

(2013) 08 KAR CK 0233

In the Karnataka High Court

Case No : Sales Tax Appeal No's. 89 to 135 of 2012 C.H.-3

Centum Electronics Limited (Earlier Solelectron Centum Electronics Limited)

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 13-08-2013

Acts Referred:

Central Sales Tax Act, 1956 — Section 9(2)
Karnataka Value Added Tax Act, 2003 — Section 47, 47(3), 63

Citation : (2013) 08 KAR CK 0233

Hon'ble Judges : P. Puttaraju, C.T.M.; Niazahmed S. Dafedar, D.J.M.

Bench : Division Bench

Advocate : V.S. Arbatti, for the Appellant; D. Devaraj, State Representative, for the Respondent

Judgement

P. Puttaraju, CTM

1. These forty-seven (47) appeals are filed u/s 63 of the Karnataka Value Added Tax Act, 2003 (for short, "the Act"). The same are directed against the appeal order passed by the Joint Commissioner of Commercial Taxes (Appeals-5), Bangalore (for short, as "FAA") in Case Nos. VAT:AP:732 to 767/09-10 and CST:AP:159 to 169/09-10, dated 28-1-2012. The FAA has upheld the reassessment orders concluded under the Central Sales Tax Act, 1956 (for short, "CST Act" or "Central Act") by the Assistant Commissioner of Commercial Taxes (Audit-57), DVO-5, Bangalore (for short, as "AA") for the tax periods of 2005-2006, 2006-2007 and 2007-2008 vide orders dated 8-4-2009 and 24-8-2009 concluded u/s 9(2) of the CST Act as well as reassessment and forfeiture proceedings concluded u/s 39(1) and Section 47 of the Act. The FAA has also upheld the orders concluded by the AA u/s 47(3) of the KVAT Act forfeiting the excess tax collected. Even though, the first appeal under CST Act is only eleven (11) appeals and six (06) appeals under the KVAT Act, the appellant has filed thirty-six (36) appeals before this Tribunal, since the matters are interconnected with all the tax periods so far as law and facts are concerned

because of input tax rebate carry forward done by the appellant in view of the refund claims made by him under both the Acts. The STAs bearing STA Nos. 89 to 124 of 2012 (36 appeals) are related to the KVAT Act, whereas, STAs bearing No. 125 to 135 of 2012 (11 appeals) are related to the Central Act. The Interim Applications I.A. Nos. I and II are related to the dispensation of the production of original impugned orders in view of the fact that the original appeal order and reassessment orders have been filed for the twelve tax periods of 2005-2006, whereas the copies are filed for the remaining tax periods under appeal under both the Acts. The same has been accepted by the Bench by disposing I.A. Nos. I and II while admitting the appeals on 13th February, 2012. The appellant has been granted stay by disposing of two more interim applications i.e., I.A. Nos. III and IV on 13th February, 2012 only following the directions given by the Hon'ble High Court of Karnataka in its judgment dated 8th July, 2009 in Writ Petition Nos. 18542 to 18545 of 2009 (T-RES).

2. The relevant facts and grounds Leading to these appeals in brief under KVAT Act, 2003 and the CST Act, 1956 are stated thus:

(i) The appellant is a company incorporated under the Companies Act, 1956 engaged inter alia in the business of manufacture and sale of "Hybrid Micro Circuits" and a dealer registered under the KVAT Act and the CST Act.

(ii) The appellant has been granted eligibility certificate under the Information Technology Policy, 1997. The relevant notifications issued under the KST Act, 1957 and CST Act, 1956 are Notifications bearing No. FD 57 CSL 97(I), dated 21-8-1997 and FD 57 CSL 97(II), dated 21-8-1997 respectively. After the introduction of the Karnataka Value Added Tax Act 2003, the Government of Karnataka in order to continue the incentives and concessions provided to the existing industrial units falling under various industrial policies including the information technology policy has issued notifications under KVAT Act, 2003 vide Notifications No. FD 56 CSL 2005 (1, 2 and 3), dated 18th April, 2005 and Notification No. FD 56 CSL 2005 (4 and 5), dated 18th April, 2005 under CST Act, 1956 to continue the unavailed tax exemptions and deferment to eligible units subjected to conditions and restrictions prescribed therein. The appellant submits that the entitlement certificate is also issued in this regard by the concerned Joint Commissioner of Commercial Taxes (JCCT) (Admn.), Bangalore Division, Bangalore. This entitlement certificate is issued by virtue of powers vested with JCCT under Notification No. FD 56 CSL 2005 (1) , dated 18-4-2005. This particular notification is issued for the new industrial units who were availing the benefit of tax exemption by virtue of notifications issued earlier under KST Act, 1957. Corresponding to the Notification No. FD 56 CSL 2005 (1), dated 18-4-2005 issued under KVAT Act for the new industrial units availing tax exemption under various industrial policies including the information technology policy under which the appellant is entitled for tax exemption, the notification has been issued under CST Act, 1956 bearing No. FD 56 CSL 2005(4), dated 18-4-2005.

(iii) Originally, the appellant had been assessed to tax u/s 38 of the KVAT Act, 2003 in terms of Notification No. FD 56 CSL 2005 (1), dated 18-4-2005 on 2nd November, 2007 under KVAT Act and assessed under CST Act on 18-1-2008 for the year 2005-2006 and on 14-3-2008 for the year 2006-2007. This assessment has been subjected to revision u/s 63-A of the KVAT Act by the Joint Commissioner of Commercial Taxes (Admn.), DVO-5, Bangalore on 20-10-2008 and the appellant had carried the revision matter before this Tribunal vide STA Nos. 225 to 228 of 2009. Meanwhile, the AA concluded the reassessment orders under the CST Act as well as KVAT Act by orders dated 8-4-2009 and 24-8-2009 before the disposal of the case by the Tribunal. Hence, this Tribunal has dismissed the appeals under STA Nos. 225 to 228 of 2009 by order dated 28-6-2010 in view of the fact that the AA has already passed fresh orders under the KVAT and CST Acts on 8-4-2009 and 24-8-2009. In this background, the appellant filed Misc. application in ST(MISC) Nos. 20-22 and 7/2010 to consider the appeal on merits and the Tribunal directed the concerned Joint Commissioner of Commercial Taxes (Appeals) to dispose of the said appeals filed by the appellant on merits without being influenced by the directions issued by the Revisional Authority by his order u/s 63-A of the Act dated 20-10-2008 by its judgment dated 20th January, 2011. At this juncture, the appellant had filed appeals before the FAA and these appeals were pending before the FAA challenging the reassessment orders concluded by the AA by orders dated 8-4-2009 and 24-8-2009.

(iv) The FAA by his common appeal order dated 28th January, 2012 has dismissed the appeals preferred under the KVAT Act (VAT.AP Nos. 732 to 767/2009-10 and CST.AP. 159 to 169/2009-10 cited supra in the first para) which are under consideration in these 47 appeals pending before us. The appellant has filed 47 appeals covering the tax periods of 2005-2006, 2006-2007 and 2007-2008 as the KVAT matters are interconnected with refund claims under CST Act and also in view of forfeiture of tax under the KVAT Act.

(v) The appellant in the grounds canvasses that the impugned appeal orders of the FAA are opposed to the law and facts of the case and contrary to the material on record. As such, they are liable to be set aside. The second ground is that the AA erred in concluding the reassessment proceedings u/s 39(1) of the Act, when the same issues of fact and law were challenged before this Tribunal in STA Nos. 225 to 228 of 2009. The appellant submits that it is improper on the part of the AA to conclude reassessments in haste when it was pending before the higher Appellate Authority. The third ground raised by the appellant is with respect to the disallowance of input tax rebate available to the unit without assigning any reasons for the same and there cannot be any apportionment of input tax rebate between KVAT and CST Acts on pro rata basis. The fourth ground raised against the AA order is that the AA erred in forfeiting the tax which had been collected by mistake under the CST Act and admits the fact that appellant is unaware of the restriction imposed in the notification issued under CST Act. Therefore, the appellant seeks liberty to seek refund of the excess amount of tax paid which is

actually collected by the appellant in the sale bills.

(vi) The appellant submits that the authorities below erred in not appreciating that the notification issued under CST Act on 18th April, 2005 does not specify any condition regarding collection or non-collection of tax as specified under the notification issued under the KST Act or the KVAT Act. Because of this, the appellant believed that there is no restriction under the CST Act to collect tax on sales effected in the course of inter-State trade.

(vii) The appellant submits that the authorities below erred in not appreciating that the only condition under the CST Notification dated 18th April, 2005 is the condition that the aggregate tax exemption availed by the appellant, together with the quantum of tax exemption stipulated should not exceed the monetary and time-limits ceiling prescribed under the KST Notification No. FD 57 CSL 97(I), dated 21-8-1997.

(viii) The appellant submits that there is nothing contradictory between the provisions of the CST Notification and the KVAT Notification insofar as the CST Notification does not bar the administration of CST exemption in terms of refund mechanism under the KVAT Notification. In any case, in view of the provisions of Section 8(2) and Section 9 of the CST Act, the appellant would be eligible for the exemption and thereby contends that the authorities below erred in coming to the conclusion that the appellant is not eligible for refund over and above the average tax liability of the appellant as calculated by the AA. It is the contention of the appellant that neither the AA nor the FAA failed to appreciate that there is no such condition stipulated in any of the exemption notifications, to arrive at the tax refund eligible for the appellant.

(ix) Instead of according tax refund both the authorities namely the AA and FAA have come to the conclusion that the appellant is not entitled for tax refund and specifically the FAA failed to appreciate the notifications issued under KST Act, 1957 and KVAT Act, 2003. The FAA has wrongly interpreted the CST notification dated 18-4-2005 in upholding the order of the AA so far as forfeiture upholding the excess of tax collected u/s 47 of the KVAT Act, 2003. Because of forfeiture and also because of input tax credit restrictions, the appellant has been deprived of tax refund and instead tax demand has been created and therefore he has been forced to file appeals for all the 36 tax periods commencing from April 2005 to March 2006, April 2006 to March 2007 and April 2008 to March 2009 encompassing the three financial years under KVAT Act and 11 appeals under the CST Act.

3. On the above grounds, the appellant prays to set aside the appeal order dated 28-1-2012 passed by the FAA and also to set aside the reassessment orders concluded by the AA on 8-4-2009 and 24-8-2009.

4. Heard the learned Counsel and the State Representative. The learned Counsel for the appellant reiterated the grounds and also highlighted the fact that Information Technology Policy notifications are distinct and prayed to set aside

the orders of the FAA and to direct the AA to accord tax refund. In this regard, the appellant relies on the following decisions:

(i) B.H. Vasudeva Pai and Sons Vs. State of Karnataka, . This decision relates to the interpretation of the commodity whether a particular chemical is pesticide or insecticide to avail the benefit of notification issued u/s 8A of the KST Act, 1957. In the said decision, it has been observed by their lordships that if two views are possible, one which is fair, does not cause injustice to party should be prefer to the one which results in unjustness.

(ii) Bharat Petroleum Corporation Limited Vs. The State of Karnataka, . This decision is with regard to the interpretation of the notification issued to mitigate the problems of fisher men and in such cases, the Hon''ble Court has held that purposive construction is necessary.

(iii) State of A.P. Vs. Hindustan Cables Ltd., . This decision is rendered by the Hon''ble Andhra Pradesh High Court which is not binding for the resolution of disputes under our taxation statutes. It is only persuasive in nature.

(iv) Vinayaka Cashew Exports Vs. Assistant Commissioner of Commercial Taxes (Lvo-260), Mangalore and Others, . This decision is relating to the tax refund available to the petitioner as per the Notification No. FD 56 CSL 2005 (1), dated 18-4-2005. In this decision, the Hon''ble High Court allowed the petitioner to file raised monthly returns in order to avail the benefit of notification cited supra and also directed the respondents to make necessary adjustments insofar as tax liability of the petitioner is concerned.

5. The common question of law and facts are involved in these forty-seven appeals and hence the same are clubbed together and disposed of by this common judgment.

6. Perused the lower Court records. The following points arise for our consideration:

(1) Whether, the AA has acted in haste in passing the reassessment orders and if so, whether the appellant had been given reprieve from this Act of the AA?

(2) Whether the appellant is entitled for collection of tax on the sales effected in the course of inter-State trade in view of the Notification No. FD 56 CSL 2005(4), dated 18-4-2005 issued under CST Act?

(3) Whether the appellant is eligible for tax refund mechanism as envisaged under Notification No. FD 56 CSL 2005 (1), dated 18-4-2005 issued under KVAT Act?

(4) Whether the AA is correct in forfeiting the excess tax collected u/s 47 of the KVAT Act which has been upheld by the FAA?

(5) What order?

7. Our answer to the above points are as under:

Point No. (1): In the affirmative.

Point No. (2): In the negative.

Point No. (3): In the negative.

Point No. (4): In the affirmative.

Point No. (5): As per the final order for the reasons hereunder:

REASONS

8. Point No. (1).--The AA has no doubt acted in haste while concluding the reassessments when the STA bearing Nos. 225 to 228 of 2009 of the appellant were pending before this Tribunal. These STAs were disposed of on 28th June, 2010 by way of dismissal. However, when the appellant filed Misc. applications bearing ST (Misc.) Nos. 20 to 22 and 7 of 2010, the Tribunal directed the FAA not to get influenced by the revision orders of the FRA by its judgment dated 20th January, 2011. Therefore, even though there was some haste on the part of AA but still this Tribunal has given the reprieve to the appellant virtually by setting aside the orders of the Revisional Authority and directing the FAA to consider the issues pending before him on merits without getting influenced by the revision order. Therefore Point No. 1 is answered in the affirmative.

9. Point Nos. 2 and 3.--These two points are clubbed together, since the notifications issued under KVAT Act and CST Act are interrelated to each other and there is necessity to analyze both the notifications together to arrive at conclusion. It is pertinent to note that after the introduction of Karnataka Value Added Tax Act, 2003, the Government of Karnataka in order to continue the tax incentives and concessions granted to the new industrial units under various industrial policies has issued the following notifications:

1. FD 56 CSL 2005 (1), dated 18-4-2005: This notification is issued under KVAT Act to continue the tax exemption benefit by contemplating the net tax refund for the new industrial units which were enjoying the benefit tax exemption earlier under KST Act, 1957. In this notification, the eligible new industrial units are entitled to collect tax only under the KVAT Act, 2003.

2. FD 56 CSL 2005(2), dated 18-4-2005: This notification is issued under KVAT Act to continue the tax deferment benefit by contemplating the deferment of output tax collected under KVAT Act and refund of input tax for the new industrial units which were enjoying the benefit of tax deferment earlier under KST Act, 1957.

3. FD 56 CSL 2005(3), dated 18-4-2005: This notification is issued under KVAT Act to continue the benefit of tax exemption provided on purchases by contemplating the refund of tax paid on purchases for the new industrial units which were enjoying the benefit of tax exemption on purchases earlier under the KST Act, 1957.

4. FD 56 CSL 2005(4), dated 18-4-2005: This notification is issued under CST Act, 1956 to continue the benefit of tax exemption provided earlier to 31st March, 2005. This notification is issued u/s 8(5) of the CST Act, 1956. This enables the eligible industrial units to avail the benefit of tax exemption on sales which were provided earlier under CST Act, 1956. This notification only grants tax exemption and there is no provision whatsoever to collect CST on inter-State sales by the eligible industrial units.

5. FD 56 CSL 2005(5), dated 18-4-2005: This notification is issued under CST Act, 1956 to continue the benefit of tax deferment provided earlier to 31st March, 2005. This notification is issued u/s 9(2) of the CST Act, 1956. This enables the eligible industrial units to avail the benefit of tax deferment on sales which were provided earlier under CST Act, 1956. In this notification since the eligible industrial units avail deferment of output tax, the CST can be collected by such industrial units.

Thus, the above five notifications issued on the same day that is on 18th April, 2005 extended the benefit of tax exemption or tax deferment for the new industrial units which were still eligible for the benefit of either tax exemption or tax deferment as per the eligibility certificates issued by the Department of Commerce and Industries, Government of Karnataka subject to the monetary ceiling and time ceiling as provided under the relevant Government Orders, corresponding Notifications issued under KST Act, 1957 and CST Act, 1956 and the Eligibility Certificates issued by the Commerce and Industries Department, Government of Karnataka.

10. For the purpose of these appeals, the relevant notifications issued are Sl. Nos. 1 and 4 of the notifications cited supra which were issued to continue the tax exemption available to the new industrial units under various industrial policies offered by the State Government under various industrial policies including the Information Technology Policy. The same are reproduced hereunder:

NOTIFICATION (UNDER KVAT ACT) No. FD 56 CSL 2005 (1), dated 18-4-2005

In exercise of the powers conferred by sub-section (2) of Section 5 of the Karnataka Value Added Tax Act, 2003 (Karnataka Act No. 32 of 2004), the Government of Karnataka hereby exempts with effect from the First day of April, 2005, the net tax payable by a new industrial unit under the said Act, on the sale of goods manufactured by it, subject to the following conditions and procedure, namely.--

(1) The industrial unit is eligible for tax exemption on sale of goods manufactured by it, under the notification issued by the Government under the provisions of the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957).

(2) The tax exemption extended in this notification shall be limited to the un-availed portion of period and extent of tax exemption extended in the relevant notification and any Government Order and also subject to the overall tax

concession originally extended.

(3) The industrial unit shall charge and collect the tax applicable under the said Act, on the sale of goods manufactured by it, any pay the net tax payable along with the return prescribed under the said Act to the jurisdiction authority.

(4) The industrial unit shall be refunded, such net tax paid within thirty-five days after the end of the month to which the return relates, if it is furnished within the time specified u/s 35 of the said Act or within fifteen days from the date of filing of the return, if it is filed after the time specified, in the manner prescribed under the said Act by the jurisdictional authority and interest shall be paid for any delay in the refund, as specified under the said Act.

(5) The industrial unit claiming tax exemption under this notification shall not be deemed to have been assessed based on the return filed by him and any refund made shall be subject to assessment requiring production of accounts in support of the return filed.

(6) The tax exemption extended in this notification shall not be available (to an industrial unit on its sale) of goods to another industrial unit which is claiming exemption of tax on its purchase in terms of the Notification No. FD 56 CSL 2005(3), dated 18-4-2005.

(7) On any claim of deduction of input tax by a registered dealer on his purchase from the industrial unit claiming tax exemption under this notification, on account of any sale in the course of inter-State trade or export outside the country of the goods purchased, the amount refunded to such industrial unit shall be repayable to the extent of input tax claimed by the purchaser.

(8) The unit claiming tax exemption under this notification shall be eligible for input tax rebate as specified under the said Act, while calculating the net tax payable by the industrial unit.

(9) The industrial unit claiming tax exemption under this notification shall file an application before the jurisdictional Joint Commissioner of Commercial Taxes within 3rd April, 2005 (within 15th July, 2005), giving details of the extent and period of tax exemption extended, availed and the balance, the relevant notification under which it was availing the tax exemption and the date from which it intends to claim tax exemption under this notification.

(10) The jurisdictional Joint Commissioner of Commercial Taxes shall issue a certificate of entitlement regarding the tax exemption available to the industrial unit under this notification, within fifteen days from the date of filing of an application by the industrial unit after verification of the claim made.

(11) The jurisdictional Joint Commissioner of Commercial Taxes shall have power to rectify the certificate of entitlement issued either suo motu or on application made by the dealer for rectification, if there are any factual mistakes and errors apparent from the records before August 31, 2005.

NOTIFICATION (UNDER CST ACT) No. FD 56 CSL 2005(4), dated 18-4-2005

Whereas, the Government of Karnataka has issued notifications from time to time providing for exemptions from payment of Central Sales Tax on the sales of the goods manufactured by industrial units including mega projects which are covered under different industrial policies for different periods and these notifications provide for exemption subject to the condition that the aggregate of any tax exemption availed by the units under the notifications issued under the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957) together with the quantum of tax exemption availed under the notifications issued under sub-section (5) of Section 8 of the Central Sales Tax Act, 1956 shall not exceed the ceiling mentioned in the notifications issued under the Karnataka Sales Tax Act, 1957.

Whereas, Karnataka Sales Tax Act, 1957 has been replaced by Karnataka Value Added Tax Act, 2003 (Karnataka Act 32 of 2004) on many of the goods.

Now, therefore, in exercise of the power conferred by sub-section (5) of Section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956) read with Section 21 of the General Clauses Act, 1897 (Central Act 10 of 1897) and in partial modification of all the notifications issued on the subject, the Government of Karnataka hereby directs that with effect from 1st April, 2005 the quantum tax exemption granted in all such notifications shall be subject to the condition that the aggregate of any tax exemption availed by the units under such notifications together with the quantum of tax exemption availed under any notification issued under the Karnataka Value Added Tax Act, 2003 shall not exceed the ceiling mentioned in the notifications issued under the Karnataka Sales Tax Act, 1957.

The reading of the above two notifications make it abundantly clear that the appellant is entitled to collect tax on the sales effected by his industrial unit on the sales effected within the State and the appellant is eligible for the refund of net tax paid to the Government under KVAT Act only. This means that the appellant pays tax on purchases effected from registered dealers within the State which is nothing but input tax for the appellant and collects tax on sales which is nothing the output tax. Thus, the appellant is entitled for the net tax refund under KVAT Act, 2003. This mechanism has been formulated, so that the dealers who purchase the goods manufactured by the appellant are also eligible for input tax credit. This creates the input tax credit stream down the line until the goods reaches the consumer. Whereas, the appellant is barred from collecting the tax on the sales effected in the course of inter-State trade since the notification has been issued by virtue of Section 8(5) of the CST Act, 1956. This will not hamper the appellant since outside the State buyers are not going to claim any type of input tax credit, since no tax is charged on inter-State sales and IPT credit is not eligible on CST collected in any type of cases. When such being the case, the appellant having contravened the provisions of the notification issued under CST Act, 1956 by collecting tax cannot resort to claim the tax refund as a matter of right. The case-laws relied by the appellant is of no help, since they do not deal

with tax incentives and concessions under industrial policy. The first case-law cited supra relied by the appellant is with respect to the interpretation of the commodity and in the instant case, the issue of interpretation of commodity does not arise at all. The second case-law is with respect to purposive construction as Advocated by the appellant is not applicable, since the notification issued under CST Act clearly accords tax exemption and never contemplates the collection of tax on sales effected in the course of inter-State trade. The third case-law relied by the appellant is where the petitioner had not collected CST but simply shown in its invoices and it was not a case of excess collection of tax. The fourth case-law relied by the appellant is not applicable in the instant case because it is not an issue of adjusting tax refund due. Therefore, it is held that the appellant is not entitled to collect tax on inter-State sales and not entitled for the tax refund mechanism having collected tax on inter-State sales as the Notification No. FD 56 CSL 2005(4), dated 18-4-2005 issued under CST Act clearly contemplates only exemption of the tax payable on inter-State sales and thereby restricts the appellant from collecting the tax under the CST Act and if collected, refund is not due for the appellant as per the Notification No. FD 56 CSL 2005 (1), dated 18-4-2005 issued under KVAT Act. Thus Point Nos. 2 and 3 are answered in the Negative.

11. Point No. 4.--There is no dispute to the fact that the appellant has collected tax in contravention of the Notification No. FD 56 CSL 2005(4), dated 18-4-2005 and thereby there is excess collection of tax which has been forfeited u/s 47 of the KVAT Act, 2003 and as per Section 9A of the Central Act, the appellant has to collect tax in accordance with the Act and Rules. The notification granting exemption has been issued u/s 8(5) of the Central Act and when such being the case, the appellant is not eligible to collect CST on inter-State sales. Therefore, the AA is correct in forfeiting the excess tax collected by invoking Section 47 of the KVAT Act. If forfeiture is not done, then it amounts to undue enrichment for the appellant. The Hon''ble Supreme Court in several cases has applied the doctrine of unjust enrichment. The leading cases in this regard of the Hon''ble Apex Court are:

- (i) The Orient Paper Mills Ltd. Vs. The State of Orissa and Others, ;
- (ii) Mulamchand Vs. State of Madhya Pradesh, ;
- (iii) Amar Nath Om Prakash and Others Vs. State of Punjab and Others, ;
- (iv) Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others, .

By applying the above case-laws, the Hon''ble Apex Court in Sahakari Khand Udyog Mandal Ltd. Vs. Commissioner of Central Excise and Customs, , has held that right of recovery under doctrine of unjust enrichment arises where retention of benefit considered contrary to justice or against equity. The justice basis of obligation is not founded upon any contract or tort but falls within the third category of law, namely doctrine of restitution. However, in this case it has been recorded by all the lower authorities that the appellant has collected tax on inter-

State sales from the customers/consumers and as such, the tax so collected is passed on to customers/consumers is not entitled to claim any amount as refund or exemption. Allowing refund of amount would result in "unjust enrichment" by the appellant which cannot be permitted. Following the above ratios laid down by the Hon"ble Apex Court, we answer Point No. 4 in the affirmative.

Point No. 5.--As Point Nos. 1 to 4 are answered against the appellant and in favour of the revenue, the appeals are liable to be dismissed. Hence, we proceed to pass the following order.--

ORDER

- (1) All the forty-seven (47) appeals filed under KVAT Act and CST Act are dismissed.
- (2) The impugned orders of the FAA are upheld.
- (3) Keep the original judgment in STA No. 89 of 2012 and copies of the same in STA Nos. 90 to 135 of 2012.
- (4) The Registrar of the Tribunal is directed to comply Regulation 53(b) of the Chapter IX of Karnataka Appellate Tribunal Regulations, 1979 by communicating this order to the persons mentioned therein.
- (5) The office is directed to send back the lower authorities records immediately within 15 days.