IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF JULY, 2026

PRESENT

THE HON'BLE MR. JUSTICE S.G.PANDIT

AND

THE HON'BLE DR. JUSTICE K.MANMADHA RAO

SALES TAX APPEAL NO.7 OF 2018

BETWEEN:

SRI. C. GIRISH
M/S JAI GURUDEV ROAD CARRIERS,
NO.28 1ST MAIN ROAD,
CHAMARAJAPET
BANGALORE – 560 018.

...APPELLANT

(BY SRI.K.G. KAMATH.,ADVOCATE)

AND:

ADDITIONAL COMMISSIONER OF
COMMERCIAL TAXES, (ZONE – II),
VANIJYA TERIGE KARYALAYA – I,
6TH FLOOR,
GANDHINAGAR
BANGALORE- 560 009.

...RESPONDENT

(BY SRI.ADITYA VIKRAM BHAT, AGA)

THIS STA IS FILED UNDER SECTION 66(1) OF THE KARNATAKA VALUE ADDED TAX ACT,2003 AGAINST THE ORDER DTD 27.01.2018 PASSED IN NO.ADCOM/ZONE-II/APP-2/SMR/ CR-25/2015-16 ON THE FILE OF THE ADDL.COMMISSIONER OF TAXES, (ZONE-II), GANDHINAGAR, BENGALURU, SETTING ASIDE THE ORDER DTD 20.08.2015 UNDER NO.VAT.AP1138/10-11 ON THE FILE OF THE JOINT COMMISSIONER OF COMMERCIAL TAXES,(APPEALS)-2, SHANTINAGAR, BENGALURU, RESTORING THE PENALTY ORDER DATED 26/08/2010 PASSED BY THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (ENFORCEMENT)-3, SOUTH ZONE, BENGALURU, FOR THE PERIODS FROM APRIL 2010 TO MARCH -2011.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 04.06.2026 AND COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.G.PANDIT
and
HON'BLE DR. JUSTICE K.MANMADHA RAO

CAV JUDGMENT

(PER: HON'BLE DR. JUSTICE K.MANMADHA RAO)

This appeal is directed against the order dated 27.01.2018 passed by the Additional Commissioner of Commercial Taxes in exercise of revisional jurisdiction under Section 64 of the Karnataka Value Added Tax Act, 2003, (in short 'KVAT Act') whereby the order of the First Appellate Authority setting aside the penalty imposed under Section 53(12) of the Act came to be reversed. The appeal was admitted on 01.07.2024, to examine the following questions of law:-

> *A) Whether under the provisions of the KVAT Act, 2003 a penalty under section 53(12) can be levied even after a "TRANSIT PASS" Or "E- SUVEGA" in electronic medium, was duly obtained at the entry check post and duly surrendered at the exit check post by the driver or*

person in charge of the goods vehicle as required under section 54(1) of the Act ?

B) Whether in a case where the person in charge of goods vehicles produces or claims documents to show that the goods under transportation being moved from a place outside the state to a place outside the state, the authorities are burdened with the proof to show that the goods are indeed loaded in the state, before initiating any proceedings under KVAT Act, 2003?

C) Whether under the provisions of section 64 of the KVAT Act, 2003, the commissioner or Additional commissioner is justified in treating the penalty levied as a deterrent measure, under section 53(12) of the KVAT Act, 2003 as a source of 'revenue' and any order of the lower authorities be treated as 'pre-judicial to the interest of revenue' where the orders were fact based without there being any interpretation of law either correctly or otherwise?

D) Whether under the facts and circumstances of the case on hand, the order of the respondent is justifiable?

E) xxx?

The brief facts of the case are as under:

2. The appellant is the proprietor of M/s. Jai Gurudev Road Carriers, a common carrier engaged in the business

of transportation of goods by road. During the relevant period, the appellant was entrusted with the transportation of consignments comprising electrical appliances from Mumbai in the State of Maharashtra to Salem in the State of Tamil Nadu through the State of Karnataka.

3. On 01.08.2010, the Commercial Tax Authorities at the Koganahalli Entry Check-post issued three Transit Passes under Section 54 of the KVAT Act in respect of three goods vehicles bearing Registration Nos.KA-22-A-7666, MH-04-EL-13 and MH-04-EL-3471, evidencing that the goods were intended to pass through the State of Karnataka en route to Salem, Tamil Nadu.

4. According to the appellant, the aforesaid vehicles did not possess valid permits to enter the State of Tamil Nadu. Consequently, the goods covered under the said Transit Passes were transferred to another goods vehicle bearing Registration No.CAM-55. On 03.08.2010, the appellant addressed a communication to the

Commercial Tax Officer, Highway Check-post (Out), requesting that the goods transported in the substituted vehicle be permitted to cross the State by accepting the Transit Passes already issued in respect of the earlier vehicles.

5. It is the case of the appellant that after the substituted vehicle reached the Attibele Exit Check-post, the Transit Passes were duly surrendered in compliance with Section 54 of the KVAT Act and the vehicle proceeded towards Hosur. The appellant asserts that shortly thereafter the driver realised that the Registration Certificate and other vehicle records had inadvertently been left behind at Bengaluru and therefore, the vehicle returned towards Bengaluru solely for the purpose of retrieving the said documents.

6. While the vehicle was proceeding towards Bengaluru, it was intercepted on 03.08.2010 by the officials of the Mobile Check-post near HSR Layout. Entertaining a suspicion that the goods, though declared

to be destined for Salem, were in fact intended to be delivered within the State of Karnataka, the authorities detained the vehicle and initiated proceedings under Section 53 of the KVAT Act.

7. During the course of inspection, the authorities noticed certain discrepancies in the goods and the accompanying transport documents. According to the Department, although the Transit Passes related to twenty-one Lorry Receipts, only fourteen Lorry Receipts were available for verification. The authorities also recorded shortages in respect of certain goods when compared with the particulars contained in the transport documents and consequently initiated proceedings for levy of penalty under Section 53(12) of the KVAT Act.

8. Upon completion of the proceedings, the Deputy Commissioner of Commercial Taxes (Enforcement), by order dated 26.08.2010, concluded that the movement of the vehicle and the discrepancies noticed

during inspection disclosed an intention to evade payment of tax within the State of Karnataka and accordingly imposed penalty under Section 53(12) of the KVAT Act. The appellant paid the penalty amount under protest in order to secure release of the detained goods vehicle and the consignments.

9. Aggrieved by the said order, the appellant preferred an appeal before the Joint Commissioner of Commercial Taxes (Appeals)-II, Bengaluru. By order dated 20.08.2015, the First Appellate Authority allowed the appeal and set aside the penalty holding, inter alia, that the Transit Passes had been duly surrendered at the exit check-post, thereby indicating that the movement of goods was in the course of interstate transit from Maharashtra to Tamil Nadu, and that the return of the vehicle towards Bengaluru stood satisfactorily explained by the absence of the Registration Certificate of the substituted vehicle.

10. The Additional Commissioner of Commercial Taxes, in exercise of suo motu revisional powers under Section 64 of the KVAT Act, initiated revision proceedings against the appellate order. Upon affording an opportunity of hearing to the appellant, the revisional authority, by order dated 27.01.2018, set aside the order of the First Appellate Authority and restored the penalty imposed by the prescribed authority. The revisional authority held that the cumulative circumstances, namely the movement of the vehicle back towards Bengaluru after surrender of the Transit Passes, the discrepancies in the transport documents, the shortage of goods noticed during inspection and the explanation offered by the appellant, clearly established an intention to evade payment of tax and rendered the appellate order prejudicial to the interests of the Revenue.

11. Aggrieved by the revisional order dated 27.01.2018, the appellant has preferred the present appeal under Section 66(1) of the KVAT Act, raising

various substantial questions of law touching upon the scope and applicability of Sections 53, 54 and 64 of the Act.

12. The learned counsel for the appellant contends that the goods in question were transported from Mumbai to Salem and were merely in transit through the State of Karnataka. It is urged that valid transit passes had been obtained and surrendered at the exit check-post and, therefore, no inference of tax evasion could have been drawn. It is further contended that the vehicle returned towards Bengaluru only because the registration documents of the vehicle had been left behind.

13. *Per contra,* the Revenue submits that the conduct of the transporter, the discrepancies noticed during inspection, the absence of supporting documents corresponding to all consignments, and the movements of the vehicle back towards Bengaluru after surrender of transit passes clearly establish an intention to divert the goods within the State and evade payment of tax.

14. In support of his contentions, the learned AGA appearing for the respondent has placed reliance on the following judgments:-

- ***M/s. Prominent Road Carriers, Bangalore v. Commissioner of Commercial Taxes in Karnataka, Bangalore and Another*** *reported in* ***1996(40) Kar.L.J. 284 (HC)(DB);*** *and*

  7. The verification of the record made by the Additional Commissioner of Commercial Taxes as stated in para 7 of the order made by him showed that the goods vehicle when it was subjected to physical verification revealed that there was a difference in documents with reference to the goods being carried. It is on the basis of this verification, the Additional Commissioner of Commercial Taxes reached the conclusion that the possibility of certain goods being unloaded in the city of Bangalore which were not actually covered by the documents was not excluded. The documents produced, at the time of physical verification, did not relate to the goods being transported on the basis of the documents. Taking into consideration the aforesaid material and the circumstances, the Additional Commissioner of Commercial Taxes set aside the order passed by the DCCT (Appeals) and restored the order of levying penalty made by the Commercial Tax Officer, Tumkur Road Checkpost (Inward).

- ***Power Max.... v. State of Karnataka and another*** *reported in* ***2011 SCC OnLine Kar 450.***

    10. From the material on record it is clear that as contended by the assessee the document pertaining to the goods was not fastened to the carton box, copy of which was not carried on by the driver of the vehicle. It was not tendered by him on being intercepted. In fact they had to open 24 carton boxes and they had to find out with great difficulty the document in one carton. Therefore, there is a clear violation of clause (b) of sub-section (2) of section 53. It is in those circumstances, the revisional authority was fully justified in interfering with the order passed by the Appellate Commissioner who has treated the matter very lightly, ignored the mandatory provisions of law and granted relief to the assessee on the ground that there was no intention to evade tax. Under the scheme of section 53, the Legislature has in detail prescribed a procedure to be followed for carrying goods. The said provisions are mandatory in nature having regard to the language employed in expressing the legislative intention. If those provisions are not complied with there is non-compliance of statutory provision in which event as the provisions do not provide for any intention to evade tax that cannot be read into the section to find out whether a, statutory- contravention is established or not. Once a statutory contravention is established then section 53(12) is attracted which provides for penalty. Unless the case falls under clauses (c) and (d), the

> *penalty to be imposed is not less than two times the tax liability and the maximum is three times. Therefore, the revisional authority was justified in setting aside the order passed by the Appellate Commissioner and restoring the order passed by the check-post officer. The only error which we can make out from the order is in imposing the penalty what is to be taken into consideration is the value of the goods as mentioned in the invoice and not the estimated value. This has not been properly appreciated both by the check-post officer as well as the revisional authority. Only to that extent the assessee is entitled to relief.*

15. Having heard learned counsel and perused the records, this Court finds no ground to interfere with the revisional order.

16. It is not in dispute that after surrendering the transit passes at Attibele, the vehicle did not proceed towards its declared destination at Salem. The material on record discloses that the vehicle was intercepted while proceeding towards Bengaluru. The explanation that the vehicle returned solely for retrieval of registration documents has been examined by the revisional authority

and found to be unacceptable. This Court finds no perversity in such conclusion.

17. The record further discloses discrepancies between the goods carried and the accompanying documents. The authorities also noticed that though transit passes had been issued with reference to a larger number of lorry receipts, only a limited number of such documents were available during verification. These circumstances cannot be viewed in isolation. When considered cumulatively with the movement of the vehicle towards Bengaluru, they furnish a reasonable basis for drawing an adverse inference.

18. The submission that surrender of transit passes conclusively establishes genuine interstate movement cannot be accepted. A transit pass is a relevant circumstance but not conclusive proof of actual transportation to the declared destination. Where surrounding facts disclose an attempt to divert goods

within the State, the authorities are not precluded from examining the substance of the transaction.

19. The revisional authority has recorded a categorical finding that the explanation offered by the appellant lacked credibility and that the surrounding circumstances demonstrated an intention to evade tax. Such findings are essentially findings of fact based on appreciation of material on record. Unless shown to be arbitrary, perverse, or unsupported by evidence, this Court, while exercising appellate jurisdiction under Section 66 of the Act, would not interfere.

20. The First Appellate Authority proceeded largely on the premise that surrender of transit passes was sufficient to negate any allegation of evasion. The revisional authority rightly found that such an approach ignored material circumstances emerging from the record. The exercise of revisional jurisdiction to correct the said error cannot therefore be faulted.

21. Having regard to the rival contentions and the material placed on record, the substantial questions of law are answered as follows:

<u>Re: Question No. (A):</u>

22. The contention that once a Transit Pass issued under Section 54 of the KVAT Act is obtained at the entry check-post and surrendered at the exit check-post, no proceedings under Section 53(12) KVAT Act can thereafter be initiated, cannot be accepted. A Transit Pass is undoubtedly a relevant circumstance evidencing the declared movement of goods through the State. However, the mere issuance and surrender of a Transit Pass does not conclusively establish that the goods were in fact transported to the declared destination. Where the authorities, on the basis of material available on record, notice discrepancies in the accompanying documents, shortages in the goods transported and other surrounding circumstances giving rise to a reasonable inference of attempted tax evasion, the jurisdiction to invoke Section

53(12) KVAT Act is not excluded merely because the Transit Pass stood surrendered. Question No.(A) is accordingly answered against the appellant.

Re: Question No. (B):

23. The contention that the authorities are required, as a condition precedent, to establish by direct evidence that the goods were unloaded, sold or otherwise dealt with within the State before initiating proceedings under the Act also cannot be accepted. Proceedings under Section 53 KVAT Act are founded upon verification of the goods in transit, the accompanying records and the attendant circumstances disclosed during inspection. Where the material on record discloses discrepancies between the goods carried and the documents produced, absence of supporting transport records and other circumstances indicative of possible diversion, the authorities are entitled to draw appropriate inferences and initiate proceedings in accordance with law. Direct proof of actual unloading within the State is not the only mode by

which contravention can be established. Question No.(B) is therefore answered against the appellant.

Re: Question No. (C):

24. Section 64 of the KVAT Act confers revisional jurisdiction upon the competent authority to examine the legality and propriety of orders passed by subordinate authorities. In the present case, the revisional authority has recorded that the First Appellate Authority proceeded on the sole premise that surrender of Transit Passes was sufficient to negate the allegation of evasion, while overlooking material circumstances such as discrepancies in the transport documents, shortage of goods and the movement of the vehicle towards Bengaluru after surrender of the Transit Passes. The revisional authority was therefore justified in examining the correctness of the appellate order and in holding that the order suffered from infirmities warranting interference. In the facts of the present case, the exercise of revisional jurisdiction under Section 64 KVAT Act cannot be said to be either without

authority or contrary to law. Question No.(C) is answered against the appellant.

Re: Question No.(D):

25. For the reasons already discussed, this Court is of the considered view that the revisional authority has taken into account relevant material available on record and has assigned cogent reasons for restoring the penalty imposed under Section 53(12) of the KVAT Act. The findings recorded are essentially findings of fact and no perversity, arbitrariness or legal infirmity has been demonstrated so as to warrant interference in an appeal under Section 66 of the KVAT Act. Accordingly, Question No.(D) is also answered against the appellant.

26. In the considered view of this Court, the findings recorded by the revisional authority are supported by relevant material and do not suffer from any legal infirmity warranting interference.

ORDER

(i) The Appeal is ***dismissed.***

(ii) The order dated 27.01.2018 passed by the Additional Commissioner of Commercial Taxes is affirmed.

(iii) The penalty imposed under Section 53(12) of the Karnataka Value Added Tax Act, 2003 shall stand restored.

(iv) No order as to costs.

SD/-
(S.G.PANDIT)
JUDGE

SD/-
(DR.K.MANMADHA RAO)
JUDGE

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