(2006) 08 KAR CK 0050

In the Karnataka High Court

Case No : Judgment and order dated 18-3-2005 of the Karnataka Appellate Tribunal in S.T.A. No. 74 of 2004, set aside and case remitted back to the Tribunal for reconsideration

Abhay Solvents Private Limited, Koppal — APPELLANT

Vs

State of Karnataka and Another — RESPONDENT

Date of Decision : 24-08-2006

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 6A

Citation : (2008) 64 KarLJ 130

Hon'ble Judges : N. Ananda, J;R. Gururajan, J

Judgement

R. Gururajan, J.-M/s. Abhay Solvents Private Limited is before this Court raising the following questions of law.-

(a) Whether in the facts and circumstances of the case of the petitioner, the Karnataka Appellate Tribunal was right in having held that sales of de-oiled rice bran for Rs. 4,84,27,865/- could not be allowed as the production out of KST paid rice bran and that the sales were classifiable by application of rule of proportions as sales attributable to de-oiled rice bran produced out of KST paid rice bran and attributable to de-oiled rice bran produced out of inter-State purchases, when the production of de-oiled rice bran out of local purchases of rice bran was as high as Rs. 6,53,13,358/- ?

(b) Whether in the facts and circumstances of the case of the petitioner, the Karnataka Appellate Tribunal was justified in having applied the judgment of Hon''ble High Court of Bombay in the case of Commissioner of Sales Tax v Berar Oil Industries, (1975)36 STC 473 (Bom.) (DB), to classify the local sales of de-oiled rice bran for Rs. 4,84,27,865/- in ratio of purchases and by rule of proportions in disregard of the judgments of the Hon''ble High Court of Allahabad in the cases of Chittarmal Ram Dayal v Commissioner of Sales Tax, (1983)52 STC 18 (All.) and Commissioner of Sales Tax, Uttar Pradesh, Lucknow and Others v Ganesh Flour Mills Company Limited, (1983)52 STC 24 (All.), as per which the rule of proportions did not have applicability to the facts in the case of the petitioner?

2. Petitioner is a company incorporated under the Companies Act, 1956. It operates a solvent extraction plant and carries on business of solvent extraction of rice bran oil out of rice bran. De-oiled rice bran is derived as the bi-product. Rice bran was purchased mostly from dealers in Karnataka. Almost the entire production of rice bran oil was sold in course of inter-State trade or commerce. By-product de-oiled rice bran was sold both within the State and in course of inter-State trade or commerce. Petitioner maintained separate accounts for purchases of rice bran made from registered dealers in Karnataka and in course of inter-State trade or commerce. Sales of de-oiled rice bran effected within the State and in the course of inter-State trade or commerce were also separately accounted for in the books. The stock account was common for the rice bran purchased locally and in inter-State trade. The Deputy Commissioner of Commercial Taxes (Assessment-2), Bellary found that the sales of de-oiled rice bran effected within the State for Rs. 4,84,27,865/- were comparable with the production attributable to rice bran purchased from registered dealers. He passed assessment order for the year 1999-2000 in terms of the order dated 18-9-2002. He exempted the turnover relating to within State sales of de-oiled rice bran at Rs. 4,84,27,865/-.

3. The Joint Commissioner of Commercial Taxes initiated revision proceedings against the petitioner. Reply was submitted by the petitioner. Thereafter, the Revisional Authority confirmed the proposals and passed revisional order dated 4-11-2003. Petitioner filed an appeal before the Karnataka Appellate Tribunal. Tribunal has upheld revisional order in its entirety and dismissed the appeal filed by the petitioner. It is in these circumstances, petitioner is before us.

4. Heard Sri Rabinathan, learned Counsel appearing for the petitioner and Smt. S. Sujatha, learned Additional Government Advocate for the State.

5. Sri Rabinathan, learned Counsel invited our attention to the material on record to say that the Tribunal has not chosen to properly appreciate the ruling in the case of Berar Oil Industries. According to him, the Revising Authority has chosen to pass an unsustainable order and the same has been accepted by the Tribunal. According to him, the order of the Revising Authority confirmed in appeal requires our interference. He wants the questions raised in the petition to be answered in his favour.

6.Per contra, Smt. Sujatha, learned Counsel for the State, would invite our attention to the material facts and material findings to say that the petition deserves to be dismissed.

7. After hearing, we have carefully perused the material on record.

8. Admittedly, revision proceedings were initiated by the Revising Authority. Revising authority confirmed the proposals. Same is confirmed by the Tribunal.

Let us see as to whether these two orders are sustainable on the facts of the case in terms of the submission made before us.

9. Revision notice was based on the decision of the Bombay High Court in Berar Oil Industries case, in terms of the findings of the Revising Authority. We have seen the order of the Bombay High Court in the case of Berar Oil Industries. In the said case, Bombay High Court was considering with regard to non-maintenance of separate accounts. After noticing the same, Bombay High Court notices the formula to be adopted in terms of Bombay Sales Tax Act, 1959. Bombay High Court would say that the respondent-assessee was not keeping separately the stock of raw materials purchased against certificates in Form 15 and the products manufactured out of such stock; and that therefore it was impossible for the respondents to prove that the raw materials purchased against certificates in Form 15 were utilised only in the manufacture of products which were sold in accordance with the declarations contained in such certificates. Bombay High Court notices ''impossibility'' for the purpose of formula in the said reported judgment.

10. Petitioner in respect of the revision notice would argue that the Bombay High Court''s judgment is not applicable to the facts of this case. On the other hand, the assessee has chosen to strongly rely on Chittarmal Ram Dayal''s case and on Ganesh Flour Mills case, in support of his submission. The Revising Authority has blindly followed Berar Oil Industries case, without taking into consideration the impossibility for the purpose of the formula on the facts and in the given circumstances. In fact the Allahabad High Court in Chittarmal Ram Dayal''s case, has noticed Berar Oil Industries case, and thereafter in somewhat similar circumstances, Allahabad High Court has ruled reading as under:

"Where the assessee, an oil mill, purchased oil-seeds against recognition certificate as well as otherwise, did not maintain separate accounts for extraction of oil from the two sources and the sale of oil was more than the oil extracted from oil-seed purchased against recognition certificate and the Revising Authority issued directions that as the oil produced by the assessee must be deemed to have flown from both the sources, that is, oil-seeds purchased against recognition certificate and otherwise, the proportionate formula laid down by the Bombay High Court in Commissioner of Sales Tax v Berar Oil Industries, (1975)36 STC 473 (Bom.) (DB), might be applied: Held, that it was true that the assessee did not maintain separate accounts of extraction of oil from two sources; but it did not make any difference as it having been established that the oil extracted was more, the burden on the assessee stood discharged and it should be taken that oil sold in the State or inter-State was out of the oil extracted from oil-seeds obtained against recognition certificate and the remaining oil was manufactured out of oil-seeds purchased otherwise. Therefore, the principle of determining liability of proportional extraction and sale did not arise.

The pro rata formula laid down by the Bombay High Court in Berar Oil Industries case, would apply in a case where the sale of notified goods is less than what it should have been and not when it is more.

Commissioner of Sales Tax v Berar Oil Industries, (1975)36 STC 473 (Bom.) (DB), explained and distinguished".

11. Unfortunately, though the said judgment was cited before the Revisional Authority, the Revisional Authority has not even adverted to the same while rejecting the case of the petitioner. We find substance in the arguments of the petitioner that the Revising Authority has not chosen to consider the material facts with reference to the case-laws available on record. When the order of the Revising Authority was challenged before the Tribunal, the Tribunal also has chosen to accept the finding of the Revising Authority without going into then aspects as to whether any such case in terms of the Bombay High Court is available on the facts of this case. The Tribunal also has not considered the subsequent judgment of Allahabad High Court after noticing the case of Berar Oil Industries. On the facts of the case, we are satisfied that the order of the Revising Authority and the order of the Tribunal require to be set aside in the absence of non-consideration of the material facts in terms of the case-laws.

12. In the circumstances, we deem it proper not to answer the questions of law, and instead, we deem it proper to set aside the order of the Revising Authority and also the order of the Tribunal. Matter is remitted back for reconsideration in the light of the judgement of the Bombay High Court and also that of the Allahabad High Court as referred to above. We make it clear that we have not expressed any opinion on the merits of the matter. Parties are directed to appear without waiting for any notice on 19-9-2006 for further hearing in the matter. Liberty is reserved to both the parties to produce any additional documents/ evidence in accordance with law. Revising authority is to take into consideration the existing material/additional material to be produced in terms of this order and thereafter to proceed to pass orders on merits in accordance with law without in any way being influenced by the earlier order or by this order. Time for completing the proceedings is 31-1-2007.

13. Ordered accordingly. No costs.