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(2013) 01 KAR CK 0025

In the Karnataka High Court

Case No : Sales Tax Appeal No. 523 of 2010 connected with Sales Tax Appeal No. 511 of 2010

Arun Fabricators APPELLANT

Vs

The Additional Commissioner Of Commercial Taxes RESPONDENT

Date of Decision : 11-01-2013

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 22-A(1), 25, 5(iv), 5-B

Citation : (2013) 76 KarLJ 15

Hon'ble Judges : V, J;Suri Appa Rao, J;H.N. Nagamohan Das, J

Bench : Full Bench

Advocate : Narayan G. Rasalkar for Sri Pramod Yadwad, for the Appellant; Mahesh Wadeyar, Additional Government Advocate, for the Respondent

Judgement

H.N. Nagamohan Das, J.—These two appeals are directed against the order of Additional Commissioner for Commercial Taxes, Bangalore, dated 11-3-2010 Annexure-A passed u/s 22-A(1) of the Karnataka Sales Tax Act, 1957. In this case, the assessment years are 2000-01 and 2001-02. Appellants filed assessments for the above two years exercising option for assessment u/s 5-B of KST Act, 1957. The Assessing Authority after processing returns filed by the appellants passed order of assessment at Annexure-B. Thereafter; the Deputy Commissioner of Commercial Taxes vide order dated 23-11-2006, passed rectification orders u/s 25 of the KST Act stating as under:

The option of the assessee for assessment u/s 5-B of the KST Act, 1957 the tax subjected to tax at rate of 4% on the inter-State purchase of steel worth of Rs. 70,74,253-00 is not correct as such the steel purchased is not used in the same form in works contract instead of storage tanks were fabricated and used the construction work.

2. Against this order of rectification, the appellants filed an appeal before the Joint Commissioner of Commercial Taxes. Under the impugned order at Annexure-D, dated 27-4-2007, the rectification order came to be set aside and

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the order of assessment came to be confirmed. Thereafter, the Additional Commissioner of Commercial taxes exercised his suo motu revisional power u/s 22-A(1) of KST Act. Under the impugned order, the Additional Commissioner reversed the finding of Appellate Authority and held that the appellants have not used the steel in the same manner when the same was purchased and on the other hand it is held that steel was fabricated into storage tanks. In the circumstances, the Revisional Authority reversed the order of Appellate Authority and confirmed the order or rectification. Therefore, the present appeal is filed.

3. Though several questions of law raised in this appeal, it is suffice for the purpose of this case to consider the following question of law.--

1. Whether the Revisional Authority is legally correct in holding that the assessee has not used the steel as it was purchased and the same was completed into storage tanks by fabrication. It is not in dispute that the appellant/assessee see in their returns specified that they have purchased steel worth Rs. 11,71,538/-. Further, in the returns it is specified that by using the steel they have erected storage tanks. Thus, there is change of use of the steel as it was purchased. Therefore, the impugned order passed by the Revisional Authority is in accordance with law?

Learned Counsel for the appellants relying on Section 5-B of the Act contends that under law, the appellants are entitled to use the steel as it was purchased or in the changed form. A reading of sub-section (iv) of Section 5 of the Act specifies that the assessee shall use the steel as it was purchased. But in the instant case the steel purchased was fabricated into storage tanks. Therefore, the above question of law is answered against the assess and in favour of revenue. Accordingly, the appeal is hereby dismissed.

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