courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 19/09/2026

(2015) 04 KAR CK 0394

In the Karnataka High Court

Case No : Writ Petition Nos. 412-417 (T-RES) and 1095-1100 of 2015

Chitradurga Sunflower Oil Complex (P.) Ltd. APPELLANT

Vs

Assistant Commissioner of Commercial Taxes RESPONDENT

Date of Decision : 27-04-2015

Acts Referred:
Karnataka Value Added Tax Act, 2003 — Section 10, 11(a)(1), 17, 35(4), 47

Citation : (2015) 52 GST 145 : (2015) 86 VST 35

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : Keshava Murthy T.N., for the Appellant; T.K. Vedamurthy, HCGP, Advocates for the Respondent

Judgement

Aravind Kumar, J—Petitioners are seeking for refund of Rs. 81,31,623/- (in W.P. 1095-1100/2015) and Rs. 77,02,584/- (in W.P. 412-417/2015) being the input tax rebate to be due to the petitioners for the tax periods February to July, 2014 in both the writ petitions. Factual matrix reads as under:

Both petitioners are registered dealers under Karnataka Value Added Tax Act, 2003 (for short ''Act'') engaged in the business of extraction and sale of sunflower oil out of sunflower cake used as input and sale of solvent bran oil from rice bran used as input. For the period February, 2014 to July, 2014 petitioners claimed partial rebate as per section 17 of the Act contending inter alia that sunflower cake and rice bran used as input in the extraction of sunflower oil/bran oil. Subsequently Division Bench of this court rendered Judgment in the case of M.K. Agro Tech (Private) Limited Vs. State of Karnataka, (2014) 80 KarLJ 1 : (2014) 4 KCCR 3624 and held that when an assessee is in the manufacture of only one product namely oil which is liable to tax, merely because in the process of manufacture of oil certain ancillary or by-product arises which is sold and which is exempted from tax, that would not attract the provisions of section 17 relating to partial rebate. Hence, on the basis of law laid down by Division Bench of this court petitioners filed revised returns under section 35(4) of the Act

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/chitradurga-sunflower-oil-complex-p...

claiming full input tax rebate of Rs. 1,17,73,035/- and Rs. 1,44,68,818/- and difference being Rs. 81,31,623/- and Rs. 77,02,584/- refund was sought being eligible input rebate for the said period which had not been claimed in the original returns filed. Applications filed by petitioners for refund resulted in endorsement being issued to the respective petitioners as per Annexures-A dated 23.12.2014 and 24.12.2014 respectively whereunder first respondent has intimated the petitioners that on account of steps being taken for challenging the Judgment rendered by Division Bench in the case of M.K. Agro Tech (P.) Ltd. (supra) by filing Special Leave Petition (SLP) before Hon''ble Apex Court applications for refund would be considered after receipt of further orders or on outcome of the proposed Special Leave Petition that would be filed by State. As such respondents have not processed the applications for refund of input tax claimed by petitioners. Hence, petitioners are before this court seeking for direction to respondents to refund the amounts claimed by petitioners under their respective returns Annexures-C to C-5.

2. I have heard the learned advocates appearing for the parties namely Sri T.N. Keshava Murthy for petitioners and Sri T.K. Vedamurthy, learned HCGP for respondents. By consent of learned advocates appearing for the parties, these writ petitions are taken up for final disposal.

3. Sri T.N. Keshava Murthy, learned counsel appearing for petitioners by reiterating the grounds urged in the writ petition would contend that under sub-section (3) of section 10 of the Act, the net tax payable by a registered dealer in respect of any tax period shall be the amount of output tax payable by him less the input tax deductible by him during the tax period and where the input tax deductible by a dealer exceeds the output tax payable by him, the excess amount shall be adjusted or refunded together with interest under sub-section (5) of Section 10 and in the instant case there being no arrears of tax amounts due by the petitioners, first respondent is required to refund to the petitioners the difference amount of input tax rebate as indicated in the revised returns filed by petitioners with interest even without seeking for such refund since it is a statutory duty cast upon the first respondent. On account of this statutory right not being complied or adhered to by the first respondent petitioners have sought for the prayer for refund of excess input tax amount paid by the petitioners.

4. Per contra, Sri T.K. Vedamurthy, learned HCGP appearing for respondent-State would contend that under section 47 of the Act it is the persons who have paid the input tax would be entitled and as such the Doctrine of Unjust Enrichment would apply and petitioners would not be entitled for refund of input tax.

5. In reply Sri T.N. Keshava Murthy, learned counsel appearing for petitioners submits that there is no dispute that input tax has been paid by petitioner and sub-section (5) of Section 10 itself provides for refund of such excess input tax payable to the dealer which had been paid by the dealer and as such Doctrine of Unjust Enrichment would not apply.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/chitradurga-sunflower-oil-complex-p…

6. Having heard the learned advocates appearing for the parties and after bestowing my careful and anxious considerations to the contentions raised by respective learned advocates it requires to be noticed at the outset that question of unjust enrichment in the instant case does not arise at all inasmuch as language of sub-section (5) of section 10 is clear and unambiguous. It would clearly indicate that where the input tax deductible by a dealer exceeds the output tax payable by him the excess amount is required to be adjusted or refunded together with interest as the case may be. The language employed in sub-section (5) of section 10 is clear and unambiguous. While interpreting a Fiscal statute the courts would not add or subtract the words to gather the intention of the legislature and the plain meaning of the statute alone has to be looked into.

7. In the instant case the refund applications of petitioners has been kept in abeyance by the first respondent not on account of contentions now raised by learned HCGP but on the other hand it is on account of the fact that the department is proposing to file a Special Leave Petition before the Hon''ble Apex Court challenging the dicta laid down by Division Bench of this court in the case of M.K. Agro Tech (P.) Ltd. (supra). In that view of the matter contention now raised would not be available for the respondent-State to either reject the prayer of petitioners for refund of excess input tax or keep the applications filed by the petitioners in abeyance on the said ground.

8. In fact the Division Bench has clearly held in M.K. Agro Tech (P.) Ltd. to the effect that where a dealer is in the business of manufacture of only one product namely oil which is liable to tax and merely because in the process of manufacture of oil certain ancillary or by-product arises which is sold and which is exempted from tax, that would not attract the provisions of Section 17 of the Act relating to partial rebate. It has been held as under:

"11. In this case it is not in dispute that the assessee is in the business of sale and manufacture of sunflower oil from sunflower oil cake had applied solvent extraction process. He did not set up any industrial unit for the purpose of manufacturing de-oiled cake. The entire raw material named as sunflower cake purchased is for the manufacture of sunflower oil. But, in the process, after the entire sunflower oil is extracted, de-oiled cake remains. The said de-oiled cake also has a value. He cannot keep that de-oiled cake in his premises as it could occupy a large space and no purpose would be served by keeping the same. Merely because the said de-oiled cake also has a value and he sells the same, there is no justification to deny the benefit of deduction to the assessee, because there is no direct nexus between the sunflower oil cake and the de-oiled cake. Sunflower oil cake was purchased for the purpose of extracting oil from the said cake and for the sale of the de-oiled cake, the assessee has not put-up a separate unit. Therefore, it is not the case that assessee has put up a separate industry for the purpose of manufacture of de-oiled cake and merely because the de-oiled cake has some value and it is sold, that would not take away the benefit

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/chitradurga-sunflower-oil-complex-p...

conferred on the assessee by the statute. A harmonious interpretation of Sections 10, 11(a)(1) and 17 of KVAT Act and Rule 131 of the Karnataka Value Added Tax Rules, 2005, makes it very clear that it is only when there is direct relationship to the taxable sales, the assessee is entitled to the benefit. The assessee cannot be denied the benefit, taking into consideration the sale of de-oiled cake which is an exempted goods. In that view of the matter, the authorities have not properly appreciated the said statutory provisions. The legislative intent is defeated in denying the benefit of input tax deduction relying on Section 11(a)(1) read with Section 17 of the Act. The impugned order is unsustainable."

9. In that view of the matter this court is of the considered view that petitioners would be entitled for the relief sought for in the present writ petitions. Hence, following:

ORDER

1. Writ petitions are hereby allowed.

2. A direction is issued to first respondent to process the applications of petitioners for refund Annexure-B and refund the amounts claimed by them if not otherwise being disentitled to forthwith.

3. In the event of refund of tax is ordered, respondents would be at liberty to obtain Indemnity Bond from the petitioners at the time of issuing such refunds, on petitioners furnishing such Indemnity Bond to the extent of the amount being refunded by respondents and such refund shall be made within two weeks from the date of petitioners furnishing Indemnity Bonds.

4. Refund if any shall be subject to result of SLP (Civil) Nos. 576-596/2014.

Ordered accordingly.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/chitradurga-sunflower-oil-complex-p…