(2014) 09 KAR CK 0304

In the Karnataka High Court

Case No : Writ Petition No. 41106/2014 (T-KST)

Coromandel Sugars Ltd. APPELLANT

Vs

The State of Karnataka RESPONDENT

Date of Decision : 19-09-2014

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 12A, 12A(1A), 12B, 25B, 25B(2)

Citation : (2015) ILR 643

Hon'ble Judges : H.G. Ramesh, J

Bench : Single Bench

Advocate : H.N. Shashidhara, Advocate for Kesvy and Co, Advocate for the Appellant; H. Venkatesh Dodderi, A.G.A, Advocate for the Respondent

Judgement

H.G. Ramesh, J.—Whether Cess is a tax?

Cess means a tax. The word ''cess'' is generally used when the levy is allocated for a particular purpose as the name of the cess indicates; For eg. health cess, education cess, road cess etc.

2. In this writ petition, the petitioner is challenging the order dated 05.08.2014 passed under Section 12-A of the Karnataka Sales Tax Act, 1957 (''the Act'') levying road cess u/s. 25-B(2), interest u/s. 12B and penalty u/s. 12A(1-A) of the Act.

3. I have heard the Counsel for the parties and perused the impugned order. The sole contention urged by the petitioner''s counsel is that the impugned order is contrary to the exemption notification dated 20.03.2008 issued u/s. 8A of the Act, wherein the Government of Karnataka has exempted the tax payable by a dealer u/s. 25-B of the Act for the period from 01.04.2008 to 31.07.2008. He submitted that cess leviable u/s. 25-B(2) of the Act is also a tax and hence is not excluded under the exemption notification. Therefore, the impugned levy of cess is liable to be set aside.

4. Government Advocate appearing for the respondents, by relying on a recent

judgment of the Supreme Court in Commissioner of Income Tax and Others Vs. Chhabil Dass Agarwal, submitted that the petitioner has a statutory remedy of appeal against the impugned order. However, it is rightly not disputed by him that if the exemption notification exempts the cess payable u/s. 25-B(2) of the Act, the impugned order is liable to be set aside.

5. To examine the contention urged by the petitioner, it is relevant to refer to S. 25-B of the Act:

25-B. Levy of tax on Sugarcane:-(1) Notwithstanding anything contained in Section 5 there shall be levied and collected a tax on the last purchase of sugarcane in the State at the rate of.-

(i) rupees sixty five per tonne, when purchased by a manufacturer of sugar (including Khandasari sugar) whose rate of recovery of sugar exceeds 10.5 per cent;

(ii) rupees fifty per tonne, when purchased by a manufacturer of sugar (including Khandasari sugar) whose rate of recovery of sugar does not exceed 10.5 per cent;

(2) In addition to the tax payable under sub-section (1) there shall be levied and collected each year by way of cess for the purpose of improvement of roads in sugarcane growing areas reserved for any factory, a tax at the rate of rupees ten per tonne on the purchase of sugarcane by manufacturers of sugar (including khandasari sugar).

(3) Every person liable to pay tax under sub-section (1) and cess under sub-section (2) shall furnish such return or returns in such manner and within such period as may be prescribed.

(4) Every purchaser shall pay in advance every month the tax payable under sub-section (1) and cess payable under sub-section (2) on the quantity of sugarcane purchased by him during the preceding month.

(5) The provisions of this Act relating to assessment, payment, recovery, appeal and revision, and refund and exemption shall mutatis mutandis apply in respect of tax and cess payable under this section.

(Underlining supplied)

6. Now let me refer to the exemption notification dated 20.03.2008, which reads as follows:

"NOTIFICATION-II

In exercise of the powers conferred by sub-section (1) of section 8-A of the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957), the Government of Karnataka hereby exempts with effect from the first day of April 2008 and upto 31st day of July, 2008, the tax payable by a dealer under Section 25-B of the said Act, on the purchase of sugarcane."

(Underlining supplied)

The above notification is interpreted by the Revenue as restricting the exemption to the tax payable only under sub-section (1) of S. 25-B of the Act. In other words, according to the Revenue, the notification does not exempt the cess payable under sub-section (2) of S. 25-B. This is patently erroneous. As could be seen from the very notification, the exemption is not restricted to the tax payable under sub-section (1) of S. 25-B of the Act but the tax payable under the entire Section.

7. The cess payable u/s. 25-B(2) of the Act is also a tax. This is made clear in S. 25-B(2) itself, as is evident by the underlined portion of the sub-section extracted above. Cess means a tax. The word cess is generally used when the levy is allocated for a particular purpose as the name of the cess indicates; For eg. health cess, education cess, road cess etc.

8. In my opinion, the facts of the case do not warrant relegating the petitioner to the statutory remedy of appeal as the facts are not in dispute and the only question involved is interpretation of the statutory notification dated 20.03.2008 issued u/s. 8A of the Act. As observed by the Supreme Court in paras 11 & 15 of the judgment in Chahabil Dass (supra), this Court can interfere under Article 226 in exceptional cases, like where the statutory authority has not acted in accordance with law etc. This case certainly comes under the exceptional category.

9. As could be seen from the above discussion, the Assessing Authority has passed the impugned order dated 05.08.2014 in clear contravention of the statutory notification dated 20.03.2008 which exempted the tax payable under Section 25-B of the Act for the period from April 1, 2008 to July 31, 2008. The impugned order is patently erroneous. Hence, it is set aside. The writ petition is accordingly allowed with no order as to costs.