(2016) 01 KAR CK 0270

In the Karnataka High Court

Case No : Writ Petition Nos. 49927-49962 of 2015 (T-RES)

Abhishek Solvent Extractions Private Limited — APPELLANT

Vs

The Assistant Commissioner of Commercial Taxes (Audit-3) and Others — RESPONDENT

Date of Decision : 20-01-2016

Acts Referred:

Karnataka Value Added Tax Act, 2003 — Section 17, Section 38(1), Section 39(1), Section 69(1)

Citation : (2016) 01 KAR CK 0270

Hon'ble Judges : Anand Byrareddy, J.

Bench : Single Bench

Advocate : G. Sarangan, Senior Advocate for T.N. Keshavamurthy, Advocate, for the Appellant; S.V. Giri Kumar, Additional Government Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Anand Byrareddy, J.—1. Heard the learned Senior Advocate Shri G. Sarangan appearing for the Counsel for the petitioner, Shri Keshava Murthy and the learned Counsel for the respondent.

2. The petitioner is a registered dealer under the provisions of the Karnataka Value Added Tax Act, 2003 (Hereinafter referred to as the ''KVAT Act'', for brevity) and is engaged in the manufacture and sale of sunflower oil, by employing solvent extraction process out of sunflower cake. While oil is liable to tax and the by-product de-oiled cake is exempted from tax under entry Serial No. 5(ii) of the First Schedule to the KVAT Act.

The petitioner claims that returns of turnover in Form-VAT 100 for the tax periods April 2007 to March 2008, April 2008 to March 2009, April 2009 to March 2010 were filed compiled on the basis of books of accounts and the tax was paid as admitted therein. In the said returns filed, the petitioner had claimed partial input rebate in terms of section 17 of the KVAT Act in respect of sunflower cake, used as input in the extraction of oil on the understanding of the law while filing returns that it was not eligible for full input tax rebate. The said returns are deemed as accepted under section 38(1) of the KVAT Act.

3. The first respondent audited the books of account for the tax periods April 2007 to March 2008, April 2008 to March 2009, April 2009 to March 2010 and had passed re-assessment orders under Section 39(1) of the KVAT Act levying tax, penalty and interest. In doing so, the prescribed authority had allowed the partial input rebate as per Section 17 of the KVAT Act, on the value of input namely, sunflower cake used in the extraction of oil.

4. Subsequent to the filing of the returns, a division bench of this court has rendered its judgment in M.K. Agro Tech Private Limited vs. State of Karnataka, , 2014(18) KLJ 1, to the effect that when an assessee is in the business of manufacture of only one product, namely, oil and which is liable to tax, merely because in the process of manufacture of oil, certain by-product arises, which is sold and which is exempted from tax, that would not attract the provisions of Section 17 of the KVAT Act relating to partial rebate. This was the declaratory of the law and according to the petitioner, would always have been applicable to all assessments made prior to and after the date of the said judgment.

Therefore, the petitioner has filed an application under Section 69(1) relating to the tax period April 2007 to March 2008, April 2008 to March 2009, April 2009 to March 2010 before the first respondent, for rectification of the re-assessment orders and to grant full input tax rebate on the value of VAT. That was rejected only on the ground that the petitioner ought to have made a claim for full tax rebate in the first instance and no such claim having been made would preclude it from doing so, since such a claim could have been made only within a period of six months and not beyond that and hence, the question of considering the case of the petitioner for such full tax rebate would not arise. Insofar as the judgment in M.K. Agro Tech, supra, is concerned, it is applied in favour of the assesses from the date of judgment and there can be no second opinion, though the revenue has sought to challenge the same before the apex court and is pending consideration.

5. The learned Government Advocate, while justifying the order, would submit that the question of rectification would not arise and it is a misconception on the part of the petitioner that they could file such a rectification application within a period of five years. Since the statute was clear even as on the date the claim was made and in the absence of any such claim, the petitioner now seeking to raise such a claim by hindsight, notwithstanding that it is only after the judgment was delivered by a division bench in M.K. Agro Tech, supra, that it has dawned on the petitioner that it could have made such an application, cannot be countenanced and seeks to contend that if any such benefit is given, the revenue would suffer serious loss.

6. By way of reply, the learned Senior Advocate would point out that it is unfair

on the part of the revenue to contend that such a claim should have been made in the first instance and that the petitioner is precluded from raising such a claim as on date, as it was a mutually understood position of law which prevented the assessees from raising such claim. For otherwise, if such claim had been made, it was quite possible that they would have been penalized for making such a claim and it is only on the legal position being settled by a decision of a division bench of this court that the benefit available to the petitioner has dawned on the petitioner and therefore, the rectification application was justified.

7. The point for consideration would be whether the petitioner could avail the benefit of the judgment which was rendered much after the assessment order was passed and whether such reassessment orders can be passed on their prayer for rectification of the earlier assessment.

8. In the above circumstances, if in a situation where if the revenue were to be in the position of the assessee and if it was discovered that by virtue of the operation of law, the revenue was entitled to a certain amount from the dealers, it would have certainly turned the tables on the assesses and proceeding on that presumption, it would be only just and fair to direct the revenue to consider the prayer of the petitioner for rectification, when there is no dispute that they were entitled to full tax rebate by virtue of the decision in M.K. Agro Tech, supra. It would be a formality for the respondent to pass a rectification order and grant full tax rebate to the petitioner in terms of its prayer.

The petitions are allowed. The impugned orders are set aside with direction to the first respondent to redo the same and give the petitioner the full benefit of the judgment in M.K. Agro Tech, supra.

The respondent having challenged the judgment in M.K. Agro Tech, supra, before the apex court, there is no order of stay. Therefore, having regard to the law laid down by this court, the respondents are bound to comply.

