(2013) 01 KAR CK 0156

In the Karnataka High Court

Case No : Sales Tax Appeal No''s. 504 and 506 to 509 of 2012

B.T.P. Structural India Private Limited — APPELLANT

Vs

The Additional Commissioner Of Commercial Taxes — RESPONDENT

Date of Decision : 23-01-2013

Acts Referred:

Karnataka Value Added Tax Act, 2003 — Section 2(33), 36, 37(1)(b), 64(1), 72(2)
Karnataka Value Added Tax Rules, 2005 — Rule 37(2)

Citation : (2013) 76 KarLJ 24

Hon'ble Judges : H. Billappa, J;B.S. Indrakala, J

Bench : Division Bench

Advocate : Pramod S. Yadawad, for the Appellant; Mahesh Wodeyar, Additional Government Advocate, for the Respondent

Judgement

H. Billappa, J.—Heard the learned Counsel for the appellant and also the learned Additional Government Advocate for the respondent. These appeals are directed against the order dated 27-10-2010 passed by the respondent in proceedings No. ZAC-1/BGM/SMR-09/10-11 vide Annexure-A.

2. By the impugned order, the respondent has confirmed the proposal in the notice u/s 64(1) of the Karnataka Value Added Tax Act, 2003 and has directed the Reassessing Authority to levy penalty on "Tax period basis" as per Section 2(33) of the KVAT Act, 2003 read with Rule 37(2) of Karnataka Value Added Tax Rules, 2005.

3. Aggrieved by that, the appellant has filed these appeals.

4. The appellant is a registered dealer under the KVAT Act, 2003 and also under the Central Sales Tax Act, 1956. The appellant is engaged in the manufacture and sales of LPG Cylinders. It is stated, the appellant has discharged its obligations and accounted all the transactions including all purchases and sales made during the period from April 2005 to March 2006. The KVAT Act, 2003 came into force with effect from 1-4-2005. Till then the Karnataka Sales Tax Act,

1957 was in force. Under the provisions of KST Act, metallic LPG Cylinder was liable to tax at 4%. The appellant paid tax at 4% by filing monthly returns regularly.

5. It is stated, the appellant made application dated 14-4-2005 to the Commissioner of Commercial Taxes in Karnataka and sought for clarification of rate of KVAT on the sales of metallic LPG Cylinders. Thereafter, the appellant applied on 14-6-2005 u/s 60 of the KVAT Act, 2003 requesting to clarify the rate of tax under KVAT Act, 2003. The Advance Ruling Authority issued order dated 21-9-2005 clarifying that the rate of tax applicable to metallic LPG Cylinders is at 12.5%. In the meanwhile, the Government of Karnataka issued notification dated 5-8-2005 reducing the VAT on metallic LPG Cylinders from 12.5% to 4% with effect from 5-8-2005.

6. After communication of Advance Ruling, the appellant came to know that VAT on metallic Cylinders for the period from 1-4-2005 to 4-8-2005 was 12.5%. The appellant paid the difference at VAT at 8.5% i.e., Rs. 7,08,058/- through Cheque No. 3047609, dated 5-12-2005. Later on, interest of Rs. 52,220/- was also paid.

7. The Assistant Commissioner of Commercial Taxes (Audit-I), Belgaum, after verifying the books of accounts, by reassessment order dated 27-2-2007 levied additional taxes and interest. The proposal to levy penalty u/s 72(2) of the KVAT Act, 2003 was dropped considering the facts and circumstances of the case.

8. The appellant preferred an appeal u/s 62 of the KVAT Act, 2003. The Appellate Authority allowed the appeal in part and directed to recalculate the interest. Thereafter, the respondent has initiated suo motu proceedings u/s 64(1) of KVAT Act, 2003. By order dated 27-10-2010, the respondent has confirmed the proposal in the notice u/s 64(1) and has set aside the order passed by the Reassessing Authority and directed the Reassessing Authority to levy penalty u/s 2(33) of KVAT Act, 2003 read with Rule 37(2) of KVAT Rules, 2005. Aggrieved by that, the appellant has filed these appeals.

9. The learned Counsel for the appellant contended that the impugned order cannot be sustained in law. He also submitted that the direction to levy penalty is illegal and cannot be sustained in law. Further, he submitted that the respondent has not considered the facts and circumstances of the case while directing to levy penalty. He also submitted that the Appellate Authority considering the material on record has allowed deduction of input tax and the respondent without considering anything has passed the impugned order. He also submitted that the respondent has not considered Section 37(1)(b) of the Act which provides that the interest is payable u/s 36 from the date on which any amount payable under this Act was due. He submitted that the amount falls due only when the appellant is called upon to pay the amount in Form VAT 186. Further he submitted that though the appellant has explained the circumstances under which the tax was not paid, without considering it, the impugned order has been passed directing to levy penalty which is totally incorrect and therefore, the

impugned order cannot be sustained in law.

10. As against this, the learned Additional Government Advocate submitted that the impugned order does not call for interference. He also submitted that the respondent considering the material on record and giving opportunity to the appellant has passed the impugned order directing to levy penalty and therefore the impugned order does not call for interference. He also submitted that Section 36 is applicable and not Section 37 of the KVAT Act and therefore, impugned order does not call for interference.

11. We have carefully considered the submissions made by the learned Counsel for the parties.

12. The point that arises for our consideration is:

Whether the impugned order calls for our interference?

13. It is relevant to note, the appellant is a registered dealer engaged in the manufacture and sales of LPG Cylinders. Till 31-3-2005, KST Act was applicable. Thereafter, with effect from 1-4-2005 KVAT Act, 2003 has come into force. The appellant has paid tax, which was payable under the provisions of KST Act. Thereafter, on 14-4-2005, the appellant has sought for clarification regarding rate of KVAT on the sales of metallic LPG Cylinders. The appellant has also applied u/s 60 of the KVAT Act, 2003. The Advance Ruling Authority has issued order dated 21-9-2005 clarifying the rate of tax applicable to metallic LPG Cylinders at 12.5%. The appellant has paid difference of VAT at 8.5% i.e., Rs. 7,08,058/- through Cheque No. 3047609, dated 15-12-2005. Later on, the appellant has also paid interest of Rs. 52,220/- on 28-2-2007.

14. The Reassessing Authority by its order dated 27-2-2007 has levied additional taxes and interest. The proposal to levy penalty has been dropped. The appellant has preferred an appeal. The Appellate Authority by its order dated 26-5-2007 has allowed deduction of input tax and has directed to recalculate the interest. Thereafter, the respondent has initiated suo motu proceedings u/s 64(1) of KVAT Act, 2003 and has passed the impugned order.

15. The impugned order shows that the respondent has not considered Section 37(1)(b) of the Act, which provides that the interest payable u/s 36 shall be from the date on which any amount payable under the Act was due. Further, without considering the explanation offered by the appellant that the appellant had sought for clarification from the Commissioner of Commercial Taxes in Karnataka and Advance Ruling Authority and Government Order dated 5-10-2005, the impugned order has been passed directing to levy penalty which is not correct. The grounds urged by the appellant require proper consideration. Therefore, in the circumstances, the impugned order cannot be sustained in law. Accordingly, the appeals are allowed and the impugned order passed by the respondent vide Annexure-A is hereby set aside. The respondent is directed to reconsider the matter keeping in view the observations made in the course of this order and in

accordance with law.

