(2014) 07 KAR CK 0053

In the Karnataka High Court

Case No : Writ Petition Nos. 25974 to 25976 and 31356 to 31388 of 2014 (T-RES)

Catering Inn — APPELLANT

Vs

State of Karnataka — RESPONDENT

Date of Decision : 04-07-2014

Acts Referred:
Karnataka Value Added Tax Act, 2003 — Section 39, 62

Citation : (2014) 80 KarLJ 44

Hon'ble Judges : B.V. Nagarathna, J

Bench : Single Bench

Advocate : Atul K. Alur, Advocate for the Appellant; S.V. Giri Kumar, Additional Government Advocate, Advocate for the Respondent

Judgement

B.V. Nagarathna, J.—Order of the second respondent-Joint Commissioner of Commercial Taxes (Appeals), Bangalore, dated 26-3-2014 rejecting the appeals filed by the petitioner as well as the endorsement dated 19-4-2014 (Annexure-J) issued by the Deputy Commissioner of Commercial Taxes (Audit)-third respondent herein (Annexure-K), are assailed in these writ petitions. Briefly stated the facts are that the petitioner being aggrieved by the order of reassessment passed under Section 39 of the Karnataka Value Added Tax Act, 2003 (''Act'' for short) preferred appeals before the second respondent-Authority. Admittedly, these appeals were filed beyond the prescribed period of limitation, which is thirty days from the date of receipt of the order passed under Section 39 of the Act. Petitioner had not filed any application seeking condonation of delay in filing the aforesaid appeals. Under the circumstances, notice under Rule 149 of the KVAT Rules in Form VAT 435, dated 3-12-2013 (Annexure-H) was issued to the petitioner. Despite receipt of that notice, petitioner did not take steps to rectify defects in the memorandum of appeals filed by the petitioner inasmuch as the application seeking condonation of delay in filing those appeals were not filed. Hence, by the impugned order dated 26-3-2014, the appeals were rejected. Thereafter, on 19-4-2014, an endorsement was issued with regard to recovery of the outstanding tax dues. Being aggrieved by the order dated 26-3-2014 as well as the endorsement, these petitions have been filed.

2. I have heard learned Counsel for the petitioner and learned Additional Government Advocate for respondents who appears on advance notice and perused the material on record.

3. Although, learned Counsel for the petitioner drew my attention to sub-rules (3) and (4) of Rule 149 of the Karnataka Value Added Tax Rules, 2005, to contend that the procedure prescribed under sub-rule (4) had not been followed in the instant case and after the issuance of Form VAT 435, the impugned order dated 26-3-2014 was passed, nevertheless, he contended that the petitioner is willing to rectify all defects in the memorandum of appeals including filing of the applications for condonation of delay.

4. Learned Additional Government Advocate of course stated that the petitioner is delaying recovery of tax, by resorting to filing of writ petitions without taking care to ensure that the memorandum of appeals was filed in accordance with the prescribed rules.

5. It is noted from the impugned order (Annexure-J) that the appeals have been rejected essentially because they were defective and not on merits. The petitioner has statutory remedy of appeal under Section 62 of the Act, if it is aggrieved by the order passed under Section 39 of the Act.

6. It is also noted that the petitioner has not taken care to ensure that the memorandum of appeals filed by it was in accordance with the prescribed format and rules. However, the appeals were rejected only on the ground of defective filing and not on merits. In the interest of justice, I am of the view that an opportunity must be given to the petitioner to rectify the defects in the memorandum of appeals, so that the appeals could be heard on merits. Hence, Annexure-J is quashed.

7. In that view of the matter, the impugned order dated 26-3-2014 (Annexure-J) is quashed. The petitioner is permitted to file the applications seeking condonation of delay in filing the appeal and also to rectify any other defect in the memorandum of appeals on 21-7-2014 by appearing before the 2nd respondent-authority. On that day, if the applications are filed, then the 2nd respondent to consider the same in accordance with law and also permit petitioner to rectify any other defect in the memorandum of appeals. The petitioner is also at liberty to seek any protective order insofar as Annexure-K is concerned before the second respondent-authority.

8. It is needless to observe that if the petitioner fails to appear before the second respondent on 21-7-2014 and file the applications, then the second respondent is at liberty to take further action on Annexure-K in accordance with law and pursuant to Annexure-J order. The writ petition is disposed of in the aforesaid terms.

