## Karnataka High Court

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

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Author: Manjula Chellur K.Govindarajulu
      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/0 Sebastian D' Souza
      SAC House, Haleym'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."-Atiirocatesl
        Aéd§'tionai Végmmissioner of
      \\\J{"'"és
       ' .V.CIozn32gér c:via.;i---Taxes
       . E:;ne5'-'I;'--X?_'a:iVi};§?a Terige Bhavan
      'G«amihitxagax':
      B"e.ng~a1¢: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
      appeal orders and restoring the orders of assessment
      and penalty of the check post authority and
      accoréingly concluding the revision proceedings.
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Sri Deepak D Souza S/O Sebastian D ... vs The Additional Commissioner Of ... on 29 September, 2010
This TAET coming on for Admission this day,
Manjula Chellur J., delivered the fallowing:
JUDGMEN'1?
On our direction, the learned Government
Advocate placed before Ire the original file perteirning
to the assessment of sales tax for the
2002-63 of M/s. Vivek Petra Co. . si;a§:v::sfi:.V:
'mls. vivek Petra] and the same :s'%;a¢;-grade " ' f
2.. The admitted facts izxddflre
the
      engaged in the
busifieseoéf trarfiepdrtefiibn of goods; in the month ef
Jugxe 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
,,,_\\j\
":to be taken by the driver or the person incharge of
the vehicie at the check post of entry after
commencement of the transit was not handed over
١,_
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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 consimment did not move out of the state
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but wags mid within the Etate.

. In the present case, the tra.nsi.t.\_\_

issued by Kannur ClleckPosi:, Kannu.r "'ar:1.d'

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Sri Deepak D Souza S/O Sebastian D ... vs The Additional Commissioner Of ... on 29 September, 2010
cheekpost was Attibeie near
goods were to reach the dos-tiliaeationt.Torrizsfileie 'i:\frac{\pmathbf{\text{:}}}{:}:\frac{\pmathbf{\text{:}}}{:}=\pmathbf{\text{-}}\pmathbf{\text{r}}
State of Karrlatakai.e., Po'i::§icherry'.V die oasis of'
nonwreceipt of trvij.-&:4: i"a,~ it gtzttbele exit
witfin time under the above said
provisiitzxgtotheggf 'trot imposeri tars: but also levied
p,eé;}elty onathey goods transported. The contention
  Vt:§ 1 :e: «apfiellant/assessee was apart from the driver
     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
,,\\'_f\
vehicie was not liable to pay either the tax or the
penalty imposed. However, the order dated
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by the Assessing Of ☐ ter 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 appeliate 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§n.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 autherity had come to conciusien that all the entries effecteci by the consignar did move out ef the State. Based on\_ this finding, the apspe□ate authority aliowed the

24.12.2003

appeal in favour the appellant, setting asiée the orders of officer dated 24.12.2903.

5. The revisional authoi;:;itt $\Box$ ::to;>?£\_ by way of suo«-metto:fe1;f\_i:«sioéxx;\_t'a';:1d cause nmtice to the him to explain the con.tei";.ts. of jg $\Box$ ce. assessee appearad before jvtiatuthority and sub $\Box$ itetiiihé fiowever, the revisional authteritty of the appellate autharity as\_in1pré'p¢\_'r .a;r;a<itA'\*\$\$z?ts.iné1dicia1 to the interest of the mjrentia' """ Ultimately the orders of the t were revised and set--a.side. The 'efders.t§f.V.aiissessment and penalty of the check post authgéity were restored.

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

\"~JrA\:5 See.I8-B»-Transit of goods by road through the State and issue of transit pass:

[1)Where a vehicie is carrying goo€i:3s".o taxable under this Act,

(a) from any other piece outsiitiet A State and bound for anyglece c--utsi.'{i\_e: 'i₁V.₁□\_ State and passes throng}: \$ta\_te':A 'V j (by and which gooaseer¢.mp¢¢t¢aemtr'tt the State from en§f'''~.plac.e .\_\_outte'i§ié~.\_t"i:he': country and such go\_oV(\_isV axje beingcarried to any p1ace'o4\_1§:tsid'e "\$'t,e.i:e:\_\_, the driver or any other perso \_eine-clierge\_'.. of such vehic\_l\_e.q ejhalfzii 3 necessary a:a~:r§d'..Vv\_\_obt;ariVVt1 a transit pass in zdntplieete'fcottt=:§i-oing such particulars as mey\_VttbeV'p\_rescri\$ed, from the officer~in- charge 'A the first oheckpost or barrier. L}vtfter««\_.\_his entry into the State or after m¢eex-mat has commenced from the the case may be, or from the Z 'officer empowered for the purposes of eelbwsection (3) of section 28-A, upon interception of the goods vehicle after its entry into the State or after movement has commenced as the case may he.),.\%X (2) The driver or the person-inw charge of the vehicle shall deliver within the stipulated time 3. copy of transit page obtained under sub section (1) to "officer~--in~--cha.rge at last checkpo□' barrier before his exit from the Statei. tt {3)If for any re;e.so:tt, 'Afjv carried in a goods Vehicle-..Aere, ai'te'.:'entry=--4 into the State (or eft,e'r.\_+eoIti1I§e31ee':ne--:it"of: movement, the . ..Vi§e.se~., v ma.y«.b e)J§not moved out ofthe the time stipulated in owner of the ogms otvehtseleeoevshazz 'tn;r:;:sh to the omce; ¢ogsterea 15. this behalf the reasons' '4..\_\_:e:...c.Er1 delay and other pettieolerstify thereof and such officer ' 'V shall extfteizjdue enquiry extend the time of t suitably amending the transit fitovided that where the goods x 'eet1'§eé by a vehicle me after their entry "ie.to the State, (or after commencement of movement, as the case may be) transported outside the State by any other vehicle or conveyances, the extras of proving that the goods have actually moved out of the State shall be on the M 'xfk awner of the vehicie who originally brought the goods into the State. (4)13 the driver or any other personal inwchange of the vehicle does not with sub-section(2), it shad! be that the goods carried thereby \_113.9\_ée:.b§é\_.{:exn1\_ sold within the State by the .q\(\sigma\rho\)eta:: 4 shall, anything contain~\(\sigma\right) < i\(\sigma\rho\).\_\_V in '7-,thisV vehicle and assessed to tax by t\(\subseteq\alpha\)-a\_V'tof\(\subseteq\epsilon\) etiniowte;red in this behalf 'in\_'\_th\(\phi\Atj\)\$te:\(\sigma\) ribgAd manner. (5) If the tbierfnér.¢'f::'th\$tt'tra.1ii3ie fails to obtain the: tra;□\$it:j.~aV5.3.':'tas tparéxvictied unéer :V4t,5ll-.11'v'~StV.¢t3';t°""□"'5"-.t3t"t fails to deliver the Same as.\_t}3tc\*fi'é.§d"'.under subsection (2), A \_ \_ he tshatlltbé liahié to pay by way of penalty sum a□ot....exceeding (female the am-aunt .,;&fVt.a:x.l\_eviabIe on the gooés transported.

T' The amount of tax and the v\_petj§a:=i1ty ievied under this section. shall be ~~ tn:-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 E3 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 Imdisputedly is a re teble presumption. Rebuttal presumption the person @inst whom the jmpug:3ed--:.10.r:&'e:reeztieu to be passed by the checkqaoet to satisfy the authoritiee 't\_hatVthere of payment of tax. If the □tention of legislature were to be that irres.3.eeet'tva+t\_»pef:it;ent of tax on the goods" et;ies'tior;V;\*-' reba;itta.I presumption was avaiI'ebIe.'\_ to "then whether those goods were stxfbjeetedv-\_to--. oa§ment of tax or not would be A Irrviei□of the fact that rebuttal evidence to be brought on record by the party in woulci be open for him to establish that . 'State.

## Ax-

in TI' was hanéed over at exit check post or A the goods in question did move out of the Therefore, presumption of sale within the State would not be available to the revenue. :9

8. In the present case, the contention of the appeilant corrsieteetiy was to the effect that along with the ériver of the vehicle, the owner of the goods also traveller} because the consignor ei:ide.the consignee were one and the same. Theref§t§','V»I' entire formalities at the cheek after by the representative o§fA\_ther4e5gAeor§s{§.'.'Renate driver who normally woeulgi be'.\_tliiterat'e know the details. Appmerrthf in this the goeéehaéto move from V1;'§i:£i;r::ga'\_ior--e,'te.\_\_1§o1z(ticherry, outside the oitheeetion 18----B contemplates that Vteet by the owner meved out of\_4:k,1e s£ate,'h'e obtain transit pass, i.e. the o£..theH;A5ere5en in charge of the vehicie. The 'Vt§;reett:m;§)"tieh'\_i.under sub-sec. (3) as already stated is e. re.hut'te3:vt'f9resumption and the appellant relies upon \_ the "erect of the assessment at' the coesignor er the

--..\_"eeeeignee of the geods.

9. It is also not disputed by the revenue that in View of the notice sent by the check~post officer pertaining to M/e. Vivek Petra, investigation was :1 made with regard to the accounts of M15. Vivek Petro and even intelligence wing of the revenue also made a thorough investigation both at Marzgalore and Pondieherry, so far as the Business, Vivek Petra. The material that was the asseceing officer at the time of of assessment indicates whetepvery T:t'}1etf-ee.\_\_\_y;we;'e imported, Le. a pro<i11cttV\_c'a\_11.ied--"iphthetteaso sent to Pondhictzerry 'accoe\_hted at Pondicherry. It evei:,\_'b\{\}f Central Excise\_at 'Whatever duty that was payat to Excise Department was also paid... gs gaiexivthe' of the assessing authority...V.\_W!i:.ez\{\}r\{\}'t\*z:aIi'ce thevvtteoeeessing authority who took up the proceedings as a part of the Ain\_ves\_tiget:ion into the missing of I or none\_ecceutiting of 1"Ps. at exit check post, so far 3.5 mils. A' 'eAV\_V"\{\}E'i\*u;?ek Petra is concerned, it was satis that all the goods that were imported which were meant to be sent to Ponebieherry did reach I'ondichery and not even. a. single incident the reeeame was able to establish that it was sold within the State. He was justified in saying that the assesses i.e. M/s. Vivek Petra had accounted

all the goods tb-.et~..4\_:"t3ere imported by them and nothing escaped In that View of the matter,\_ yczlten rebnttable evidence, the apj3ellen.t' reiiee:"uj:;on5."t'tiie assessment oréer pertaiitieg int' the absence of the Departr£1en't..nesteiaiieingi that the consignment in queetiorze ☐tluiitotuieove outside the State, revieigoxtal iiot justified in sett:ir:ig't'e.ei:de e'z%§.l'ersA"o§"'tV:l1e appellate authority. As revisiorzai authority did not even, diecees the rebuttabie evidence relied the owi3eVr of the vehicle and whether the "eseessing authority had reached finality 'er Vnotr." 1 ..\_1b.-»-" 03:1 the other hand, the learned ..Crove't' ☐ meot Advocate is fair enough to bring to our "'.\_tzio'i'Aice that the order of assessment pertaining to = - 3. Viva}; Petro was the subject matter of sue mote revision under section 23., but the revisional I3 authority con red the said order of assessment of the assessing officer. When once the order of assessment of M13. Vivek Petro has reached hality, it would not be open to the Bepartment: that the presumption uncier sub--sec. (3) of still available and the same 1s'hoot.;e\u20e8ug.\u20e4\u20e4\u20e8i;rrnrivsawt r of the above discussion and opinion, the appeal desérv,§s.\_tto Accordingly, the appeal, i\$.VVa1\soWeed setting aside the order of tiztf Ar; §vi; \$i.oi:a1.t'.A: "~authority dated been recovered from the o{;2pélla□\_tVéVit2:§é'r:':L:'iowards tax or penalty, the sa§:t1'eeo..sh2rV1"£'-»"refilntied within three months from reoetot of a copy of the order.

S□ \* □dga ;Sd7i~» i□dge " V "oak