(2016) 02 KAR CK 0304

In the Karnataka High Court

Case No : Writ Petition Nos. 10018-10029 of 2016 (T-RES)

ABB India Ltd. APPELLANT

Vs

The State of Karnataka and Others RESPONDENT

Date of Decision : 23-02-2016

Acts Referred:

Central Sales Tax Act, 1956 — Section 9(2)
Karnataka Value Added Tax Act, 2003 — Section 36

Citation : (2016) 02 KAR CK 0304

Hon'ble Judges : Anand Byrareddy, J.

Bench : Single Bench

Advocate : K.P. Kumar, Sr. Counsel for Suryanarayana T., Advocate, for the Appellant; S.V. Girikumar, AGA, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—1. Heard the learned Senior Advocate Shri K P Kumar, appearing for the counsel for the petitioner.

2. The learned Government Advocate is directed to take notice.

3. It is the case of the petitioner that on 01.12.2015 the second respondent initiated assessment proceedings under the provisions of the Central Sales Tax Act, 1956 for the years 2014-15 and the petitioner was called upon to produce its books of accounts, tax invoices and other relevant documents pertaining to the said financial year. In response the petitioner had submitted a letter stating that it was in the process of preparing its audited statement of accounts required to be submitted under the provisions of KVAT Act, 2003 and that all its resources were utilized in the same, as well as in year end closing activities. Therefore a request was made to the second respondent to grant additional period of three months to produce its books of accounts apart from other documents. The second respondent said to have issued an endorsement rejecting the petitioner''s request for additional time and directed the petitioner to submit its books of accounts and other relevant documents by December 28, 2015. The petitioner

filed a letter pointing out that in view of the high volume of interstate sales, it is required to collect statutory forms from over 1500 customers located in 23 States across the country. The petitioner requested for an additional period of 30 days to collect the balance forms, particularly since the said forms had to be collected from customers located in different geographical locations.

4. The second respondent however issued a notice proposing to reassess the petitioner''s tax liability for the tax periods April 2014 to March 2015 under Section 9(2) of the CST Act read with Section 36 of the KVAT Act, and levy tax at the regular rate of tax applicable to the interstate sale of goods effected by the petitioner. This was by notice dated 29.12.2015. On 05.01.2016 the petitioner submitted a letter alongwith various documents for the year 2014-15 and again requested the second respondent for an additional period of 30 days to collect and file the balance statutory forms and repeated the request again on 08.01.2016. On 22.01.2016 the second respondent had issued a refixed proposition notice proposing to levy tax at the regular rate of tax on the turnover of sales not covered by statutory forms. The petitioner filed a reply on 29.01.2016 stating that it has uploaded some more statutory forms and accordingly requested the 2nd respondent to take the same on record and again sought further time to file the balance statutory forms. The petitioner uploaded additional statutory forms on 05.02.2016 for a value of Rs. 21,88,01,732/-. However, on 10.02.2016 the petitioners'' request was disregarded and the second respondent passed the impugned reassessment order. The second respondent had levied tax on the balance turnover of sales not covered by statutory forms at the regular rate of tax applicable to such sales. The second respondent had according to the petitioner failed to consider statutory forms for a value of Rs. 21,88,01,732/- which had been uploaded by the petitioner on February 5, 2016 and the second respondent also levied interest under the provisions of Section 36 of the KVAT Act and issued a consequential demand notice in Form VAT 180, calling upon the petitioner to pay the reassessed tax and interest amounting to Rs. 50,12,80,911/- (tax of Rs. 41,74,34,388/- and interest of Rs. 8,38,46, 523/-) within a period of 30 days from the date of service of the notice.

5. The petitioner is questioning the legality and validity of the reassessment order and consequent demand notice dated 10.02.2016 issued by the 2nd respondent under the provisions of the CST Act for the year 2014-15. The petitioner is also seeking direction to the 2nd respondent to allow the petitioner a further period of 90 days from the date of disposal of this petition to collect and file the balance statutory forms prescribed under the provisions of the CST Act in support of its claim of exemption/concessional rate of tax.

6. The learned Senior Advocate would point out that in the above circumstances make it seen as if the petitioner was at fault. However, it is relied that the statutory forms invariably are not issued in time either to the dealers in other states or to the petitioner and it is in this regard that the delay has occasioned.

The petitioner would submit that in so far as the statutory forms that are already uploaded have not been taken into consideration. If the respondent is directed to take those into consideration and afford reasonable time to the petitioner to submit other forms the interest of justice would be met in so far as the amounts covered under the form which are yet to be submitted. The petitioner is also ready to furnish bank guarantee as it is petitioner''s belief that no tax liability whatsoever and the same may be supported by production of the statutory forms. Incidentally it is pointed out that three Judges bench of Supreme Court as in the case of State of H.P. and others v. Gujarat Ambuja Cement Ltd., and another reported in 2005 STC (142) 1 has laid down that Rule 12(7) of the Central Sales Tax (Registration and Turnover) Rules, 1957, the declaration form can be filed at a subsequent point of time, not necessarily alongwith the returns. On an application being made before the Assessing Authority the extension of time can be granted. The object of the rule is to ensure that the dealer is not denied a benefit which is available to him under law on a technical plea. That the Assessing Officer is empowered to grant time means that the provision requiring filing of the declaration forms along with the return is a directory provision and not mandatory. In a given case even the declaration forms can be filed even before the appellate authority, as an appeal is continuation of the assessment proceedings. If the appellate authority is satisfied that the dealer was prevented by reasonable and sufficient cause which disenabled him to file the form in time, it can be accepted. It can also be accepted as additional evidence in support of the claim for deduction. Therefore, the learned Senior Advocate would submit that this is clearly the law laid down by the Supreme Court which has not been applied by the Appellate Authority in the present case on hand and seeks that the petition be allowed.

7. The learned Government Advocate would submit that in so far as the statutory forms that are uploaded on 05.02.2016 the revenue will take the same into consideration. In so far as the turn over which is not supported by the statutory forms as on date, the Tribunal would have to make good the demand, subject to production of such forms and would submit that the offer to furnish the bank guarantee would not enable the State as the State cannot run on statutory bank guarantees and it would require revenue to be paid in accordance with law.

8. However, in the above facts and circumstances since the petitioner has already filed several applications seeking extension of time, produced statutory forms as it is apparently beyond its control. The second respondent shall consider the grant of additional time which shall be atleast of 60 days to produce the necessary statutory forms instead of those amounts which have not been supported by statutory forms. The respondent shall take into account the statutory forms uploaded on 05.02.2016 and such other statutory forms which may be uploaded now and in so far as the balance amount which are not supported by the statutory forms are concerned, the petitioner shall furnish a bank guarantee within two weeks, which shall be kept in force. Till such time the assessment proceedings are proceeded. The orders passed by the Appellate

Authority are therefore summarily set aside.

The learned Government Advocate is permitted to file his memo of appearance within two weeks.

