

(2004) 01 KAR CK 0013

In the Karnataka High Court

Case No : Writ Petition No"s. 13516 to 13519 of 2001

BPL Limited

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 30-01-2004

Acts Referred:

Karnataka Tax on Entry of Goods Act, 1979 — Section 2 (A) (8a), 3

Citation : (2004) 3 KCCR 264 SN : (2008) 11 VST 835

Hon'ble Judges : R.V. Raveendran, J;H. Billappa, J

Bench : Division Bench

Advocate : Sundaraswamy Ramdas and Anand, for the Appellant; B. Anand, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R.V. Raveendran, J.—The petitioner, a manufacturer of electronic goods, is a registered dealer under the Karnataka Tax on Entry of Goods Act, 1979, (for short, "the KTEG Act").

For the assessment year 1996-97 (April 1, 1996 to March 31, 1997), the petitioner filed a return on May 30, 1997, subsequently revised on February 29, 2000, returning a taxable turnover of Rs. 2,27,84,17,826. The assessing authority (second respondent) issued a proposition notice dated March 2, 2000 proposing a taxable turnover of Rs. 4,62,03,58,237. The petitioner filed objections dated March 28, 2000. One of the objections related to the valuation of goods for the purpose of levy of entry tax under the Act. The assessing authority passed an order of assessment dated March 31, 2000 determining the taxable turnover as Rs. 3,78,24,78,447 and entry tax payable as Rs. 4,42,01,754.

2. The petitioner is aggrieved by the valuation of the goods adopted for the purpose of levy of entry tax under the Act. The petitioner submits that as per the MODVAT Scheme formulated under the provisions of the Central Excise Act, 1944 and the Central Excise Rules, 1944, a manufacturer is entitled to a credit of the

excise duty paid on the inputs used in the manufacture of final products. The petitioner contends that under the MODVAT Scheme, it is entitled to MODVAT credit on all eligible inputs received by it in its factory for manufacture of final products; that it is entitled to utilise such credit, for payment of excise duty on the final products manufactured by it; and that therefore it is entitled to deduct the MODVAT credit amount availed by it, namely Rs. 57,65,64,844, from the total value of goods, entry of which is caused by it into the local area, to arrive at the value of goods that can be subjected to entry tax. Elaborating the said contention, it is submitted that though it pays a particular price for the goods (purchased by it for being used in the manufacture of final products), on the entry of such goods within the local area and entry in its factory premises, it has an indefeasible right to take a credit in respect of the excise duty paid on the said goods; and therefore, the value of the goods for the purpose of entry tax is the price at which it purchased the goods including the cost of transport, packing, forwarding and handling charges, commission, insurance, taxes, duties, etc., less the MODVAT credit for excise duty availed by it under the provisions of Central Excise Rules.

3. The said contention was negatived by the assessing authority on the following reasoning:

5. With regard to the claim of deduction of the tune of Rs. 57,65,65,884 being the MODVAT component in the price of the goods purchased by the assessee is concerned, the objection raised is not sustainable, as can be seen from the definition of the words "value of the goods" appearing in Section 2(A)(8a) of the KTEG Act, 1979 is concerned. It is clear therefrom that the amount paid by a dealer to purchase the goods constitutes part and parcel of the value of the goods and it is immaterial how the seller has segregated the consideration under the various heads. It is also irrelevant to go into the issue of who had paid the MODVAT. What is essential is what was the amount the dealer had paid to get the ownership of the goods. In the instant case, the dealer got the ownership of goods on payment of price which was inclusive of MODVAT component, there is no justification for granting deduction to the extent of the MODVAT.

4. The said reasoning and decision by the assessing authority is wholly in consonance with the decision of this Court in Motor Industries Co. Limited v. State of Karnataka R.P. Nos. 1550 to 1552 of 1992 disposed of on September 29, 1999, for short, MICO's case.

5. The petitioner was of the view that having regard to the binding decision of this Court in MICO's case R.P. Nos. 1550 to 1552 of 1992 decided on September 29, 1999 no purpose would be served by having recourse to the remedy of appeal under the provisions of the KTEG Act. Therefore, the petitioner challenged the order of assessment directly before the Supreme Court in SLP (Civil) No. 8415 of 2000. However, the said petition was subsequently dismissed as withdrawn by the Supreme Court by the following order dated March 19, 2001.

The present SLP has been filed against an assessment order. Learned Counsel states that despite the judgment of this Court which support the contention of the petitioner on merits, the petitioner has chosen not to file a writ petition in view of a division Bench decision of the Kamataka High Court. In our opinion, it will be more appropriate for the petitioner to approach the Kamataka High Court and make the submission there. Liberty granted to the petitioner to approach the High Court by way of an appropriate petition and this petition is dismissed as withdrawn.

6. Thereafter, the petitioner has filed these petitions for the following reliefs:

(i) To declare that for the purpose of determining the value of goods for levy of entry tax under the KTEG Act, the MODVAT credit availed by an assessee on such goods is liable to be deducted.

(ii) To declare that the decision of this Court in MICO's case in so far as it relates to disallowance of MODVAT credit availed in computing the assessable value of goods under the KTEG Act is incorrect and unenforceable.

(iii) To declare that the petitioner is entitled to a deduction of Rs. 57,65,64,884 for the assessment year 1996-97 under the KTEG Act in determining its taxable turnover under the said Act, and quash the order of assessment dated March 31, 2000 in so far as it disallows the claim for such deduction.

7. The petitioner does not dispute that if the principle laid down by the division Bench of this Court in MICO's case R.P. Nos. 1550 to 1552 of 1992 decided on September 29, 1999 is applied, the prayers in the writ petitions will have to be rejected. The petitioner however submits that MICO's case R.P. Nos. 1550 to 1552 of 1992 decided on September 29, 1999 did not notice the decisions of the Supreme Court in HMM Ltd. and another Vs. The Administrator, Bangalore City Corporation, Bangalore and another, and Eicher Motors Limited and Another Vs. Union of India and Others Etc., and did not properly apply the decision in Collector of Central Excise, Pune Etc. Etc. Vs. Dai Ichi Karkaria Ltd. Etc. Etc., and therefore, the question decided in MICO's case R.P. Nos. 1550 to 1552 of 1992 decided on September 29, 1999 requires consideration by a larger Bench.

8. We have carefully considered the matter. We are of the view that MICO's case R.P. Nos. 1550 to 1552 of 1992 decided on September 29, 1999 was rightly decided and the matter does not require to be referred to a Full Bench.

9. HMM Ltd. and another Vs. The Administrator, Bangalore City Corporation, Bangalore and another, related to levy of octroi under the provisions of City of Bangalore Municipal Corporation Act, 1949. The Supreme Court held that mere physical entry into the Municipal limits would not attract the levy of octroi unless the goods were brought in for use or consumption or sale. In Eicher Motors Limited and Another Vs. Union of India and Others Etc., , the Supreme Court held that the assessee becomes entitled to take the credit of the duty paid in regard to the input instantaneously once the input is received in the factory on

the basis of existing MODVAT scheme. The said decisions are of no assistance, to decide whether MODVAT credit availed by an assessee on a raw material, should be excluded for determining the value of goods to be subjected to entry tax.

10. In *Collector of Central Excise, Pune Etc. Etc. Vs. Dai Ichi Karkaria Ltd. Etc. Etc.*, the Supreme Court considered the question whether in determining the assessable value of an intermediate product, for purposes of excise duty, the cost of the raw material is the price paid to the supplier (as contended by the Revenue) or the price paid to the supplier less the excise duty paid by the supplier in respect of which manufacturer had availed MODVAT credit (as contended by the manufacturer). The Supreme Court answered the question in favour of the assessee by holding that the excise duty paid on the raw material will not form part of the cost of the excisable product for the purposes of Section 4(1)(b) of the Central Excise Act, 1944 read with Rule 6 of Valuation Rules. After referring to Rules 57A to J of the Central Excise Rules, the Supreme Court held thus:

18. It is clear from these rules, as we read them, that a manufacturer obtains credit for the excise duty paid on raw material to be used by him in the production of an excisable product immediately it makes the requisite declaration and obtains an acknowledgement thereof. It is entitled to use the credit at any time thereafter when making payment of excise duty on the excisable product. There is no provision in the Rules which provides for a reversal of the credit by the excise authorities except where it has been illegally or irregularly taken, in which event it stands cancelled or, if utilised, has to be paid for. We are here really concerned with credit that has been validly taken, and its benefit is available to the manufacturer without any limitation in time or otherwise unless the manufacturer itself chooses not to use the raw material in its excisable product. The credit is, therefore, indefeasible. It should also be noted that there is no correlation of the raw material and the final product; that is to say, it is not as if credit can be taken only on a final product that is manufactured out of the particular raw material to which the credit is related. The credit may be taken against the excise duty on a final product manufactured on the very day that it becomes available....

25. We think it is appropriate that the cost of the excisable product for the purposes of assessment of excise duty u/s 4(1)(b) of the Act read with Rule 6 of the Valuation Rules should be reckoned as it would be reckoned by a man of commerce. We think that such realism must inform the meaning that the courts give to words of a commercial nature, like cost, which are not defined in the statutes which use them. A man of commerce would, in our view, look at the matter thus:

I paid Rs. 100 to the seller of the raw material as the price thereof. The seller of the raw material had paid Rs. 10 as the excise duty thereon. Consequent upon purchasing the raw material and by virtue of the MODVAT Scheme, I have become entitled to the credit of Rs. 10 with the excise authorities and can utilise

this credit when I pay excise duty on my finished product. The real cost of the raw material (exclusive of freight, insurance and the like) to me is, therefore, Rs. 90. In reckoning the cost of the final product I would include Rs. 90 on this account." This, in real terms, is the cost of the raw material (exclusive of freight, insurance and the like) and it is this, in our view, which should properly be included in computing the cost of the excisable product.

(Here italicised)

11. But what is relevant to be noticed is that the entire discussion is with reference to the determination of the assessable value for the purpose of excise duty, in the absence of a definition in the relevant Act. The Supreme Court made it clear that the assessable value for purposes of excise duty is based on "cost" which is not defined in the Central Excise Act. Because the term "cost" is not defined, the Supreme Court held that the term "cost" should be given a meaning that accords with the meaning that a man of business would put upon it and for that purpose established accounting practices would be relevant. The decision makes it clear that the principles laid down therein have no relevance for determination of the value of goods under other enactments, which may prescribe different principles to determine the value of the goods. In fact, in the same decision the Supreme Court recognised the position that the principles relating to valuation laid down in an enactment will have no bearing on the principles applicable regarding valuation in other enactments by stating thus:

The learned Attorney General submitted that judgments relating to the Income Tax Act or other statutes had no relevance while considering a provision in an excise statute. There can be no doubt about the correctness of this proposition....

12. We are concerned with determination of value of goods under the KTEG Act. Section 3 which is the charging section provides that there shall be levied and collected a tax on entry of any goods specified in First Schedule into a local area for consumption, use or sale therein at such rates not exceeding 5 per cent of value of goods as may be specified. The term "value of goods" is defined in Section 2(A)(8a) thus:

"Value of goods" shall mean the purchase value of such goods, that is to say, the purchase price at which a dealer has purchased the goods inclusive of charges borne by him as cost of transportation, packing, forwarding and handling charges, commission, insurance, taxes, duties and the like, or if such goods have not been purchased by him, the prevailing market price of such goods in the local area.

13. In *State of Karnataka and Another Vs. Hansa Corporation*, , while upholding the validity of the KTEG Act, the Supreme Court made it clear that the taxing event under the statute is entry of Schedule goods in a local area for consumption, use or sale therein at the instance of a dealer. The Supreme Court held:

...The taxing event is the entry of scheduled goods into a local area. The tax becomes payable on the entry of scheduled goods in a local area. Therefore, the price of the scheduled goods at the time of entry paid by the dealer who is the importer of goods within the scheduled area would be the ad valorem price on the basis of which tax would be computed. No subsequent rise or fall in price has any relevance to the computation of the tax. The charging section says that the tax shall be levied and collected on the entry of scheduled goods in a local area at specified percentage not exceeding two per cent ad valorem. Therefore, the price of the scheduled goods at the time when the tax becomes chargeable irrespective of the fact that it would be computed at a later date when the dealer submits his return as required by the other provisions of the Act, would be the price for computation of tax. And there is no ambiguity or any vagueness in this behalf. There is thus specific guideline in the charging section itself for taking into account the price according to which tax would be computed. The High Court negated this contention by observing that it would be open to the dealer to choose either the sale price or the purchase price whichever is favourable to him for computation of his liability to tax. This approach overlooks the specific language of Section 3 which clearly indicates what price is to be taken into account for computing the tax. When the goods are brought within the local area they have a certain price. The price may be the price which the importer of goods has paid before bringing the goods within the local area. Even if the dealer is the manufacturer of goods at a place outside the local area and brings the goods within the local area he must have determined the price of the goods. Therefore, the dealer has some specific price of the scheduled goods which are being brought within the local area at the time of entry in the local area and the entry being the taxing event that would be the price which alone can be taken into account for computing the tax ad valorem.

(Here italicised.).

14. For the purpose of entry tax, what is relevant is the value of goods when the goods enter the local area. The fact subsequent to such entry, the assessee received the goods in his factory and took MODVAT credit for the Excise duty paid on such goods, will not have the effect of reducing the value of the goods on entry into the local area. This can be demonstrated by an example. Let us take a case where the same excise suffered goods is purchased for a price of Rs. 100 (of which excise duty paid by the seller is Rs. 10 from the same seller by three different purchasers and brought into the local area, the three purchasers being:

- (a) a dealer who intends to sell it in the local area;
- (b) a manufacturer who intends to use it as an input in the manufacture of a final product which is not exigible to excise duty.
- (c) a manufacturer who intends to use it as an input in the manufacture of a final product exigible to excise duty.

15. If the contention of the petitioner is to be accepted, then the value of the

goods for purpose of entry tax will be Rs. 100 (plus transportation cost, etc.,) in the case of purchasers (a) and (b) and Rs. 90 (plus transportation cost, etc.,) in the case of purchaser (c). But, such difference is inconceivable, as the taxable event in respect of all three assesseees is the entry into local area for sale/use/consumption. Therefore, any act of the assessee subsequent to entry into local area, which may have the effect of reducing the price or cost, will have no bearing on the value of the goods on which entry tax is payable.

16. The basis of valuation considered by the Supreme Court for determining the "cost of the excisable product" and the basis of valuation for determining the "value of goods" u/s 2(A)(8a) of the KTEG Act for levy of entry tax, are completely different. This has been brought out clearly in MICO's case R.P. Nos. 1550 to 1552 of 1992 decided on September 29, 1999, while negating the contention that for the purpose of entry tax, MODVAT credit availed by the assessee should be deducted from the purchase value of goods specified in the bill. This Court distinguished the decision in Collector of Central Excise, Pune Etc. Etc. Vs. Dai Ichi Karkaria Ltd. Etc. Etc., , on the ground that it related to the "cost" under the provisions of Section 4 of the Central Excise Act, 1944, as also Rule 6 of the Central Excise (Valuation) Rules, 1975. This Court pointed out that only for the purpose of levy of excise duty, the cost has to be considered at Rs. 90 instead of Rs. 100, on account of the assessee having the benefit of credit for Rs. 10 being the excise duty paid on the raw material under the MODVAT scheme. This Court also pointed out that under the definition of "value of goods" in the KTEG Act, what is relevant is the purchase price at which dealer has purchased the goods; and on the other hand, as the Central Excise Act does not contemplate levy of excise duty on the excise duty component of the price of the raw material, the cost of the raw material is taken as the price less the excise duty, for purpose of levying excise duty on the intermediate/final product using such raw material. Referring to the example given in Dai Ichi Karkaria's case [1999] 7 SCC 448, the division Bench held:

So far as the assessee is concerned, he has paid Rs. 100 to the seller as value of the goods. The subsequent benefit by way of MODVAT it would not be claimed at the time of entry of goods into the local area. The act of claiming the MODVAT is after the goods enter in the factory premises and not at the stage when the entry is in the local area. In these circumstances for the purpose of entry tax, the purchase value of goods is as specified in the bill including all other charges as mentioned in Clause (8a) of Section 2 thereof included. Therefore the above decision in Collector of Central Excise, Pune Etc. Etc. Vs. Dai Ichi Karkaria Ltd. Etc. Etc., cannot give any benefit to the assessee.

(Here italicised).

17. MODVAT credit does not operate as a "reduction" or "discount" in the purchase price paid to the supplier. MODVAT is only a procedure whereby the manufacturer utilises the credit for specific excise duty on inputs against duty payable on the final product. MODVAT credit taken on inputs is in the nature of

set-off available against the payment of excise duty on the final product. Therefore, the decisions relating to "cost" for purposes of excise duty, have no relevance for determining the "value of goods" u/s 2(A)(8a) of the KTEG Act for purposes of entry tax. We therefore hold that for determining the value of goods for levy of entry tax, MODVAT credit availed by assessee on such goods cannot be deducted. The assessing officer was justified in rejecting the request for deducting Rs. 57,65,64,884 in determining the taxable turnover.

18. The petitions have no merit and accordingly they are dismissed.