(2014) 10 KAR CK 0093

In the Karnataka High Court

Case No : Writ Petition No. 49857/2014 (T-RES)

Bharat Earth Movers Limited — APPELLANT

Vs

State of Karnataka — RESPONDENT

Date of Decision : 30-10-2014

Acts Referred:
Karnataka Value Added Tax Act, 2003 — Section 62, 63

Citation : (2014) 10 KAR CK 0093

Hon'ble Judges : B.V. Nagarathna, J

Bench : Single Bench

Advocate : Shivadass G, Advocate for the Appellant; Venkatesh Dodderi, AGA, Advocate for the Respondent

Judgement

B.V. Nagarathna, J.—Petitioner is a public sector undertaking. It has sought a direction to the Tribunal to admit its appeal in S.T.A. No. 2170/2014 filed by the petitioner without insisting on pre-deposit of 30% of the disputed amount as stipulated under sub-section (4) of Section 63 of the Karnataka Value Added Tax Act, (herein after referred to as ''Act'' for the sake of brevity) 2003.

2. Briefly stated the facts are that in respect of certain demands made by the respondents/department, appeal was filed before the Joint Commissioner of Commercial Taxes under sub-section (6) of Section 62 of the Act. At that stage, petitioner had filed Writ Petition No. 33978/14 and connected writ petitions seeking relief with regard to deposit of tax and other amounts deposited in the appeal.

3. This Court by order dated 17.7.2014 by placing reliance on judgment of the Hon''ble Supreme Court in the case of Bharat Petroleum Corp. Ltd. vs. Commissioner of Sales Tax and others reported in [2008] 17 VST 162 (SC), directed the petitioner to submit a bank guarantee of 30% of the outstanding dues which was around rupees ten crores and for the balance of 70% waiver was granted.

4. Learned counsel for the petitioner now submits that the appeal has been dismissed by the Joint Commissioner of Commercial Taxes and being aggrieved by that order, the petitioner has filed further appeal before the Karnataka Appellate Tribunal under Section 63 of the Act. He submits that sub-section (4) of Section 63 states that every appeal to be filed must be accompanied by proof of payment of thirty percent of tax or other amount disputed and also a fee equal to two percent of the amount of assessment objected to.

5. It is the contention of petitioner''s counsel that as this Court in the order referred to above had permitted the petitioner to give a bank guarantee for 30% of the tax when the matter was pending before the First Appellate Authority, the same could be continued and construed as proof of payment of 30% of the tax in respect of the appeal now filed before the Appellate Tribunal. He therefore submits that an order to that effect may be made by this Court.

6. Learned Addl. Government Advocate who appears on advance notice opposes the relief sought by the petitioner. He contends that the provision does not give discretion to either the appellate authority or the State Government, in so far as pre-deposit is concerned.

7. Having heard the learned counsel for the parties and on perusal of the relevant provisions, it is noted that sub-section (4) of Section 63 insists on pre-deposit of 30% of the tax or other amount disputed and also a fee equal to 2% of the amount of assessment objected to. It must be paid at the time of filing the appeal. In other words, the appeal would not be entertained by the Appellate Authority until the said deposit is made. There is no discretion vested with the Appellate Authority to either reduce the amount of deposit or waive deposit or make the payment in any other form such as by a bank guarantee. This provision is unlike the provision applicable for grant of interim stay by the First Appellate Authority in respect of which the earlier writ petition was filed by the petitioner.

8. In that view of the matter, relief claimed by the petitioner cannot be granted. However the petitioner is directed to make the deposit in terms of sub-section (4) of Section 63 of the Act. If such a deposit is made by the petitioner, then the Appellate Tribunal to consider the appeal in accordance with law in an expeditious manner, as the petitioner is a public sector undertaking.

Subject to the aforesaid observations and directions, the writ petition is dismissed.

