

Karnataka High Court

Sri Deepak D Souza S/O Sebastian D ... vs The Additional Commissioner Of ... on 29 September, 2010

Author: Manjula Chellur K.Govindarajulu

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IN THE HIGH COURT OF KARNATAKA, BAHGALGRE

BATEB THIS THE 29" DAY OF SEPTEMBER, 2010
PRESENT

THE HONBLE MR3. JUSTICE MANJULA

THE 1a:o1~z'BLE MR. JUSTICE K. A

'1'.A..E.'i'. No.3 Iii?' ,« .
BI3'I'W3:»EN J n V

Sri. Deepak D' Souza

S/O Sebastian D' Souza
SAC House, HaIeym'lgadyA"Po.ét :4
M-a.ngalore--574 146'» - ...AI'PELLAN'I'

(By éx§i.*<f3. vK:.'*.f; and Sri. 9. E. Umesh,
M/s. (flpbai Law'*«.I':z9."-Atiitrocatesl

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' .V.CIoZn32gér_c:via.;i---Taxes
. E;;ne5'-'I;'-X?_ 'a:iVi};\$?a Terige Bhavan
'G«amihitxagax':_

B"e.ng~alç:ei-560 009 RES?ORDEN'I'

A. {By S'r"i.. T. K. Vedamdurthy, HCGP)

This TAET is filed :1/s 16 of the KTEG Act

§agaix1st the Revision Order dated 3.11.2008 passed
' in No.ZAC--1/MNG/SMR-()7 83 0?A/0'?-08 on the file

of the Add}. Commissioner of Commercial Taxes,
Zone-1, Bangalore, revising and setting aside the
appeai orders and restoring the orders of assessment
and penalty of the check post authority and
accoréingly concluding the revision proceedings.

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This TAET coming on for Admission this day,
Manjula Chellur J., delivered the following:
J U D G M E N '1?

On our direction, the learned Government

Advocate placed before me the original file pertaining

to the assessment of sales tax for the

2002-63 of M/s. Vivek Petra Co. . _si;a\$;v::sfi:.V:

'm/s. vivek Petra] and the same :s'%;a¢;-grade " ' f

2.. The admitted facts izxddflre

the engaged in the
business of goods; in the month of

Jughe _ desonsimment belonging to a

M/s 'Vivek Petro -----a a registered

.3:ieé;lerf~:-;vrrde.r7'Karnataka Tax on Entry of Goods Act,

\$.;Q?9.__"t1*e\$;i3eported consignment of a. product called

.. Tzragdthe' from Mangalore; the contention of the

A' "A._VVd'eliartrrlerlt was the transit: parts which was required

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":to be taken by the driver or the person incharge of

the vehicle at the check post of entry after

commencement of the transit was not handed over

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at exit check post; therefore, a presumption under
Subsection 4 of Section 3.8-B is available to hold
that the consignment did not move out of the state

but was made within the State.

. In the present case, the transit. __

issued by Kannur Collector, Kannur. "ar:1.d'

cheekpost was Attibeie near

goods were to reach the dos-tiliaeatont.Torrizsfieie 'i:¥:;ie~r

State of Karrlatakai.e., Po'i::§icherry'.V_ die oasis of'

nonwreceipt of trvij.-&:4:_i"a,~_it gtzttbele exit

witfiin time under the above said

provisiitzxgtoheggf 'trot imposeri tars: but also levied

p,eé; }elty onathey goods transported. The contention

Vt:§_1 :e:«apfiellant/assessee was apart from the driver

2 étlithorised representative of the consigner

Petra, Béanylore, who was incharge of the

'A ge_ode from the commencement of the journey till it treeehed the destination and he was the one who

H too}: not may the transit pass but was entrusted

with the duty of handing over the same at exit

check post. Therefore, the owner of the transit

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vehicie was not liable to pay either the tax or the

penalty imposed. However, the order dated

24.12.2003

by the Assessing Oficer goes tr!"--Show that the said defence was not accepted._éeg§i:4'e:'ti\$¢'ey
proceeded to impose tax of Rs.6,6'Mr/h--H another Rs.□674/- as 1Je11aJt;:5y;.»At»V 9 before the
appellate a_.utheri.t\$*--.. in A' 130.232] 03-04. _

4.The appeiiate aut?:...~eri_ty°--~i_1; thegvreéent case after taking into the assessment on by the
owner of the goods i.e., Vti'vek _Pé'£:r'iie,:' lktiititrrgxalare, concluded that there were no einrasionv
of any tax. Therefore, on »V:VaeVsur\$_ar1ti\$ñ.s; taxes cannot be levied when the H '-
f5Lssegs7«§e%r able to establish. that there was ample er€irIe"r3,cie4'.to prove the movement of
goods outside the '□tate ané not said within the State. He also ""\$r'et'Aers to the release of goods of
naptha in favour of H the consigner and also ietters issued by the Deputy Commercial Tax Officer at'
Pondicherry. The assessing authority had come to conciusien that all the entries effecteci by the
consigaar did move out ef the State. Based on_ this finding, the apspe□ate authority aliowed the

6. Sec. 18§ :31' the Kamataka Tax on Entry of Genés □at, 1979 reads as undar:

[1]Where a vehicle is carrying goods taxable under this Act,

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The amount of tax and the duty levied under this section, shall be covered in the prescribed manner. Explanation: In case where a vehicle owned by a person is hired for transportation of goods by some other person, the hirer of the vehicle shall for the purposes of this section be deemed to be the owner of the vehicle.)"

'2'. Presumption under sub-section (3) of sec. 18-B of the Act indisputably is a rebuttable presumption. Rebuttal presumption the person at whom the burden is to be passed by the checkpost to satisfy the authorities that there was payment of tax. If the intention of legislature were to be that irrespective of payment of tax on the goods, the presumption was available to "then whether those goods were subjected to payment of tax or not would be a matter of fact that rebuttal evidence to be brought on record by the party in would be open for him to establish that." State.

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in this case was handed over at exit check post or if the goods in question did move out of the State. Therefore, presumption of sale within the State would not be available to the revenue.

8. In the present case, the contention of the appellant was to the effect that along with the driver of the vehicle, the owner of the goods also travelled because the consignor and the consignee were one and the same. Therefore, all the formalities at the check post by the representative of the consignor, i.e. the driver who normally would be known to the details. Apparent from this the goods had to move from Pondicherry, outside the notification 18-B contemplates that the vehicle by the owner moved out of the State, he obtain transit pass, i.e. the one in charge of the vehicle. The view under sub-sec. (3) as already stated is correct. The presumption and the appellant relies upon the "effect of the assessment at the consignor or the

-- the consignee of the goods.

9. It is also not disputed by the revenue that in view of the notice sent by the check-post officer pertaining to M/s. Vivek Petra, investigation was made with regard to the accounts of M/s. Vivek Petro and even intelligence wing of the revenue also made a thorough investigation both at Marzgalore and Pondicherry, so far as the Business, Vivek Petra. The material that was the assessing officer at the time of assessment indicates that the goods were imported, i.e. a product of India. The goods were sent to Pondicherry and the duty was paid to Excise Department was also paid to the assessing authority. The view of the assessing authority who took up the proceedings as a part of the investigation into the missing of goods or none of the goods at exit check post, so far as M/s. Vivek Petra is concerned, it was satisfied that all the goods that were imported which were meant to be sent to Pondicherry did reach Pondicherry and not even a single incident the revenue was able to establish that it was sold within the State. He was justified in saying that the assessee i.e. M/s. Vivek Petra had accounted

all the goods therein imported by them and nothing escaped In that View of the matter, the evidence, the appellant's reliance on the assessment order pertaining to the absence of the Department's finding that the consignment in question was outside the State, reviewed and justified in settlement of the appeal authority. As revision authority did not even, displace the rebuttable evidence of the vehicle and whether the assessing authority had reached finality thereon. The learned Additional Advocate is fair enough to bring to our notice that the order of assessment pertaining to the subject matter of the revision under section 23, but the revisional authority confirmed the said order of assessment of the assessing officer. When once the order of assessment of the subject matter has reached finality, it would not be open to the Department to set aside the presumption under sub-section (3) of the same and the same is the result of the above discussion and opinion, the appeal is allowed. Accordingly, the appeal, is allowed setting aside the order of the assessing authority dated 14.12.2009. Authority dated 14.12.2009 recovered from the appellant towards tax or penalty, the same is set aside. The order is confirmed within three months from the date of a copy of the order.

Sd/- * [Signature] ; Sd/- [Signature] i/c [Signature] " V " oak