



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 24TH DAY OF JUNE, 2024

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PRESENT

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

AND

THE HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR

WRIT APPEAL NO. 854 OF 2022 (T-RES)

BETWEEN:

1. THE JOINT COMMISSIONER OF
COMMERCIAL TAXES (APPEALS)-3
BMTc COMPLEX, 2ND FLOOR,
TTMC, SHANTHINAGAR, K.H. ROAD,
BENGALURU-560 027.
2. THE COMMERCIAL TAXES OFFICER
VIGILANCE-09, VTK-2,
A BLOCK, 3RD FLOOR, VIVEKNAGAR,
KORAMANGALA, BENGALURU-560 047.

...APPELLANTS

(BY SRI. ADITYA VIKRAM BHAT., AGA.,)

AND:

M/S. TRANSWAYS INDIA TRANSPORT
NO.3, 3RD CROSS, KALASIPALYAM,
NEW EXTENSION, BENGALURU-560 002,
(GSTIN 29AA0FT649Q1ZT)
REPRESENTED BY ITS PARTNER,
MR. MOHAMMED MANSOOR

...RESPONDENT

(BY SRI.K J KAMATH.,ADVOCATE)

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA
HIGH COURT ACT PRAYING TO CALL FOR RECORDS AND
ALLOW THE WRIT APPEAL AND SET ASIDE THE ORDER DATED
23.06.2022 PASSED BY THE LEARNED SINGLE JUDGE OF THIS
HONBLE COURT IN WP No-7226/2022 (T-RES) IN THE
INTEREST OF JUSTICE AND EQUITY.





THIS APPEAL COMING ON FOR PRELIMINARY HEARING, THIS DAY, **KRISHNA S DIXIT.J.**, DELIVERED THE FOLLOWING:

JUDGMENT

This intra-Court Appeal seeks to call in question a learned Single Judge's order dated 23.06.2022 whereby respondent's W.P.No.7226/2022 (T-RES) having been favoured, the obligation to pay tax & penalty has been quashed coupled with a direction to release the vehicle in question.

2. Learned AGA appearing for the Appellants vehemently argues that the carrier of subject goods had furnished the movement particulars of the vehicle in advance in terms of *lex mercatoria* to the Department; goods carried in the conveyance originated from various consigners from Mumbai, consignees being in several places in Bengaluru city limits; however, the conveyance was intersected by the CTO at Bommasandra Industrial Area which is more than 20 kms away from the outer limits of City; thus, the goods conveyance having moved in a different direction altogether than was impressed to



the department and the same being not authorized by the transit documents in question, the authorities rightly treated the case as one of *'transportation of goods without documents beyond the place of destination and also diversion of the goods to a place other than the destination point'*. He also tells that both the original authority & the Appellate Authority had looked into the matter and therefore, the same did not merit a deeper examination at the hands of learned Single Judge, scope of writ jurisdiction being restrictive.

3. Learned counsel appearing for the respondent makes submission in justification of the impugned order of the learned Single Judge and the reasons on which it has been structured. For him there was much scope for touching the final aspects of the matter, which we have deliberated on our own.

4. FACTS IN BRIEF:

a) The conveyance bearing Registration No.AP21-TY-3126 was intercepted by the CTO (Vig) on 2.12.2021 at



Bommasandra industrial area more than 20 kms. away from the destination point namely Bengaluru city. The statement of its driver was recorded, goods in movement having been inspected. Particulars of the documents tendered by the driver showed that the goods were moving from Maharashtra to several places in Bangalore city and they do not mention anything about Bommasandra Industrial Area.

b) The CTO vide order dated 13.12.2021 observed as under:

"5. On Verification of the above tendered documents with reference to the conveyance, it was noticed that the above invoices are supported by e-Way Bills which are mandatory for transportation of goods for a value of Rs.50,000/- and above, as per the documents the delivery places of the goods are different places of Bengaluru, other than Bommasandra Industrial Area. Therefore, it proves beyond doubt that the goods are to be delivered to other than the places mentioned in the documents, and is in contravention of the provisions of the GST Act, 2017.

6. Further verification of the tracking of vehicles in RF ID revealed the fact that the said conveyance has passed the Electronic City Toll Plaza on 02-12-2021 at 10.37 PM, which also proves that the goods conveyance was not



moving toward the destination points as mentioned in the documents. And, present movement of goods and the conveyance are to be considered as moving without proper documents or with defective documents as prescribed under the provisions of the GST Act and Rules, 2017.

Both non-production of the required documents for the goods in transit or production of defective documents for verification at the time of check, leads to a clear contravention of the provisions of the GST Act and Rules, which attracts the levy of tax and penalty as provided under the provisions of sub-section (1) of Section 129 of the GST Act, 2017.”

(c) In view of the above, the CTO passed an order u/s 129(3) of the 2017 Act confirming the tax liability of Rs.3,25,423/- coupled with a penalty of Rs.21,41,239/- and directed the respondent to make the payment immediately. The respondent carried the matter in appeal at the departmental level and the same came to be negatived vide order dated 10.03.2022. Against these orders, respondent filed W.P.No.7226/2022 (T-RES) and the same having been favoured by the learned Single Judge, this appeal by the State is placed at our hands.



5. Having heard the learned counsel for the parties and having perused the Appeal papers, we decline indulgence in the matter for the following reasons:

a) In shaping medieval English law in 1215 AD, the Magna Carta articulated travel rights for personal liberties and unfettered commerce in assuring “ *merchants are ... safe and secure in ... traveling in England.*” *Blackstone’s 1795 Commentaries on the Laws of England identified freedom of movement as a natural liberty inherent by birth. This personal liberty consists in the power of locomotion, of changing situation, or removing one’s person to whatsoever place one’s own inclination may direct, unless by due course of law.*” He defined it as a “strictly natural” right. In 1770, **Thomas Jefferson** argued that freedom of movement is a personal liberty by birth. “*Under the law of nature, all men are born free, everyone comes into the world with a right to his own person, which includes the liberty of moving and using it at his own will. This is what is called a personal liberty.*” In 1871, **Charles Darwin** offered an explanation in his



book 'The Descent of Man': "...*Hominids needed to walk on two legs to free up their hands... they were habitually used for locomotion...*" It is relevant to see what **Erwan Le Corre**, a French author opines: "*To the beings, movement is not a chore, not a temporary punishment for being physically lazy and out of shape, not an optional activity just for better looks*".

b) Right to movement whether by foot, cart, boat, aircraft or on a horseback, is constitutionally guaranteed to the citizens as a Fundamental Right under Article 19(1)(d) and ordinarily that avails to the merchants too when they carry goods for trade. Production of goods but not distributing them would not serve interest of the community, is the underlying principle of Article 301 of the Constitution which reads as under:

"301. Freedom of trade, commerce and intercourse: *Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free.*"

Even this freedom implies right to movement. Of course, the said guarantee in this regard is not absolute; law can



regulate it & restrict too. Scope of right to movement is not the same always; it is variable depending upon the circumstances & conditions. For example, right to move becomes restrictive when a person moves with a firearm or when he uses vehicle for movement. It is because, the firearm & the vehicle are regulated by law in certain aspects and that affects the scope of right to movement otherwise vastly availing to citizens. That is how Article 19(5) i.e., restriction by law is conceived. Thus, a trader cannot claim unfettered right of movement whilst carrying goods that are regulated by law. However, in the absence of such law being shown, fetter cannot be imposed.

c) This case involves also the fundamental right to trade & business guaranteed u/a 19(1)(g) read with Article 301 of the Constitution. Therefore, it will have elements of right to movement, as well. It is open to a trader to take goods to the destination point in whichever route he opts, unless the law otherwise requires, destination point being intact. Such a right needs to be recognized as of necessity



to trade or business. Mr. Hamilton, a co-author of Federalist Papers (1787-88) says the following about importance of free movement to commerce:

"...An unrestrained intercourse between the States themselves will advance the trade of each by an interchange of their respective productions, not only for the supply of reciprocal wants at home, but for exportation to foreign markets. The veins of commerce in every part will be replenished, and will acquire additional motion and vigor from a free circulation of the commodities of every part. Commercial enterprise will have much greater scope, from the diversity in the productions of different States..."

d) The above being not an absolute right, can certainly be regulated by law as provided u/a 19(6), hardly needs to be stated. Despite vehement submission, learned AGA could not locate any rule or ruling that regulates the movement of conveyor of goods while choosing his route, in the State. It can be said without the risk of contradiction that as the law now stands in Karnataka, a merchant or his convoy is free to choose the route for the movement of goods from the point of origin to the point of destination and that he has specified a



particular route in the consignment documents, would not come in the way of that route being altered, although destination cannot be. In the absence of law, he cannot be faltered if he chooses a circuitous route in preference to linear one in variance with the impression given to the authorities in the said documents as long as travel time and destination point remain intact. If that be so, the impugned orders of authorities that were structured on a contra premise could not stand the test of law. The judgement of the learned Single Judge therefore is inexplicable, despite the said reason not animating it.

e) The vehement argument of learned AGA that the movement particulars in terms of *lex mercatoria* were furnished in writing by the consignor/conveyor of the goods specifically mentioning the point of origin, route & the destination points of the consignees; all that has been apparently breached unjustifiably inasmuch as the conveyor traveled astray *qua* the route map furnished and that amounted to carrying the goods without the requisite



documents and therefore, the penal action taken by the authorities could not have been faltered. This contention is difficult to countenance: merchants as of course move with goods as vividly explained by noted novelist Dr. S L Bhyrappa in his famous work "Sartha" (2006), literally meaning a trading caravan; in ancient India, such caravans would travel to farthest lands for trade. In the instant case, driver of the conveyance left the usual track to venture in the other that had not found a place in the consignment documents, is undeniable. In fact, that was his admission and he gave his own reason for that which was not believed by the authorities as true. However, the question is whether law mandates conveyance in a particular route and prohibits alteration of travel route *qua* the one impressed in the consignment documents. We have not been shown any such law, rule or ruling.

(f) What is required by law is the furnishing of consignment documents and specified particulars of consignor, consignee, goods, route maps & destinations.



Requirement of furnishing particulars of route map, etc., is one thing, compulsive adherence to the impressed route is another. There is law with regard to the former, is true; but latter is *non liquet* i.e., an area where there is no binding rule. When law does not require giving of reasons for changing the direction or route, whether the reason offered by the driver for opting another route is true or false, pales into insignificance. However, this does not mean a driver of conveyance can lie with impunity, the motto *Satyameva Jayate (Truth alone succeeds)* having been inscribed in our national emblem i.e., *Ashoka Sthamba*. We are told at the Bar that even the requirement of furnishing travel & other particulars that obtained in law earlier has been now done away with in the new legal regime. That being the position, the orders of liability & penalty of the authorities that are quashed by the learned Single Judge cannot be revived by setting aside his Judgement.

g) It is relevant to advert to what a Division Bench of Hon'ble Gujarat High Court in a nearly comparable fact



matrix observed in ***M/S. KARNATAKA TRADERS vs. STATE OF GUJARAT, 2022 SCC OnLine Guj 28.*** These observations occurring at paragraphs 6 & 13 run as under:

"6. Respondent No. 3 noticed two discrepancies in the impugned notice form GST MOV-10, which reads as under:

"(i) Vehicle was intercepted while it was travelling to the different direction than the direction of destination or way to the destination. So it is clear that the goods was not moving to the place destined for. Hence it appears that the goods is being transported with intention to evade tax.

(ii) The value of goods being transported is shown Rs. 286 which is to low compared to its real market value, i. e., Rs.330."

13. On careful consideration of the facts and circumstances of the case and the submissions made by the respective advocates for the parties, we find the force in the contention of the learned advocate appearing for the petitioners that there cannot be any mechanical detention of a consignment in transit solely on the basis of the two reasons as stated by respondent No. 3 in the impugned notice. We find that merely the direction preferred by the petitioners for delivery of consignment to the place destined for, an inference cannot be drawn with regard to the intention of the petitioners to evade tax. So far as the second ground with regard to the goods being transported to be undervalue is concerned, no material has been placed on record. Even otherwise, as held by this court as well as other High Courts, it is a settled legal position that undervaluation cannot be a ground for seizure of



goods in transit by the inspecting authority. In the instant case, there is no such indication.”

What is stated above, in a measure, lends support to the case of respondent.

In the above circumstances, this Appeal being devoid of merits is liable to be and accordingly dismissed, costs having been made easy.

We place on record our appreciation for the research work done by Chamber Intern Mr. Arjun Vivekananda Harihar.

**Sd/-
JUDGE**

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JUDGE**

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List No.: 1 Sl No.: 35