

(2015) 08 KAR CK 0102

In the Karnataka High Court

Case No : WA Nos. 1552 and 1571 - 81/2015 (T - RES)

Cargotec India Private Limited

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 12-08-2015

Acts Referred:

Karnataka Value Added Tax Act, 2003 — Section 36, 39(1), 62, 72(2)

Citation : (2015) ILR (Kar) 4873

Hon'ble Judges : Vineet Saran and B. Manohar, JJ.

Bench : Division Bench

Advocate : Shivadass G., Advocate, for the Appellant; K.M. Shivayogiswamy, AGA, for the Respondent

Judgement

Vineet Saran, J.—The appellant is an assessee under the Karnataka Value Added Tax Act (for short "KVAT Act"). The dispute in these appeals is with regard to the payment of VAT under the said Act on certain items which were not disclosed by the appellant in its return for the year 2010-2011 (assessment period April, 2010 to March, 2011). On 30.1.2015, the Deputy Commissioner of Commercial Taxes issued a re-assessment notice under Section 39(1) of the KVAT Act, read with Sections 72(2) and 36 of the KVAT Act, for payment of further tax on items not disclosed by the appellant, and required the appellant to submit its reply to the said notice within seven days. In response thereto, appellant wrote to respondent No. 3 on 6.2.2015 and prayed for 30 days time to submit its reply. When reply was not submitted, an endorsement was issued on 5.3.2015 to submit its reply within three days, to which the appellant responded on 9.3.2015 requesting for one week more time. The appellant still did not submit its reply and on 18.3.2015 requested for further period of one week. Even then, when no reply was filed by the appellant, respondent No. 3 passed an order on 8.4.2015 imposing tax liability of Rs. 7,55,51,179/- plus penalty of 10% and interest, totaling to Rs. 14,27,48,346/-. Challenging the said order, appellant filed Writ Petitions No. 21490/2015 and 21703-21713/2015, which have been dismissed by the learned Single Judge of this Court on 19.5.2015 on the ground of availability

of statutory alternative appeal, which had not been availed by the appellant. Challenging the said order of the writ court, these appeals have been filed, in which an interim order was passed on 26.5.2015.

2. We heard Sri Shivadass G, learned counsel for the appellant as well as Sri K M Shivayogiswamy, learned Additional Government Advocate appearing for the contesting respondents No. 1 to 3 and perused the records.

3. Submission of the learned counsel for the appellant is that respondent No. 3 did not have jurisdiction to impose Value Added Tax, as on the same items the appellant had already paid Service Tax. It has been submitted that the service income of the appellant, which was from across the country, has been subjected to tax by impugned order dated 8.4.2015, which was not permissible in law. It has also been submitted that no adequate opportunity of hearing was given to the appellant, and that even if no reply was submitted by the appellant to the show cause notice, an opportunity of personal hearing ought to have been provided. It is also submitted that the order passed by respondent No. 3 is non-speaking order, which does not give any reason for imposing value added tax. It was thus contended that, in such circumstances, where principle of natural justice had not been complied, availability of alternative remedy would not be a bar in filing a writ petition. He has, however, not been able to satisfy the court as to why no reply to the show cause notice had been submitted by the appellant, even though several opportunities had been granted to it and the time prayed by the appellant to submit its reply was given at least on three occasions. However, immediately after passing of the order, a detailed reply was submitted by the appellant before respondent No. 3 on 8.5.2015.

4. Sri Shivayogiswamy, learned Additional Government Advocate appearing for the contesting respondent, has, however submitted that sufficient opportunity was given to the appellant before passing the order on 8.4.2015 and thus it cannot be said that principle of natural justice was not complied. He has also submitted that the appellant has right to file an appeal under Section 62 of the KVAT Act before the Appellate Authority, on which ground the writ petition filed against the assessment order has rightly been dismissed by the writ court. He could, however, not justify the passing of the order without giving any reason.

5. It is true that if a party does not reply to the notice given by the Authority within the time specified in the notice, the Authority concerned would be justified in passing an ex parte order. However, while passing such order, the Authority has to give reason why it is imposing tax or how the items would be covered for payment of tax. It cannot be said that merely because no reply to the notice has been given, the assessee would be liable to pay the tax, without giving a finding as to whether tax is liable to be paid on the items subjected to tax. Although not necessary, but the respondent-Authority could have given an opportunity of personal hearing to the appellant before passing the order.

6. Considering the fact that the order passed by the Assessing Officer does not

give any reason for imposing tax and no opportunity of personal hearing was given to the appellant before passing the assessment order, we are of the opinion that in the interest of justice, the order of the Assessing Officer deserves to be set aside. Balancing the equities between the parties, we are setting aside the order dated 8.4.2015 passed by respondent No. 3, but on condition that the appellant shall deposit 30% of the total amount payable under the order dated 8.4.2015 within six weeks. If the appellant deposits the said amount within six weeks, the order dated 8.4.2015 shall be deemed to be set aside and a fresh order shall be passed by the Assessing Authority, as expeditiously as possible and in accordance with law, after considering the reply dated 8.5.2015 and any other further reply that may be filed by the appellant and after giving adequate opportunity of hearing to the appellant. On such deposit of 30% of the amount payable by the appellant under the order dated 8.4.2015, the same shall be kept by respondent No. 3 in separate interest bearing account in a bank, which shall be subjected to further order passed by the Assessing Authority. It is made clear that in case no deposit of 30% of the amount, as directed above, is made by the appellant within six weeks from today, this appeal shall stand dismissed and the order dated 8.4.2015 passed by respondent No. 3 shall automatically come in force.

Appeal is disposed of in terms as indicated above and the order of the writ Court also stands modified accordingly.