

(2010) 08 KAR CK 0083
In the Karnataka High Court
Case No : S. T. A. No. 39 of 2010

Blue Star Ltd.

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 26-08-2010

Acts Referred:

Citation : (2011) 39 VST 497

Hon'ble Judges : N. Kumar, J;H.S. Kempanna, J

Bench : Division Bench

Advocate : M.N. Shankare Gowda, for the Appellant; T.K. Vedamurthy, High Court Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

N. Kumar J.

1. This appeal is by the assessee, challenging the order passed by the revisional authority, setting aside the order passed by the appellate authority, which had held that the additional should be on the basis of the actual profits earned at the rate of 14.3 per cent and not at the rate of 30 per cent which the assessee had admitted in the course of assessment proceedings.

2. The assessee is a trade in air-conditioners, water coolers, deep freezers, mineral water dispensary and works contractor in supply, installation and commissioning of air-conditioners. Upon processing of books of account and evidences, the assessing authority concluded final assessment u/s 12(3) and section 17(6) of the Karnataka Sales Tax Act, 1957 (for short, hereinafter referred to as, "the Act") on May 25, 2005. By and large, the book figures were accepted in the final assessment under the Act. The succeeding assessing authority observed after verification of assessment records that there is suppression of sales turnover of goods as first dealer goods assessable to tax at the hands of the assessee as suppressed sales turnover of air-conditioners, deep freezers, air coolers, etc., for Rs. 3,95,84,553. He issued a reassessment

proposition notice u/s 12A(1) of the Act. He considered the opening stock, inter-State purchases, stock inwards, closing stock and sales. In the process, he observed that there was suppressed turnover of goods assessable to tax at Rs. 3,95,84,553 which is liable to tax at 20 per cent. The tax liability was proposed at Rs. 79,16,911. He also proposed penalty u/s 12A(1A) of the Act for wilful suppression of taxable turnover. The assessee filed its objection and opposed the reassessment on various grounds. After examining the objections of the assessee, the assessing authority found that the assessee has not declared any closing stock in the form of works-in-progress and it has declared only goods held in opening stock in Rs. 56,95,085 and closing stock as Rs. 69,64,688. The assessee, in the course of its objections submitted that it has claimed 30 per cent as gross profit. However, it contended, that cannot be taken as the basis for addition of the suppressed turnover. The assessing authority held, it is not acceptable since the assessee itself has adopted gross profit at 30 per cent in case of works contract and the gross profit can be more than the trading activity and the assessee is likely to incur expenses towards execution of works contract of supply, installation and commissioning of air-conditioners. Also the assessee itself has declared 30 per cent labour expenditure under work-in-progress as on March 31, 2002 and as on March 31, 2003. Therefore, he proceeded to hold that the assessee has not furnished any documentary evidence to claim that the gross profit earned by it is less than 30 per cent. Therefore, gross profit adopted at 30 per cent, is based on the gross profit declared by the assessee itself and local purchase of air-conditioners, deep freezers, mineral water dispensary and sale of air-conditioners, etc., was made the basis for addition. Accordingly, he claimed a sum of Rs. 1,84,91,110 as the total tax payable.

3. Aggrieved by the same, the assessee preferred an appeal. The first appellate authority held that there is no correlation between the opening stock purchases, closing stock and the sales disclosed by the appellant relating to goods dealt in trading activity and also used in the execution of works contract. Therefore, the assessing authority has rightly held that there is under-statement of turnover tax in so far as the first dealer goods are concerned. However, the assessing authority for the purpose of arriving at the sale value of the goods, made addition of gross profit at 30 per cent which is claimed to be declared in respect of second dealer goods. From the copies of the purchase and sales bills and the trading profit and loss accounts, filed by the assessee, relating to traded goods, i.e., first dealer goods and second dealer goods and the works contract executed, it held, gross profit is at 14.3 per cent which is the consolidated gross profit. The element of gross profit is derived with the integration of all the purchases and sales of goods liable to tax and exempt from payment of tax. Taking margin of gross profit at 30 per cent in respect of second dealer goods, the assessee claimed exemption under the works contract. The assessing authority has proposed to adopt the very same margin to gross profit even in respect of first dealer goods and compared the same with the actual first dealer goods available for sale and for use in the execution of works contract with that of the first sales

declared and the taxable works contract receipts disclosed for tax u/s 5B of the Act. Further, it recorded that when a question was posed to the authorised representative of the company, at the time of hearing of the appeal, as to why 30 per cent of gross profit was reckoned towards local registered dealer purchases, the reply was, under misconception that they are liable to claim the benefit of gross profit at 30 per cent on par with the labour and like charges as enumerated under rule 6(4) of the Karnataka Sales Tax Rules and they had claimed deduction towards gross profit. Therefore, the first appellate authority held the assessing authority in the impugned reassessment proceedings, has not made out a case for adopting the gross profit at 30 per cent, as the same cannot be gathered from the material available on record. He further held, the non-disclosure of taxable sales in this case could be attributed to mis-classification of sale of goods and not on account of wilful non-disclosure. The claim for gross profit at 30 per cent on the local registered dealer purchases used in the execution of works contract against the actual gross profit as per the books of account at 14.3 per cent for declaration of taxable goods received. Therefore, he held, the assessing authority is not justified in imposing penalty in those circumstances. Accordingly, the appeal was partly allowed and the appeal filed against the penalty was allowed in full.

4. The revisional authority, by virtue of the power conferred u/s 22A(1) of the Act, initiated suo motu revisional proceedings and found fault with the appellate authority in adopting 14.3 per cent as the profit which should have been added and set aside the same and restored the order of the assessing authority. Aggrieved by the same, the assessee is before this court.

5. The learned counsel for the assessee, assailing the impugned order of the revisional authority contends, as is clear from the material on record that the basis for addition of 30 per cent by the assessee is on a wrong assumption that they would be entitled to the benefit of 30 per cent profit with respect to second dealer sales. Whereas the material on record clearly shows the profit earned is only 14.3 per cent. Therefore, the appellate authority, on scrutiny of the entire material on record, rightly set aside the order as well as the penalty and the revisional authority, exceeded in its jurisdiction in setting aside the said order and restoring the order of the assessing authority.

6. Per contra, learned counsel for the Revenue submits, when the assessee itself has claimed 30 per cent as the profit in respect of the second dealer sales and when that is taken as the basis for addition, the appellate authority committed a serious error in interfering with the said order based on admission. It is that order which is set aside and restored by the revisional authority. Therefore, no case for interference is made out.

7. From the aforesaid facts, it is not in dispute that 30 per cent, which is the addition, is based on the claim of the assessee representing the profit on second dealer sales. It is not an actual profit earned by it. In order to claim exemption, as in the case of labour charges under works contract, it has estimated the said

amount. The liability to tax under a fiscal legislation cannot be based on admissions. The liability has to be worked out under the provisions of the Act. When the material on record discloses the actual profit earned is 14.3 per cent, merely because the assessee for the purpose of claiming exemption had put forth a claim of 30 per cent profit, that cannot be the basis for addition as done by the assessing authority.

8. In that view of the matter, we do not see any justification for the revisional authority to have interfered with the well considered order passed by the appellate authority which was based on material on record, statutory provisions and the law on the point.

9. In that view of the matter, the impugned order requires to be set aside and the order passed by the assessing authority is to be restored. Hence, we pass the following :

ORDER

Appeal is allowed. The impugned order passed by the revisional authority is hereby set aside. The order passed by the appellate authority is restored. The parties to bear their own costs.