(2016) 03 KAR CK 0332

In the Karnataka High Court

Case No : Writ Petition No. 16323 of 2016 (T-RES) and Writ Petition Nos. 16517-16539/2016 (T-RES)

Bharat Electronics Limited APPELLANT

Vs

State of Karnataka and Others RESPONDENT

Date of Decision : 24-03-2016

Acts Referred:
Karnataka Value Added Tax Act, 2003 — Section 39(1), Section 62

Citation : (2016) 03 KAR CK 0332

Hon'ble Judges : Anand Byrareddy, J.

Bench : Single Bench

Advocate : Shivadass. G., Advocate, for the Appellant; A.S. Ponnanna, AAG-II of S.V. Girikumar, AGA, for the Respondent

Final Decision : Disposed Off

Judgement

Anand Byrareddy, J.—1. Heard the learned counsel for the petitioner and the learned Additional Advocate General who has entered appearance for the State Government.

2. The petitioner is a public sector undertaking established by the Government of India under the Ministry of Defence. It is engaged in designing, developing and manufacturing products such as military radars, electronic warfare systems, naval systems, avionics, defence communication equipment, solar products, electronic voting machines etc. and caters to the defence and non-defence organizations and other categories of work. The petitioner is a registered dealer under the Karnataka Value Added Tax Act, 2003 and is also registered under the Central Excise Act, 1944. The goods manufactured by the petitioner are classified under the relevant Chapter Headings of the Central Excise Tariff Act, 1985. On the manufacture and clearance of various defence products, the petitioner is eligible for exemption from payment of excise duty under relevant exemption notifications. The State of Karnataka in terms of Entry 53 of the III Schedule of KVAT Act has notified IT products including telecommunication equipments vide

Notification No. FD 116 CSL 2006(9) dated 31.3.2006 and Notification No. FD 116 CSL 2006(16) dated 06.04.2006., which are amended from time to time. The goods are notified under the said notifications with reference to corresponding chapter hearing/sub-heading of the CET Act. The petitioner has classified the goods manufactured by it under the relevant entries of the aforesaid notifications, on the basis of the CTH classification and discharged VAT at 5.5% on sale of said products. The third respondent namely The Deputy Commissioner of Commercial Taxes, (Audit)-6.3, DVO-6, Bengaluru, has initiated audit proceedings for the tax periods April 2014 to march 2015 under Section ((2) of the CST Act and under Section 39(1) of the KVAT Act and visited the business premises of the petitioner for verification of books of accounts and other relevant documents. Thereafter, proposition notices have been issued dated 19.01.2016 proposing re-assessment of returns under the provisions of the KVAT Act and CST Act. Inter-alia, it was proposed to reject the classification of ''Electronic Voting Machine(EVM), Digital Flight Control Computer and its parts, Radar Warning Systems and its parts, Missile Warning System and all other products sold by the petitioner under the prevailing IT Product Notifications and instead of it sought to classify the same as unscheduled commodity attracting tax at 14.5% apart from assigning reasons for rejecting the classification of the said products. The petitioner had appeared before the third respondent and filed objections and filed written submissions in support of the classification adopted. It is contended that the third respondent without considering the submissions of the petitioner passed re-assessment orders dated 25.2.2016 demanding differential tax amounting to Rs. 38,35,71,281/- on the inter-state sale of EVMs and other products and passed separate re-assessment orders of even date under Section 39(1) of the KVAT Act demanding tax amounting to Rs. 11.70 Crore, which was subsequently reduced to Rs. 4.63 Crore. The third respondent has also issued consequential demand notice to make payment. Aggrieved by this, the petitioner had filed an appeal before the first appellate authority namely the Joint Commissioner of Commercial Taxes(Appeals-6), the fourth respondent herein under Section 62 of the KVAT Act, 2003. In terms of the said Section, the fourth respondent is empowered to grant stay of recovery of 70% disputed amounts only on a pre-condition of deposit of 30% of the disputed amounts. Therefore, in this piquant situation, the petitioner is before this Court contending that it is a Central Government undertaking and is engaged in the business of manufacturing products which are mainly used by the Defence Department and seeks to place reliance on the judgment of the Supreme Court in the case of Bharath Petroleum Corporation Limited vs. Commissioner of Sales Tax and others [(2008) 17 VST 162 SC] wherein the Apex Court has laid down that in cases involving Central Government Undertakings the State Government should not insist on any such pre-deposit in considering appeals filed in such situations. The said judgment was rendered while dealing with Essential Commodities Act. This Court in Bharat Earth Movers Limited, Bangalore vs. State of Karnataka and others [, 2016(84) Kar.L.J.332] and the Bombay High Court in the case of Rashtriya Chemicals and Fertilisers Limited vs. Union of India [, 2011(270)

E.L.T.11(Bom)] have applied the ratio laid down in respect of similar provisions under other enactments. Therefore, the learned counsel would submit that insofar as the present demand is concerned, the appeal before the Appellate Authority would not be entertained unless there is a pre-deposit. As there is no discretion offered to the Appellate Authority to waive pre-deposit, no such order would be granted unless the petitioner deposits the amounts. Hence, the present petition.

3. The learned Additional Advocate General, on the other hand, would submit that if the petitioner seeks to rely on the decision of the Supreme Court to seek such waiver, it would be appropriate for the petitioner to raise such a plea before the Appellate Authority. The present petition is misconceived. In any event, pre-deposit is required as a safeguard to the legislature to ensure the payment as regards the disputed claim. If the petitioner is given the benefit of any waiver, it would result in the State being deprived of funds for which it is starved; and furnishing of bank guarantee instead of making a deposit would not enable the State to function as laid by the Supreme Court in the case of Assistant Collector of Central Excise, Chandan Nagar, West Bengal vs. Dunlop India Limited and others [(1985) 1 Supreme Court Cases 260] wherein the Supreme Court has opined that the State will not be able to run on bank guarantees and wherever the requirement of deposit is to be made it should be complied with strictly. Hence, submits that there is no warrant for interference and the petition is misconceived and seeks dismissal of the same.

4. In the present situation, while keeping open the question whether the judgment of the Supreme Court in Bharath Petroleum Corporation Limited''s case referred to above could be applied to the facts of the case and the petitioners should be given a waiver, it would be serving the purpose of both the State and the petitioner if a compromise could be arrived at in the petitioner being directed to deposit atleast 10% of the demand amount before 31st March 2016 and furnishing of a bank guarantee for the remaining 20% of the demand, subject to the result of the appeal. Accordingly, the Appellate Authority is directed to receive the said deposit of 10% to be made on or before 31st March 2016 as well as a bank guarantee for the remaining 20% of the demand and proceed in accordance with law.

5. Since large amounts are involved and since the petitioner is a Government of India undertaking, it would be in the interest of the nation that the matter is heard at the earliest and disposed of without insisting on further deposits and bank guarantee apart from the deposit to be made as directed hereinabove and dispose of the appeal in accordance with law with expedition, in any event, the appeal shall be heard and disposed of within a period of four weeks, if not earlier, from the date of receipt of a certified copy of this order.

6. The petitions are accordingly disposed of.

