

(2009) 03 KAR CK 0006
In the Karnataka High Court
Case No : S.T.A. No. 13 of 2008

Adarsha Electricals

APPELLANT

Vs

Additional Commissioner of Commercial Taxes 1

RESPONDENT

Date of Decision : 16-03-2009

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 12 A, 22 A (1)
Karnataka Sales Tax Rules, 1957 — Rule 6 (4) (m), 6 (4) (n)

Citation : (2010) 27 VST 272

Hon'ble Judges : Manjula Chellur, J;B.V. Nagarathna, J

Bench : Division Bench

Advocate : A. Satyanarayan, for the Appellant; S. Sujatha, AGA, for the Respondent

Final Decision : Dismissed

Judgement

Manjula Chellur, J.—This appeal is directed challenging Annexure A orders of the Additional Commissioner of Commercial Tax dated July 22, 2008 in No. ZAC-1/BCD 1 & 3/SMR-112/06-07 passed u/s 22A(1) of the Karnataka Sales Tax Act, 1957.

2. It is contended by the learned Counsel for the appellant that the appellant is a contractor, a registered dealer under the Karnataka Sales Tax Act and also Central Sales Tax Act carrying on business on development of land and construction of buildings, which falls under entry 11 of the Sixth Schedule. It is contended by the appellant that originally on the returns submitted by him for the year 1999-2000 the assessing authority has passed assessment order on March 7, 2003, levying Rs. 1,40,000 by TDS which was already paid by TDS. It is also not in dispute that when the assessee filed revised return voluntarily, the assessing authority reopened the assessment u/s 12A and passed orders on October 27, 2003, as per annexure C. Later on the Joint Commissioner of Commercial Taxes initiated suo motu revision proceedings. There was assessment on the revised returns of the party and passed the impugned orders

dated January 13, 2006 as per annexure B. As per this order the total turnover was taken as Rs. 1,45,67,874 (as per the revised returns and deducted 30 per cent out of the same towards labour charges), then took the turnover at Rs. 1,01,97,512. So far as the other levies, there is no dispute.

3. Subsequently, the Additional Commissioner of Commercial Taxes issued notice u/s 22A(1) proposing to restrict the labour and other like charges to 20 per cent as per law and not 30 per cent as per annexure B. Objections were also called for and by way of letter the assessee has replied on February 26, 2007. Considering the objections raised in the said letter and also the submissions of the assessee in person, the concerned authority, the Additional Commissioner passed the impugned order at annexure A. The authority under annexure A by referring to provisions of law and the nature of labour with reference to the business carried on by the assessee, reduced the labour and other like charges to 20 per cent, to be deducted from the turnover instead of 30 per cent. Aggrieved by the said order, the assessee has come up in this appeal u/s 24 of the Act.

4. The arguments of the learned Counsel appearing for the appellant/assessee are to the effect that at no point of time, the authorities concerned had taken into account the objections raised by the assessee and so also the documents filed by him along with the objections. Therefore, injustice is caused to the assessee. It is further contended that the account books would reflect that the amounts spent towards the labour and other like charges can totally be deducted as they are reflected in the account books and none of the authorities have taken into consideration such expenditure made by the appellant/assessee, apparent in the books of accounts.

5. Per contra, learned Government Advocate brought to our notice the various provisions applicable to the facts of the present case and so also the admission and acceptance of the orders at annexure B by the appellant/assessee in view of not filing any appeal, as provided u/s 22 of the Karnataka Sales Tax Act.

6. We have gone through the entire annexures brought before us. We have referred to the relevant provisions of the Act under Sections 21, 22, and 24 and also 25A of the Karnataka Sales Tax Act. So far as Rules under Rule 6(4), classifications under (m) and (n) are also looked into.

7. The point that would arise for court's consideration is as to whether the appellant is entitled to ask for remand of the matter to the assessing authority by setting aside the orders under annexure A and all other previous orders of the authorities under the Sales Tax Act?

8. It is not in dispute that the appellant/assessee is dealing with electrical contract work and not civil contracts, though the appellant has claimed so in his memorandum of appeal. There is vast difference between the exemptions or the benefits, which could be given to the contractor who deals in civil works and the person who is dealing in electrical contract works.

9. Then coming to the assessment in question, it is also not in dispute that the appellant/assessee voluntarily filed revised returns and sought deduction of the labour charges. It is also not in dispute that annexure C came to be passed by the Deputy Commissioner of Commercial Taxes on the revised returns of the assessee. Meanwhile exercising suo motu powers u/s 21(4) of the Act, the Joint Commissioner of Commercial Taxes after giving opportunity to the assessee has proceeded to pass the orders at annexure B on January 13, 2006. In this order the deduction towards labour and other like charges was restricted to 30 per cent. When this order came to be made on January 13, 2006, apparently, the assessee did not challenge this order though there was scope and provision to challenge the said order u/s 22 of the Act, by taking the matter before the Karnataka Appellate Tribunal. Till today, no such appeal has been filed by him.

10. When things stood as stated above, the Additional Commissioner of Commercial Taxes suo motu took up the orders at annexure B, as there was revised returns, etc., in the case of this assessee and gave opportunity to the appellant to explain why the restriction of deduction should not be fixed at 20 per cent instead of 30 per cent, as contemplated under Rule 6(4)(m) of the Rules. It was replied by the assessee and personal hearing was also given to the assessee. Paras 3, 4 and 5 of the orders at annexure A would make it manifestly clear that all the submissions made by the appellant/assessee were taken into consideration and even his submission that allowance of labour and other like charges at 30 per cent as allowed under revision order u/s 21(4) is in accordance with law. This would only go to show that the appellant/assessee had no grievance whatsoever when orders under annexure B came to be made by the Joint Commissioner of Commercial Tax and only when the proposal came to reduce the same to 20 per cent restriction, he raised his voice.

11. Reference has to be made to Rule 6(4)(m) and (n) which reads as under:

Rule 6. (4)(m) in the case of works contracts specified in Serial Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 17, 26, 27, 35, 36, 40 and 42 of the Sixth Schedule,--

(i) all amounts received or receivable in respect of goods other than the goods taxable under Sub-section (1A) or (1B) of Section 5 which are purchased from registered dealers liable to pay tax under the Act and used in the execution of works contract in the same form in which such goods are purchased.

(i) all amounts received or receivable in respect of goods specified in Second, Third and Fourth Schedule which are purchased from registered dealers liable to pay tax under the Act and used in the execution of works contract in the same form in which such goods are purchased;

(ii) all amounts actually expended towards labour charges (and other like charges) for erection, installation, fixing, fitting out, or commissioning of the goods specified in the said serial numbers;

(iii) all amounts received in respect of goods which specifically exempted from

tax under any of the provisions of the Act;

(iv) all amounts paid to sub-contractors as the consideration for execution of works contract whether wholly or partly:

Provided that, no such deduction shall be allowed unless the dealer claiming deduction produces proof that the sub-contractor is a registered dealer liable to tax under the Act and that the turnover of such amounts is included in the monthly statement or return of turnover, as the case may be, filed by such sub-contractor;

(v) such amounts calculated at the rate specified in column (3) of the table below towards labour charges and other like charges for erection, installation, fixing, fitting out, or commissioning of the goods specified in the said serial numbers when such charges are not ascertainable from the books of accounts maintained and produced by a dealer before the assessing authority.

TABLE Charges for erection, installation Sl. installation, fixing, fitting out or No. Type of contract commissioning as a percent- age of the value of contract. 1. Installation of plant and machinery Fifteen per cent 2. Installation of air conditioners and air coolers Ten per cent 3. Installation of elevators (lifts) and escalators Fifteen per cent 4. Fixing of marble slabs, polished granite stones Twenty-five per cent and tiles (other than mosaic tiles) 5. Any other works contract Twenty per cent.

Rule 6. (4)(n) in the case of works contracts specified in serial numbers 6, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 28, 29, 30, 31, 32, 33, 34(xxx), 37, 38, 39 and 41 of the Sixth Schedule;

(i) all amounts received or receivable in respect of any goods other than the goods taxable under Sub-section (1A) of (1B) of Section 5 which are purchased from registered dealers liable to pay tax under the Act.

(i) all amounts received or receivable in respect of goods specified in Second, Third and Fourth Schedule which are purchased from registered dealers liable to pay tax under the Act.

(ii) all amounts for the purchase of any goods which are specifically exempted from tax under any of the provisions of the Act;

(iii) all amounts paid to sub-contractors as the consideration for execution of works contract whether wholly or party:

Provided that, no such deduction shall be allowed unless the dealer claiming deduction produces proof that the sub-contractor is a registered dealer liable to tax under the Act and that the turnover of such amounts is included in the monthly statement or return of turnover, as the case may be, filed by such, sub-contractor;

(iv) such amounts towards "labour charges and other like charges" not involving

any transfer of property in goods actually incurred in connection with the execution of works contract, or

(v) such amounts calculated at the rate prescribed in column (3) of the table below, if they are actually incurred towards "labour charges" and other like charges and are not ascertainable from the books of accounts maintained and produced by a dealer before the assessing authority.

TABLE Labour or other charges as a Sl. No. Type of contract percentage of the value of the contract
1. Civil works like construction of buildings, bridges, roads, etc. Thirty per cent.
2. Construction of railway coaches on carriages supplied by railways Thirty per cent.

12. From reading of the above provisions, it is very clear that the electrical contract work, which is the occupation of the appellant/assessee falls under Rule 6(4)(m) of the Rules and not under Rule 6(4)(n). Therefore, the Additional Commissioner of Commercial Taxes who made orders under challenge dated July 22, 2008 was justified in reducing the deductions allowed under the said provisions to 20 per cent from 30 per cent. By this order there is 10 per cent reduction so far as the benefit available to the appellant/assessee is concerned. In the light of the above order, the appellant/assessee has to pay required tax that was left out.

13. At this stage whether the appellant/assessee can seek the interference of this Court to remand back the matter to the assessing authority, as claimed by him so that he could get the total exemption of the amount which was allegedly reflected in the books of accounts. As already stated above, when he did not choose to file the appeal u/s 22 of the Act challenging annexure B, he could not have come before this Court challenging the same. The remedy open to him was before the Karnataka Appellate Tribunal. Now we have to consider and restrict our order to annexures A and C where there was a fair opportunity available to the appellant/assessee and the reduction of 20 per cent from 30 per cent was in accordance with the Rules contemplated under the Karnataka Sales Tax Rules.

14. As stated above, the Additional Commissioner of Commercial Tax in his orders at annexure A has referred to all the provisions of law, both the sections and the Rules as referred to above and, has clearly stated how the deduction of labour and other like charges have to be deducted from the turnover.

15. Viewed from any angle, we are unable to accept the contentions raised by the appellant/assessee seeking for remand of the matter to the assessing authority for fresh assessment. The order at annexure A is in total conformity with the provisions of law. There is no scope for any interference.

16. With these observations we dismiss the appeal. However, the appellant/assessee is at liberty to take recourse to any provisions of law if there is a scope to do so.