

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF JUNE, 2015

PRESENT

THE HON'BLE MR.JUSTICE MOHAN M.SHANTANAGUDAR

AND

THE HON'BLE MR.JUSTICE ARAVIND KUMAR

STA No.97/2013

BETWEEN:

M/s.PAN PARAG INDIA LTD.
NO.6, NISARGA FARM HOUSE,
MATHAHALLI ROAD, MAKALI,
DASANAPURA HOBLI,
BENGALURU-562 123,
TIN:29940824286
REPRESENTED BY
ANIL KUMAR G.M.
S/O KEDARNATH
AGED 59 YEARS,
HINDU

..APPELLANT

(BY SRI.A.SATHYANARAYANA, ADVOCATE)

AND:

ADDL. COMMISSIONER OF
COMMERCIAL TAXES
ZONE-3, VTK-1, 1ST MAIN,
GANDHINAGAR,
BENGALURU-9

..RESPONDENT

(BY SRI.K.M.SHIVAYOGISWAMY, AGA)

THIS STA IS FILED UNDER SECTION 66(1) OF THE KARNATAKA VALUE ADDED TAX ACT, 2003, AGAINST THE ORDER DATED:29.04.2013 PASSED IN NO.ZAC-03/DVO-06/SMR-18/12-13 ON THE FILE OF THE ADDL. COMMISSIONER OF COMMERCIAL TAXES, ZONE-3, VTK-1, GANDHINAGAR, BENGALURU-09, SETTING ASIDE THE APPEAL FILED ORDER UNDER SECTION 62(6) OF KVAT ACT, 2003 PASSED BY THE JCCT (APPEALS)-6, BANGALORE VIDE VAT AP/NO.1495/10-11 DATED: 07.04.2012 AND RESTORING THE PENALTY ORDER FILED UNDER SECTION 53(12) OF KARNATAKA VALUE ADDED TAX ACT, 2003 PASSED BY THE DCCT(VIGILANCE) BENGALURU, DATED: 04.08.2010.

THIS STA COMING ON FOR FINAL HEARING THIS DAY, **MOHAN M. SHANTANAGOUDAR J.**, DELIVERED THE FOLLOWING:

JUDGMENT

Appellant is a dealer in Pan Parag-Gutkha. Appellant's Goods Vehicle bearing NO.KA-40-2300 was intercepted by the Deputy Commissioner of Commercial Taxes(Vigilance) Bengaluru at 11.00 A.M on 29.07.2010 at National Highway No.4 (Tumkur-Bengaluru Road). At the time of interception, the driver in-charge of the goods vehicle did not produce any documents before the investigation officer. Thereafter physical verification of the goods under transport in the goods vehicle was taken up immediately. On verification it was noticed by

the officer that the goods vehicle was carrying 14,61,600 pouches of 1.8 gms each, Pan Parag-Gutkha which was packed in 60 bundles with total weight of 2630.880 kgs. The inspecting officer has valued the goods in the vehicle based on Maximum Retail Price(MRP) at ₹14,61,600/-. Despite repeated demands, the driver did not produce any document pertaining to transport of gutkha. Hence, inspecting officer issued Goods Consignment Endorsement bearing No.GCE-18/10-12 dated 29.07.2010.

2. Within half an hour thereafter i.e., after detention of the vehicle, one Sri.Rilesh, said to be authorised officer of the appellant company came to the spot wherein the vehicle was intercepted, on being asked he was also not able to produce any of the documents pertaining to transport of gutkha. At about 5 P.M. on 29.07.2010 appellant company faxed a copy of the invoice bearing No.139 to the office of inspecting officer along with a covering letter dated 30.07.2010

wherein it was mentioned that 240 bags of Pan Parag were to be consigned to M/s.Lovely Enterprises, No.7, G.S.Market, O.T Pete Cross, Bengaluru-53. Subsequently the Managing Director of the appellant company was present in the Department on 30.07.2010 and in his presence the vehicle was again verified and goods as mentioned in the aforementioned paragraph were found to be in the vehicle.

3. Hence, it is clear that, since none of the records/documents were produced pertaining to transport of gutkha at the time of interception vehicle came to be checked at about 11.30 A.M. on 27.07.2010. Thereafter show cause notice under section 53(12) of the Karnataka Value Added Tax Act, 2003 (for short 'Act') was issued on 30.07.2010 by the Commercial Tax Officer calling upon the appellant to show cause as to why they should not be imposed penalty under section 53(12) of the Act. Appellant replied the said show cause notice on 30.07.2010 itself. After considering the reply

and after hearing the appellant, an order came to be passed by the Commercial Tax Officer under section 53(12) of the Act on 04.08.2010 imposing penalty of ₹3,13,075.00ps (amounting to double the amount of tax). Being aggrieved by the said order dated 04.08.2010, appellant filed an appeal before the Joint Commissioner of Commercial Taxes(A), Bengaluru-20 in KVAT.AP.No.1495/10-11. By a non speaking order the Joint Commissioner of Commercial Taxes (Appellate Authority) allowed the appeal on 07.04.2012 by exercising the powers under section 62(6) of the Act as per Annexure-C.

4. When the facts stood thus, a show cause notice came to be issued by Revisional Authority/Additional Commissioner of Commercial Taxes, Zone-3, Bengaluru exercising suo moto powers under section 64(1) of the Act. The Revisional Authority after due notice to the appellant and after hearing the appellant, passed a detailed order as per Annexure-A on 29.04.2013 setting

aside the order passed by first appellate authority in KVAT.AP.No.1495/10-11 and consequentially has restored the order passed by the Commissioner, Commercial Tax Officer dated 04.08.2010 imposing penalty of ₹3,13,075.00. Order of Revisional authority (Additional Commissioner of Commercial Taxes, Zone-3, Bengaluru is assailed in this appeal.

5. Though the appeal is admitted on 17.07.2013 by this court, by oversight substantial question of law was not framed. However, after perusal of records we find that following substantial question of law would arise in this appeal:

“Whether the initiation of suo moto revisional proceedings against the appellant under section 64(1) of Karnataka Value Added Tax Act is erroneous in law and as such, same is liable to be set aside?”

6. Sri.Sathyannarayana, learned advocate appearing on behalf of appellant taking us to the

material on record and orders passed by authorities submits that there was no intention on the part of appellant to evade tax inasmuch as tax had already been paid; since threat perception generated in the mind of driver of the vehicle, he could not produce the relevant documents before the inspecting officer though such documents were inside the goods vehicle carrying the goods; however within few hours all the documents were faxed to the office of concerned officer to show that all the taxes were paid in respect of the goods even prior to transport of goods. The sum and substance of the arguments of Sri.Satynarayana, learned counsel for appellant is that appellant cannot be said to be at fault and therefore the first appellate authority was justified in setting aside the order passed by the original authority imposing penalty. In other words he submits that the impugned order of revisional authority exercising power under section 64(1) of the Act is bad in the eye of law.

7. Said submissions were opposed by Sri.K.M.Shivoyogiswamy, learned Additional Government Advocate appearing on behalf of respondent.

8. Undisputedly the goods vehicle bearing registration No.KA-40-2300 at about 11.00 A.M. on 29.07.2010 was intercepted by Deputy Commissioner of Commercial Taxes (Vigilance), Bengaluru and said vehicle was carrying Pan Parag-gutkha packed in 60 bundles having total weight of 2630.880 kgs. It is also not in dispute that at the time of interception the driver who was in-charge of the goods vehicle did not produce any documents pertaining to the goods which were being transported before the inspecting officer. It is also not in dispute that in the presence of the driver, the physical verification of the goods under transport was taken up and it was noticed by the inspecting officer that Pan Parag-Gutkha of 14,61,600 pouches weighing

1.8 gms which were packed in 60 bundles were in transit without valid documents. The officer valued the goods based on Maximum Retail Price at ₹14,61,600/-. Since the driver did not produce any document pertaining to the goods under transport, the vehicle as well as goods were detained and Goods Consignment Endorsement vide No.GCE-18/10-12 dated 29.07.2010 was issued to the driver. It is also not in dispute that one Sri.Rilesh who was calling himself as authorised officer of appellant company came to the spot within half an hour of interception and obviously after getting information from the driver of the vehicle. He also did not produce any records pertaining to the goods under transport. It was only in the evening on 29.07.2010 at about 5 P.M. it seems appellant company faxed copy of invoice bearing No.139 dated 29.07.2010 in which it is contended that 240 bags of Pan Parag were to be delivered to M/s.Lovely Enterprises, No.7, G.S.Market, O.T Pete Cross, Bengaluru-53 in which the company has stated that the copy of invoice is with the driver and

it continues to be with the driver who was afraid of the inspecting officer and hence he could not speak and satisfy the authorities by producing the bill. Said fax message further requested for early release of the vehicle. All the aforementioned admitted facts clearly reveal that the person in-charge of the vehicle or the person who came within half an hour after interception of the vehicle calling himself as authorised officer of appellant company did not produce any record or documents pertaining to the goods under transport.

9. Provisions of section 53 of the Karnataka Value Added Tax Act are enacted mainly to prevent clandestine transportation of goods and to prevent evasion of tax payable. Section 53(2) of the Act mandates that the owner or person in-charge of the goods vehicle shall carry with him the goods vehicle record, the trip sheet or the log book as the case may be and shall also carry documents as prescribed or notified by the Commissioner in respect of goods carried in the

goods vehicle. Certain other mandatory requirements are also to be satisfied under section 53 of the Act. In case if the provisions of section 53(2) are contravened, officer in-charge of the check post or any other officer is empowered to levy penalty under section 53(12) of the Act. In the matter on hand, admittedly the documents were not tendered by the person in-charge of the goods vehicle immediately after interception of the vehicle. Hence, departmental officer had to inspect the goods under transport and find out as to the nature of goods that was being transported. Such interception has taken place at 11 A.M. on 29.07.2010 and a fax message along with copy of the invoice was received by the inspecting officer only at about 5 P.M. informing the department that the invoice was with the driver and he could not tender said document before the inspecting officer. Such explanation is certainly an afterthought and hence it cannot be accepted. Therefore same is not rightly accepted by revisional authority. The act of the appellant in not sending records along with the person

in-charge of the vehicle along with the goods is a clear violation of clause (b) of sub-section(2) of section 53 of the Act. Under those circumstances revisional authority was fully justified in interfering with the order passed by appellate commissioner which has treated the matter lightly, ignoring the mandatory provisions of law and granted the relief to the assessee on the ground that there was no intention to evade tax. Order passed by appellate commissioner though runs to number of pages is unreasoned. The order of appellate Commissioner merely mentions the arguments advanced by the appellant; however the only reason assigned by the appellate commissioner while setting aside the order imposing penalty is that there was no intention on the part of the appellant to evade tax.

10. The legislature in detail has prescribed procedure for carrying goods under section 53 of the Act. The said provisions are mandatory in nature and having regard to the legislative intention, if those

provisions are not complied then there is non compliance of statutory requirement. As the provisions do not anywhere disclose or indicate that the intention to evade tax is necessary for levy of penalty, same cannot be read in section 53 of the Act to find out whether statutory contravention is established or not. Once statutory contravention is established, then section 53(12) is attracted which provides for levy of penalty.

11. Unless the case falls under Section 53(2) clauses (c) and (d), the penalty to be imposed is not less than two times the tax liability and maximum is three times. The matter on hand does not fall under clauses (c) and (d) of Section 53(2) of the Act and hence the authorities have rightly imposed penalty to an extent of two times of the tax liability. Hence, no interference is called for in the quantum of penalty also.

12. On considering the entire material on record we find that revisional authority is justified in setting aside the order passed by the appellate commissioner and restoring the order passed by the original authority. Accordingly, we answer the substantial question of law against assessee and in favour of revenue.

In view of the above, appeal stands dismissed. Order of Additional Commissioner of Commercial Taxes, Zone-3, Bengaluru, dated 29.04.2013, Annexure-A stands affirmed. No costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

SBN