

(2011) 07 KAR CK 0041
In the Karnataka High Court
Case No : STRP No. 17 of 2009

Aisin NTTF Pvt. Limited

APPELLANT

Vs

State of karnataka and Others

RESPONDENT

Date of Decision : 21-07-2011

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 22 (6), 25 A, 4, 5 A, 6 B

Citation : (2012) 50 VST 494

Hon'ble Judges : Ravi Malimath, J;N. Kumar, J

Bench : Division Bench

Advocate : G. Rabinathan, for the Appellant; S. Sujatha, AGA, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—The assessee has preferred this revision against the rectification order passed by the Karnataka Appellate Tribunal (hereinafter called as "the KAT", for short) u/s 25A read with section 22(6) of the Karnataka Sales Tax Act, 1957 (hereinafter called as "the Act", for short). The assessee is a manufacturer of components of motor vehicles. The bulk production is sold to M/s. Toyota Kirloskar Motors Private Ltd., Bidadi (hereinafter called as, "M/s. TKML", for short). The said components are used by TKML in the manufacture of motor vehicles. Accordingly, they gave declaration in the prescribed form. On the basis of the said declaration, the assessee claimed exemption from payment of sales tax by notification dated January 1, 1998, whereby the Government of Karnataka exempted the tax payable by the dealer u/s 5 of the Act in respect of sale of goods to M/s. TKMPL for their use as raw materials/ components/consumables/ the packing materials, for a period of five years for each phase, subject to the condition of production of declaration obtained from M/s. TKMPL in the forms specified in the said notification.

2. It is not in dispute that the assessee availed of the benefit under the said notification and he did not pay any sales tax at all for the relevant period.

However, though the assessee is exempted from payment of sales tax, was liable to pay turnover tax u/s 6B of the Act. Accordingly, he paid the turnover tax. The Government issued a notification on March 31, 2000 reducing from first day of April 2000 the turnover tax payable u/s 6B of the Act to one per cent on the turnover relating to sales taxable u/s 5A of the Act. On the basis of the aforesaid notification, the assessee contended that he is liable to pay only one per cent and not three per cent turnover tax. The said contention of the assessee was not accepted by the assessing authority. Aggrieved by the same, he preferred appeal to the Appellate Commissioner who also did not accept the contention of the assessee. Against the said order of the Appellate Commissioner, the assessee preferred a second appeal to the KAT.

3. In the first instance, the Appellate Tribunal upheld the claim and held that the assessee is liable to pay only one per cent turnover tax by an order dated April 4, 2006. The Revenue preferred a rectification application seeking for rectification of the said order. The said application was allowed. The earlier order passed on April 4, 2006 was recalled and it was held that the assessee is not entitled to the benefit of the notification dated March 31, 2000 and it is liable to pay turnover tax at three per cent. Aggrieved by the said order the assessee is before this court in revision.

4. The learned counsel for the assessee submitted that section 5 of the Act is not a charging section at all and therefore, the notification dated January 1, 1998 has to be construed as applicable to the liability to tax u/s 5A of the Act. If so construed, the notification is applicable to the persons who have paid tax u/s 5A and if section 5A is applicable to the assessee, he is entitled to benefit of reduction in turnover tax. Consequently, it was contended that the ground on which the rectification order came to be passed, was not the subject-matter of the original appeal. Therefore, the scope of rectification being very much limited and altogether new ground which is not discernible from the original order, no rectification can be ordered and therefore, he submits the cause for interference is made out.

5. Per contra, the learned counsel appearing for the State supported the impugned order.

6. It is well-settled that the exemption notification comes in the way of collection of revenue by the State. Therefore, courts have consistently held that these exemption notifications have to be strictly construed. It would not be proper for the courts under the guise of interpreting these exemption notifications to read into the notification exemptions which are not granted by the Government. In the instant case, the notification dated January 1, 1998 specifically refers to section 5 and grants exemption from payment of tax, subject to the condition mentioned. They have been fulfilled by the assessee. Section 5A is an independent section which also came in statute book when section 5 was introduced. Therefore, exemption notification issued exempting the assessee from payment of duty u/s 5 cannot be construed as an exemption notification

issued u/s 5A. If payment had been made u/s 5A, correspondingly if turnover tax has been paid by such an assessee by the subsequent notification, refund of turnover tax was reduced from three per cent to one per cent. Therefore, the conditions precedent for application of the second notification is the payment of sales tax u/s 5A. If no payment is made u/s 5A, the subsequent notification has no application.

7. In the instant case, the assessee has not made any payment as he claimed exemption under the notification issued granting exemption from payment of tax u/s 5, the subsequent notification has no reference to either to the said notification or payment of tax u/s 5. Therefore, he is liable to pay turnover tax only at three per cent. This aspect has been completely missed by the KAT while deciding the appeal on the merits and it has directed itself in proceeding on the assumption when the assessee was not under obligation to produce form 37 to claim the benefit of reduction of turnover tax to one per cent it erroneously extended the benefit. Subsequently, the KAT retraced the steps. After looking into sections 5 and 5A and the two notifications which are the subject-matter of these proceedings, rightly came to the conclusion that when the assessee has not paid any tax u/s 5A, he is not entitled to the benefit of reduction of payment of turnover tax from three per cent to one per cent and he is liable to pay turnover tax at three per cent before. The same does not call for interference. Insofar as the second contention that altogether different ground taken while passing the rectification order, is concerned, the Tribunal is vested with the power to rectify the earlier order, if there is error apparent on the face of the record. When the earlier order did not properly comprehend as to the dispute between the parties and decided the appeal by proceeding tangentially altogether on a different point, a case of error apparent on the face of the record, is clearly made out and the KAT was justified in rectifying the mistake it had committed by rectifying the earlier order. In fact section 22(6) confers on the KAT the power to review any order passed by it u/s 4 on the basis of the fact it was not before it when it passed the order. Therefore, when the KAT did not look into the fact which was before it and took into consideration which was not before it and passed the order, rectification of such an order is valid and legal and does not suffer from any legal infirmity which calls for interference. We do not see any merit in this revision petition and accordingly, dismissed.