(2005) 02 KAR CK 0068

In the Karnataka High Court

Case No : Writ Petition No''s. 8433-36 of 2004

Ceeta Industries APPELLANT

Vs

The State of Karnataka and Another RESPONDENT

Date of Decision : 02-02-2005

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 12 (4), 12 A (1A), 12 B (4)
Karnataka Tax on Entry of Goods Act, 1979 — Section 5 (5), 6 (2), 7 (3)

Citation : (2005) ILR (Kar) 1485 : (2005) 2 KCCR 71 SN : (2007) 8 VST 638

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : Arvind Kamath K., for Kamath and Kamath, for the Appellant; Niloufer Akbar, HCGP, for the Respondent

Judgement

S. Abdul Nazeer, J.—The petitioner has called in question the Order passed by the second respondent dated 29.1.2004 (Annexure-H) whereby his application seeking waiver of tax as per Kara Samadhana Scheme was rejected.

2. The brief facts of the case are as follows;

Petitioner is a Company incorporated under the Provisions of the Companies Act and is engaged in the manufacture, sale and export of Granite tiles. It is a registered dealer under the provisions of the Karnataka Sales Tax Act, 1957, Central Sales Tax Act, 1956 and Karnataka Tax on Entry of Goods Act, 1979 (for short, KST, CST & KTEG Act respectively) and is borne on the file of the second respondent.

3. The petitioner had filed the Annual Returns in Form No. 5 declaring Nil turnover for the Assessment Years 1995-96, 1996-97, 1997-98 and 1998-99 under of the KTEG Act. The second respondent rejected the said returns and proposed to assess the petitioner in accordance with Section 5(4) of the K.T.E.G. Act. Petitioner filed objections to the said proposal. Thereafter the second respondent passed the Orders of assessment as per Annexures-A, B, C and D for

the aforesaid assessment years levying entry tax in terms of the said Orders.

4. Feeling aggrieved by the said Orders, the petitioner filed appeals before the Joint Commissioner of Commercial Taxes (Appeals), Bangalore Division. The appeals relating to the assessment years 1995-96 and 1996-97 were dismissed on 15.12.2000 and the Orders were served on the petitioner on 8.1.2001. However, the appeals in respect of the assessment years 1997-98 and 1998-99 were pending. .

5. The State Government has issued a Government Order No.FD 291 CSL 03 dated 3.10.2003 known as ''Kara Samadhana Scheme'' as per Annexure E. In modification of the said Government Order, the State Government has issued another Government Order No.FD 291 CSL 03, dated 10.12.2003. The petitioner made an application dated 30.12.2003 for withdrawal of the Appeals filed by him before the Appellate Authority. Thereafter, it made applications before the assessment authority for waiver of the disputed tax and interest in terms of the aforesaid scheme. The Assessing Authority has rejected those applications, holding that the Kara Samadhana Scheme is not applicable to the petitioner since there is no legal dispute between the Department and the petitioner.

6. I have heard Sri. Arvind Kamath learned Counsel for the petitioner and Niloufer Akbar, learned High Court Government Pleader for the respondents.

7. Learned Counsel for the petitioner submits that the second respondent is not justified in dismissing the application on the ground that there is no legal dispute between the parties relating to payment of tax and penalty. It is argued that the petitioner had disputed its liability to pay the taxes on the ground that its factory is situated within the KIADB area which does not constitute a local area for the purpose of levy of tax under KTEG Act. Since, the assessing authority has rejected the returns filed by the petitioner and has passed the Orders of assessment, the petitioner had filed appeals before the Appellate Authority and that when Kara Samadhana Scheme came into force, the appeals were withdrawn and that the petitioner has complied with all other pre-conditions of the scheme. Therefore, the second respondent is not justified in rejecting the application on the ground that there is no legal dispute between the parties.

8. On the other hand, learned Government Pleader submits that in so far as the assessment years 1995-96 and 1996-97 are concerned the appeals were dismissed on 15.12.2000 and the copy of the Orders was served on the petitioner on 8.1.2001. Since the appeal was not pending as on the date of coming into force of the Scheme, the petitioner is not entitled for the benefit of the scheme. In so far as the assessment years 1997-98 and 1998-99 are concerned, it is argued that the petitioner has filed returns declaring nil turnover. Placing - reliance on the preamble of the scheme, learned HCGP argues that the prime condition for eligibility for waiver is that the dealer should have admitted its liability on some part of the turnover and disputed its liability on the rest of the turnover. In these cases, no part of the turnover has been offered for tax. In

other words, the dispute relates to the entirety of the transaction. Since the petitioner is seeking waiver of entire liability, it is not eligible for the relief of waiver of tax.

9. I have carefully considered the arguments made at the Bar and perused the materials placed on record.

10. As noticed above, the State Government has issued a Government Order No. FD 291 CSL 03, dated 3.10.2003 called the ''Kara Samadhana Scheme''. The reason for issuance of the said Scheme as stated in its preamble is that huge amount of taxes together with penalties levied and the interest accrued on such taxes and penalties due under the KST, CST and KTEG Act have been locked up in the cases pending with the Departmental Appellate Authority, Tribunal and Courts. In most of the cases, the tax demanded by the Departmental Authorities in addition to the taxes admitted in the returns filed by the assessees and penalties levied have been disputed by the assesses .The Scheme was introduced with a view to reduce the arrears and to settle the disputes on part payment of the amount disputed as the completion of the proceedings to resolve the disputes which would take considerable time. The scheme is as follows;

"PROCEEDINGS OF THE GOVERNMENT OF KARNATAKA

Sub: Kara Samadhana Scheme -regarding. Preamble:

Huge amounts of taxes together with penalties levied and interest accrued on such taxes and penalties due under the KST, CST and KTEG Acts have been locked up in cases pending with the departmental appellate authorities, Appellate Tribunal and Courts. In most of these cases the tax demanded by the departmental authorities in addition to the tax admitted in the returns filed by the assessees have been disputed or penalties levied on the assessees have been disputed by them. The main grounds of disputes in these cases are additions made by the assessing authorities based on their own findings or reports received, rejection of claims, of tax exemption/tax concession in the absence of statutory/prescribed forms to be issued by the buyers, rejection of claims of tax exemption inter-State stock transfers and levy of discretionary penalties.

It is considered necessary to reduce these arrears by offering a scheme to settle the disputes on part payment of the amounts disputed as the completion of the proceedings to resolve these disputes would take considerable time and also efforts both of the administration and the tax payers. Accordingly, the Government hereby accords approval to such a scheme.

Consequently, it is considered necessary to specify the conditions and procedural aspects of the said Scheme.

Hence the following Order.

GOVERNMENT ORDER NO.FD 291 CSL 03, DATED 3rd OCTOBER 2003

The taxes and penalties levied, and the interest accrued in respect of taxes or other amounts due which are involved in pending appeals filed before any Appellate Authority or Tribunal or Court on or before 31st March, 2003 are waived off to the extent specified below subject to the conditions specified.

1. Conditions:

1. In cases where additions have been made in the declared turnover by the assessing authorities based on estimations but excluding cases relating to claims of industrial incentives, if, the taxes admitted have already been paid and 30% of the tax levied on the additions made has already been paid on or before 31.12.2003 along with.

(i) 10% of the interest payable on 30% of such tax levied, if the appeal was filed on or before 31.3.2000 or 50% of the interest payable on such 30% of such tax levied, if the appeal was filed later; and

(ii) 25% of the penalties levied, if any, then balance amount of taxes levied, interest accrued and penalties levied would stand waived.

2. In cases where claims of concessional lower tax have been rejected by the assessing authorities in the absence of statutory forms like Form 32-B declarations, Form-37 declarations, Form 40 declarations, C Forms, D Forms and H Forms or any other prescribed form, if the taxes admitted have already been paid and 20% of the taxes levied on the claims rejected have already been paid or are paid on or before 31.12.2003 along with,

(i) 10% of the interest payable on such 20% of the tax levied, if the appeal was filed on or before 31.3.2000 or 50% of the interest payable on such 20% or the tax levied, if the appeal was filed later, and

(ii) 25% of the penalties levied, if any, then the balance amount of taxes levied, interest accrued and penalties levied would stand waived.

3. In cases where claims of inter-State stock transfers under the CST Act, 1956 have been rejected by the assessing authorities, if the taxes admitted have already been paid and 25% of the taxes levied on the turnovers involved in the rejected claims have already been paid or are paid on or before 31.12.2003 along with,

(i) 10% of the interest payable on such 25% of the tax levied, if the appeal was filed on or before 31.3.2000 or 50% of the interest payable on such 25% of the tax levied, if the appeal was filed later; and

(ii) 25% of the penalties levied; if any, then the balance amount of taxes levied, interest accrued and penalties levied would stand waived.

4. In cases where penalties have been levied u/s 12(4) or 12-A(1-A) or 12-B(4) of the KST Act, 1957 or Section 5(5) or 6(2) or 7(3) of the KTEG Act, 1979, if the taxes admitted have already been paid on or before 31.12.2003 along with 10% of the interest payable, if the appeal was filed on or before 31.3.2000 or 50% of

the interest payable, if the appeal was filed later, then the balance amount of penalties levied and interest accrued would stand waived.

5. The assessee opting for this scheme shall withdraw the appeal preferred or should not press the issues covered under this scheme if the appeal preferred involves other issues by making a suitable application before the concerned authority, on or before 31.12.2003.

6. This scheme shall not apply to a case in which, if after filing of an application by an assessee under this scheme, any appeal is disposed of before its withdrawal by the assessee.

7. If in any case the assessee has paid tax, penalty or interest in excess of the amounts specified in this scheme, then the amounts specified in this scheme shall stand modified to that extent and the scheme shall apply only to the balance amounts.

II Procedure:

1. The assessee opting for this Scheme shall submit an application in the format appended to this Order before the concerned assessing authority

2. The concerned assessing authority shall scrutinize such application and satisfy himself that,

(a) the amounts sought to be waived in the application are involved in pending appeals filed on or before 31.3.2003 before the departmental Appellate Authority or Tribunal or Court.

(b) the taxes admitted have already been paid in full;

(c) the taxes and other amounts as specified in this Order have been paid in full within the time specified; and

(d) in case where the assessee has preferred appeals against Orders or proceedings relating to the amounts due, such appeal has been withdrawn or an application has been filed before the authority concerned not to press the issues covered by this scheme if the appeal covers other issues also, before the date specified above and that such appeals have not been disposed of after the filing of application by the assessee.

3. The assessing authority shall then Order for waiver/write off of balance amounts of tax levied, penalty levied and interest payable which are due as the case may be. The remission Order shall be communicated to the assessee within a week from the date of the Order.

4. All the applications filed under this scheme which are correct and complete shall be disposed of within 30 days from the date of their filing."

11. The above scheme was partially modified by a Government Order No.FD 291CSL (3) dated 10.12.2003. The original scheme covered only three specified

areas of disputes relating to assessment. The modified scheme was extended to cover all other areas of dispute but excluding cases relating to industrial incentives. The modified scheme is as follows;

GOVERNMENT ORDER No.FD 291 CSL 3 DATED 10th DECEMBER 2003 In partial modification of the Government Order No. FD 291 CSL 03, dated 3rd October, 2003,

1) the taxes and penalties levied, and the interest accrued in respect of taxes or other amounts due which are involved in pending appeals filed before any Appellate Authority or Tribunal or Court before 3rd October, 2003 are waived off to the extent specified and subject to the conditions specified in the said Order; and

2) in cases where claims of deductions but excluding cases relating to industrial incentives, the taxes and penalties levied, and the interest accrued in respect of taxes or other amounts due which are involved in pending appeals filed before any Appellate Authority or Tribunal or Court before 3rd October, 2003 are waived off to the extent specified below subject to the conditions specified.

Conditions and Procedure:

l. If, the taxes admitted have already been paid and 30% of the tax levied on the additions made has already been paid or is paid on or before 31.12.2003 along with,

(i) 10% of the interest payable on 30% of such tax levied, if the appeal was filed on or before 31-3-2000 or 50% of the interest payable on such 30% of such tax levied, if the appeal was filed later; and

(ii) 25% of the penalties levied, if any, then balance amount of taxes levied, interest accrued and penalties levied would stand waived.

2. All the other conditions specified in paras (5) to (7) and the procedure specified in the Government Order No. FD 291 CSL 03, dated 3rd October, 2003 shall apply mutatis mutandis to these cases."

12. It is established law that preamble discloses the primary intention of the statute but does not over- ride the express provisions of the statute. It is one of the cardinal principles of the statutory construction that where the language of the Act is clear, the preamble cannot be involved to curtail or restrict the scope of the enactment. Where the object or the meaning of the enactment is not clear, the preamble may be resorted to explain it.

13. Now, let me find out if there is any ambiguity in the enacting part of the scheme. The scheme dated 3.10.2003 states that the taxes and penalties levied and the interest accrued in respect of taxes or other amounts due which are involved in pending appeals filed before any Appellate Authority or Tribunal or Court on or before 31st March 2003 are waived off to the extent specified and subject to the conditions in the scheme. Originally the Scheme was made

available to cover four specific areas namely; in cases where additions were made in the declared turnover by the assessing authorities based on estimations but excluding cases relating to claims of industrial incentives; in cases where claims of concessional lower tax have been rejected by the assessing authorities; In cases where claims of inter-State stock transfers under the CST Act, 1956 have been rejected and in cases where penalties have been levied under different Sections of KST and KTEG Acts. However, by virtue of its modification by a subsequent Government Order, the Scheme was made available to cover all other areas of dispute except those relating to industrial incentives. Time was extended till 3.10.2003 to claim the benefit of the Scheme in cases where the taxes and penalties have been levied and the interest accrued in respect of taxes or other amounts due which are involved in pending appeals filed before the competent Authorities before 3.10.2003. The Scheme specifies the conditions and procedure, for claiming the waiver. The language employed in the scheme is clear and unambiguous. I am of the view that it is unnecessary to resort to the preamble for understanding the import of various Clauses contained in the enacting part of the scheme.

14. Even if the preamble of the scheme is examined, it does not disclose the legislative intent that for waiver of taxes and penalties levied and interest accrued, the assessee has to admit his liability on some part of his turnover. It only states that in most of the cases, even tax admitted by the assessees in their returns have been disputed by them in their appeals pending before the competent authorities. There is no merit in the argument of the learned HCGP that in Order to be eligible to claim waiver, the dealer should admit his liability to pay tax on some part of the turnover.

15. It is not in dispute that the appeals filed by the petitioner for the Assessment Years 1995-96 and 1996-97 have been dismissed on 15.12.2000. Thus, in respect of the assessment years 1995-96 and 1996-97, no appeals were pending before the Appellate Authority as on 3.10.2003. Therefore, the petitioner is not entitled for exemption in respect of the said two assessment years.

16. In respect of the other two assessment years, appeals were pending as on 3.10.2003. It is not the case of the respondent that the petitioner has not complied with the conditions specified and procedure prescribed in the aforesaid scheme. In the circumstances, I am of the view that the petitioner is entitled for the benefit of Kara Samadhana Scheme in respect of the assessment years 1997-98 and 1998-99.

17. In the result, these Writ Petitions are allowed in part. The Order impugned in so far as the assessment years 1997-98 and 1998-99 is quashed. Respondents are directed to grant waiver in terms of Kara Samadhana Scheme in respect of the assessment years 1997-98 and 1998-99. The Writ Petitions are dismissed in respect of the assessment years 1995-96 and 1996-97.

No costs.