(2007) 10 KAR CK 0058

In the Karnataka High Court

Case No : STRP No. 2 of 2006

Canara Security Press Private Limited — APPELLANT

Vs

The State of Karnataka — RESPONDENT

Date of Decision : 31-10-2007

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 5

Citation : (2008) ILR (Kar) 67 : (2007) 4 KCCR 352 SN : (2009) 20 VST 282

Hon'ble Judges : K.L. Manjunath, J;Arali Nagaraj, J

Bench : Division Bench

Advocate : Aravind Kamath and Koushik, for Kamath and Kamath, Associates, for the Appellant; Gangadhar Sangolli, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Manjunath, J.—This revision its by the assessee, challenging the concurrent findings of the Karnataka Appellate Tribunal in STA.NO. 1901/2004 dated 29th April 2005, as well as the order passed by the Joint Commissioner of Commercial Taxes (Appeals), Mangalore Division, Mangalore in KST. AP.NO.17/04-05 dated 30th June 2004 and the order of the Deputy commissioner of Commercial Taxes (Intelligence), West Zone, Mangalore in Case No. DCCT/INT/INS.96/2003-04.

2. Petitioner is a company incorporated under the provisions of the Companies Act, 1956 engaged in the business of printing of high security documents like cheques, Lottery Tickets. On the orders placed by the Director of small Savings & State Lotteries, the petitioner has got printed and supplied the Lottery Tickets, which attracts sales tax.

3. Government of Karnataka issued a notification bearing No. FD.35 CSL 96(9) dated 30th March 1996 reducing the tax payable on the sale of goods to Four per cent other than timber, petrol, diesel and other petroleum products to the Departments of Government of India or State of Karnataka or Government of any

other State located in Karnataka and Zilla Panchayats in Karnataka for use by them subject to the condition that the dealer obtains and furnishes before the assessing authority a declaration in the form specified in the notification.

4. Relying upon the notification dated 30th March 1996, the petitioner-assesses contended that the Lottery Tickets got printed for the benefit of the Department of Small Savings and State Lotteries and that said Lottery Tickets have to be charged with tax at 4% u/s 5 of the Karnataka Sales Tax Act. He also produced the declaration form issued by the concerned department. The assessing officer computing the tax payable by the petitioner on the goods sold by him held that the petitioner has to pay the taxes on the sale of printed Lottery Tickets at the regular rates and not at the reduced rates on the ground that the Lottery Tickets supplied by the petitioner to the Department was not for the official use of the Department, but it is for the commercial venture and further hold that the notification dated 30th March 1996 has no application to the facts of the case.

5. Aggrieved by the order of the assessing officer, an appeal was filled before the Joint Commissioner of Commercial Taxes (Appeals). He also upheld the contention of the assessing officer and dismissed the appeal on 30th June 2004.

6. The following question of law is raised in this revision petition:

Whether the purchase of Lottery Tickets by the Department of small Savings & State Lotteries, which has employed in the activity of conducting the lottery amounts to use of the Lottery Tickets by the Department as contemplated under the notification dated, 30th March 1996 and whether the word "for use by them" would restrict the personal use of the office?

7. We have heard the learned Counsel for the parties.

8. Learned Counsel for the petitioner contends that when the authorised person has issued a declaration in terms of the notification dated 30th March 1996 stating that the goods were purchased by the Department from the assesses for the official use, the Intelligence authority or the Appellate Authority could not have held that the word "used by them" in the notification would be restricted to the personal use of that office and not for the commercial venture of the department. Relying upon the judgment of this Court in Wipro Infotech Limited v. Additional Deputy Commissioner of Commercial Taxes (Assessment-ii) and Ors. reported in (2000) 117 STC 244, he contends that a certificate issued by the director could not have been donated toy the Intelligence Authority, as the same is binding on the Sales Tax Department. Therefore, he requests this Court to allow the petition by holding that the word "used by them" in the notification would not give restriction meaning for the benefit of the official use of the department alone, but it includes the sale of Lottery Tickets by the department to the public as the main activities of the Lottery Division is to sail the Lottery Tickets and make profit out of it.

9. Per contra, learned Government Advocate contends that in view of the

declaration form and the word "used by them" in the notification, it is clear that the sales tax payable in respect of the goods used by the Department of Government of India, Government of Karnataka and local Government has to be restricted only to the official use of the department and not for the business activities. Otherwise in the notification the word for official use would not have been introduced by the Government while issuing such notification. In view of the word ''official use'' in the declaration form, he contends that the notification was meant to reduce the tax only in respect of the goods purchased by the State of Karnataka or other department as shown in the notification only for office use and not for a commercial venture.

10. It is not in dispute that the Lottery Tickets were got printed by the petitioner at the instance of the Lottery Division of the state of Karnataka and not for the personal use of the said department. Therefore, it cannot be stated that it is for the official use of the department and not to make profit. Normally, the Government would not conduct any business to make profit from the goods purchased for the benefit of the department. The Government has reduced the tax payable u/s 5 of the K.S.T. Act at 4% and was granted an exemption in the notification. The said reduction is not applicable in case of timber, petrol, diesel and other petroleum products. From the intention of the notification issued, by the Government one has to gather that the Government has reduced the tax payable by the state of Karnataka, local Government or Union of India at the rate of Four per cent only in respect of the goods which are required for the regular official use and not for commercial venture. It is useful to extract the form of declaration to be submitted by the petitioner, which is as follows:

Declaration

To

(Name and style of business and address of selling dealer)

...

K.S.T.R.C. No.

It is hereby certified that goods listed below purchased wide our Invoice No. ...dated...are for official use:

Sl.

Description of

Quantity

Value (Rs.)

No.

Goods

(1)

(2)

(3)

(4)

... Total ... Place:

Date: (Signature of authorised person) Name: seal of Office:

11. It is no doubt true that in the case of WIPRO INFOTECH LIMITED, this Court has held that Certificate of Director of industries as to extent of investment is binding on the sales tax authorities. Here also, the assessing officer has not doubted the certificate issued by the Department of small savings and Lottery Division. But, considering the nature of goods, he has held that the Lottery Tickets cannot be ''for official use'' of the department. Therefore, we are of the opinion that all the authorities were justified in overruling the contentions urged by the petitioner and that there is no substantial question of law arises in this petition as the word ''used by them'' in the notification dated 30th March 1996 and the word ''for official use'' in the declaration form has to be meant only for the official use of the department and not for the commercial venture.

12. In the circumstances, this petition is rejected.

