Pratiksh a Asher Vs. State of Kerala

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Court : Kerala

Decided On : Oct-01-2010

Reported in : ILR2010(4)Ker516

Judge : J.Chelameswar; P.R.Ramachandra Menon

Acts : General Sales Tax Act 1963 - Sections 41, 30B; Central Sales Tax Act

Appeal No. : ST.Rev..No. 185 of 2010()

Appellant : Pratiksh a Asher

Respondent : State of Kerala

Judgement :

1. This is a revision under Section 41 of the Kerala General Sales Tax Act, 1963 (hereinafter referred to as 'the Act') aggrieved by the order dated 25th January, 2010 passed by the Kerala Agricultural Income Tax and Sales Tax Appellate Tribunal, Additional Bench, Palakkad.

2. The brief facts are as follows: The petitioner herein was the appellant before the Tribunal aggrieved by the order of the Appellate Assistant Commissioner-II, Commercial Taxes, Palakkad, and dated 19.12.2008. The assessee sold certain lubricant oil valued at Rupees 25 lakhs approximately to a purchaser at Mangalore. The commodity sold was sought to be transported to Mangalore by a lorry bearing Registration No.TN/41-B 1927. The said vehicle in the course of its journey from Coimbatore (assessee's place of business) obtained a transit pass

contemplated under Section 30B of the Act. Section 30B in so far as it is relevant for the present purpose is sub-section (1) which reads as follows:

"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."

3. It can be seen from the said sub-section that when a vehicle carrying goods from any place outside the State and bound for any place outside the State passes through the State of Kerala, a transit pass is required to be obtained at the entry point in the State and the transit pass so obtained is required to be surrendered at the exit point from where the vehicle exits out of the State. The allegation in this case is that though an entry pass was obtained at the Walayar check post, the same was not surrendered at any check post/exit point in the State of Kerala and therefore it was inferred that the goods covered by the entry pass obtained from the Walayar check post did not exit the State of Kerala, but sold in the State of Kerala. Such an inference is not only logical but also mandated to be drawn under sub- section (2) of Section 30B of the Act which reads as follows:

"(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."

4. In view of such inference the petitioner herein who is the vendor of the goods was assessed to tax under the provisions of the Act. Aggrieved by such assessment, the petitioner herein carried the matter in a succession of appeals and eventually ended up in this Court by the present revision.

5. The learned counsel for the petitioner argued that in view of the language of sub-section (3)* of Section 30B of the Act it is only the owner or driver or a person in charge of the vehicle who is accountable for the movement of the goods and the petitioner who is the vendor of the goods and who parted with possession of the goods cannot be made liable for assessment under the Act. It is also argued by the learned counsel that the goods were sold against C Form issued under the Central Sales Tax Act and therefore the sale of the goods in

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*(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 or 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." question is an inter-state sale and therefore the petitioner cannot be called upon to explain the movement of the goods subsequent to his parting with the custody of the goods, nor can the petitioner be made liable for tax under the Act.

6. We see no substance in the submission made by the learned counsel for the petitioner. By sub-section (3) of Section 30B, the Legislature only declared the liability to pay the tax by the owner or driver or person in charge of the vehicle carrying the goods which are presumed to be liable to tax in view of the declaration contained under sub-section (2) extracted supra. But for the declaration under sub-section (2) the driver or transferor would have not tax liability as they are not parties to the sale transaction. Sub-section (3) declares that

such liability of the abovementioned persons connected with vehicle shall be joint or several. The submission of the learned counsel that such liability either joint or several is exclusive to the three categories of the abovementioned persons, but does not extend to the vendor who is not a registered dealer in the case nor the sale took place within the State cannot be accepted in view of the language of sub-section (4)* of Section 30B; which declares that it shall be presumed that the goods have been sold in the State by the consignee or owner of the goods on establishment of certain factors which are specified in sub- section (2) of Section 30B of the Act. One of the factors, the failure of which would go to establish the liability of the owner of the goods is that the transporter fails to establish the bona fides of the transport.

7. In the instant case, neither the petitioner nor the transporter could establish the bona fides of the transport that it was during the course of the inter-state sale by producing the ---

* "(4). Where any person consigns any goods or transports any goods liable to tax under this Act from another State into the State without any records as provided for under sub-section (2) of section 29 or where the particulars furnished in the documents accompanying the goods are false or the consignor or purchaser stated therein is found to be bogus or non-existent or is not traceable or where the transporter fails to prove the bonafides of the transport, it shall be presumed that such goods have been sold in the State by the consignor or the owner of the goods or the transporter or the owner 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 and severally liable to pay tax on such sales which shall be assessed and recovered in the manner provided for in sub-section (3)." appropriate documents including the exit of the goods from the State of Kerala. In such a case, the language of sub-section (4) of Section 30B is very categoric and makes the owner of the goods liable for assessment.

8. The other submission of the learned counsel for the petitioner is that in view of the fact that a Form C declaration (under CST Act) is given by the alleged purchaser the bona fides of the transport are established and therefore the

petitioner is not liable for the tax.

9. The fact that such a declaration in Form C is given need not necessarily establishes that the content of the declaration is true. When the truth of the content of the declaration is in doubt, the burden is on the parties to the declaration or persons claiming the benefit of such declaration to establish the truth of the content of the document. In view of the nature of the transaction a statutory fiction is created, i.e., unless the exit of the goods is established, in all the cases where admittedly the goods enter the State of Kerala, it is to be presumed that the goods are sold in the State of Kerala. In the absence of any proof to the contrary a mere declaration in Form C does not override the statutory presumption.

10. No other ground is pressed before us. We do not see any reason to interfere with the order under revision. The Revision petition is dismissed at the admission stage.