the facts of the case justify exemplary punishment and that consequently, even if a penalty was awarded because these are technical breaches involving non-carriage of the requisite documents that this is a fit case in which a reasonable penalty would have served the ends of justice. There was also some debate with regard to the question as to whether or not the petitioners were justified in not having carried form 39 because of the circular issued by the Commissioner which was then in force. This is also a factor which we have taken into consideration.

5. On an overall evaluation of the facts and circumstances of the present case and particularly since it is demonstrated that there are no aggravating circumstances, in our considered view a penalty of Rs. 10,000 would meet the ends of justice. The impugned order is accordingly modified and the petitioner would be entitled to the consequential refund of the excess of penalty that has been recovered from them.

6. The petition partially succeeds to this extent. No order as to costs.