(2014) 03 KAR CK 0184

In the Karnataka High Court

Case No : S.T.A. Nos. 45 and 50-64 of 2011 (T-KVAT)

Creative Markings and Controls (P.) Ltd. APPELLANT

Vs

Additional Commissioner of Commercial Taxes RESPONDENT

Date of Decision : 07-03-2014

Acts Referred:
Karnataka Value Added Tax Act, 2003 — Section 39(1), 64(1)

Citation : (2014) 44 GST 797 : (2014) 79 KarLJ 183 : (2014) 72 VST 392

Hon'ble Judges : Dilip B. Bhosale, J;B. Manohar, J

Bench : Division Bench

Advocate : K.J. Kamath, Advocate for the Appellant; T.K. Vedamurthy, Advocate for the Respondent

Judgement

B. Manohar, J.—These Sales Tax Appeals are directed against the order dated 25-06-2011 in ZAC-I/BNG/SMR-70/10-11, passed by the Additional Commissioner of Commercial Taxes, Zone-I, Bangalore in exercise of power u/s 64(1) of the Karnataka Value Added Tax Act, 2003 (for short the KVAT Act) setting aside the order dated 26-02-2009 passed by the Joint Commissioner of Commercial Taxes (Appeals)-I (for short ''the First Appellate Authority'') for the assessment years 2005-06 and 2006-07. The appellant is a Private Limited Company and a dealer registered under the provisions of KVAT Act engaged in the execution of works contract of ''Road marking'' by using hot melt Thermoplastic road marking materials and glass beads. The appellant filed monthly returns in Form No. 11 for the period from 01-04-2005 to 31-03-2006, 01-04-2006 to 31-03-2007 declaring total turnover and actual out put tax payable. The appellant has claimed deduction towards labour and like charges at 30% of the actual contract receipt.

2. The ACCT (Audit) visited the business premises of the appellant on 11-05-2007 for the audit of books of account for the tax period from April 2005 to March 2007. After verification of the books of account, the Assessing Authority noticed that the appellant-Company had not maintained the books of account

pertaining to the labour charges and also found that the appellant-Company claimed 30% deduction towards the labour and other like charges which are contrary to law and issued proposition notice u/s 39(1) of the KVAT Act to the appellant on 15-06-2007 calling upon the appellant to file their objections to the proposition notice to reassessment.

3. A in pursuance of the notice dated 15-06-2007, the appellant filed detailed objections to the proposition notice on 22-06-2007 contending that they have maintained the books of account and other supporting documents like bills and vouchers which are also audited by the Chartered Accountant. The appellant is eligible to claim deduction on labour charges and like expenses to the extent of 30% as per Rule 3(2)(m) of the KVAT Rules at the rate specified in column No. 3 of Entry 5 of the Table. Further, the expenditure incurred are ascertainable from the books of account maintained by the dealer and sought for dropping of the proposition notice.

4. The Assessing Officer after considering the objections to the proposition notice and after considering the materials produced before him, passed the reassessment order on 21-08-2007 u/s 39(1) of the KVAT Act and allowed 25% deduction towards labour and other like charges as per Rule 3(2)(m) under entry 14 of the KVAT Act and also levied interest and penalty.

5. The appellant being aggrieved by the order dated 21-08-2007 preferred an appeal before the First Appellate Authority challenging the same on various grounds contending that the expenditure incurred toward the labour and like charges in execution of work contract is ascertainable from the books of account and it falls under Entry 5 of the table. Hence, it is not open to the Assessing Officer to resort to Entry 14 of the said table. The First Appellate Authority by its order dated 26-02-2009 allowed the appeal and set aside the reassessment order and also levy if penalty and interest. The First Appellate Authority held that when the actual labour and like charges incurred in the execution of the work contract are ascertainable from the books of account, the Assessing Authority cannot resort to deduction of labour and like charges at the standard rate as provided under Rule 3(2)(m) of the KVAT Rules.

6. On scrutiny of the order passed by the First Appellate Authority, the Revisional Authority found that the order passed by the First Appellate Authority is erroneous in law and also prejudicial to the interest of the Government revenue. Accordingly, invoking its power u/s 64(1) of the Act issued notice to the appellant calling upon them to file statement of objections.

7. In pursuance of the notice issued by the Revisional Authority, the appellant entered appearance and filed detailed statement of objections contending that there is no infirmity or irregularity in the order passed by the First Appellate Authority setting aside the order passed by the Assessing Authority. Further, Section 64(1) cannot be invoked when the aggrieved party has got right of appeal. The appellant has produced necessary documents, bills and voucher

before the Assessing Authority in support of claim of deduction. When the expenditure incurred towards the work contract is ascertainable by books of account maintained by the appellant and the same was assessed by the income tax Authorities and other authorities, it is not open to the Assessing Authority to invoke Rule 3(2)(m) of Entry 14 of the Table. In fact, the appellant had incurred expenditure of more than 30%, but in view of the provisions of the Act they had claimed flat deduction of 30%. Further, the nature of work carried on by the appellant is marking of the road by using hot melt thermoplastic. The process involves melting the thermoplastic compounds at temperature exceeding 200 degrees centigrade in a boiler and laying the same on the road using the Screeding machine. The machinery and tools used for execution of the work contract are deductible expenses and sought for allowing the appeal.

8. On the other hand, Sri. Vedamurthy, the Advocate appearing for the Respondent argued in support of the order passed by the Revisional Authority and contended that the First Appellate Authority without verifying the records and without scrutinizing the bills and vouchers said to have been produced by the appellant allowed the appeal and extended the benefit of 30% deduction on the work contract. The specific case of the Assessing Officer is that no materials have been produced and the records are not maintained regarding labour charges and like expenses. In the absence of the same, the First Appellate Authority had observed that the appellant had produced the bills and vouchers. Even before the Revisional Authority also, the appellant has not produced any bills and vouchers in support of their contention. In the absence of necessary documents, such charges are not ascertainable from the books of account maintained by the dealer, the authority has recourse to the Rule 3(2)(m) at the rate specified at column No. 3 of the entries 14 of the table. In the instant case, the appellant has executed the work contract of road marking using the hot melt thermoplastic road marking materials which do not fall under any of the entries between 1 to 13 of the table and 14th Table, is "any other work contract residuary section", for that, maximum deductable is 25%. Accordingly, the Assessing Authority had given the benefit of 25% deduction towards the work contract. Further, on scrutiny of the order passed by the First Appellate Authority, the Revisional Authority found that without taking into consideration the relevant materials the order has been passed by the First Appellate Authority which is erroneous and prejudicial to the interest of the Revenue. It is always open to the higher authorities to re-examine the matter and correct the error. The Revisional Authority after considering the entire matter, set aside the order passed by the First Appellate Authority and restored the order passed by the Assessing Authority. There is no infirmity in the said order and sought for dismissal of the appeals.

9. These appeals were admitted to consider the following substantial questions of law:

1. In view of the fact that the First Appellate Authority has framed a speaking

order dated 26.02.2009 (Annexure-E) and after recording findings of fact therein that the actual labour and other like charges incurred in execution of works contract are ascertainable from the books of account maintained by the Appellate and the deduction of the same has been allowed therein, after verification of the same in accordance with the provisions of the KVAT Act read with Rules framed thereunder, whether the action of the respondent to set aside the same and concluding the Revisional proceedings u/s. 64(1) of the KVAT Act, 2003 vide his orders dated 25.06.2011 (Annexure-A) is sustainable in law as being erroneous and prejudicial to interest of the Revenue?

2. In view of the fact that the actual labour and other like charges incurred in the execution of works contract are ascertainable from the books of account and other documents maintained by the Appellate whether the action of the Respondent to allow the deduction of labour and other like charges as per the provisions of Rule 3(2)(m) of the KVAT Rules, 2005 instead of under Rule 3(2)(1) of the KVAT Act, 2003 in contravention of the provisions of the KVAT Rules, 2005 is justified and in accordance with law?

10. We have carefully considered the arguments addressed by the learned counsel for the parties and perused the order passed by the authorities below.

11. The records clearly disclose that the appellant has executed work contract of road marking using thermoplastic road marking materials. The process of road marking is essentially a hot extrusion process using a Screeder which involves laying at high temperature, thermoplastic ribbon of specified thickness, continuous and uniform in shape having clear sharp edges, on the roads, as distinguished from painting and other civil work. He has submitted the returns for few months of the assessment years 2005-06 and 2006-07 claiming deduction towards the labour charges and like expenses to an extent of 30% on the said work contract. During the audit of accounts of the appellant-Company it was noticed that, the appellant has not maintained books of account and bills and vouchers pertaining to the labour charges. In the absence of books of account, the expenditure incurred has to be ascertained as per the table specified in Rule 3(2)(m) of the KVAT Act. Hence, the proposition notice was issued. The appellant filed objections to the proposition notice. The Assessing Authority after considering the matter in detail found that no document or bills and vouchers were produced to establish the expenditure incurred. Accordingly, allowed deduction as per Rule 3(2) of column. No. 3 of Entry 14 to an extent of 25%. Being aggrieved by the said order, the appellant filed an appeal before the First Appellate Authority which came to be allowed the appeal on the ground that the assessee has produced the necessary records and the expenditure incurred in the execution of work contract ace ascertainable as per the books of account. Hence, deduction of 25% is erroneous and the appellant is entitled for deduction to an extent of 30% under column 3 of the V Schedule. Being aggrieved by the order passed by the First Appellate Authority, the Revisional Authority found that the order passed by the First Appellate Authority is erroneous and prejudicial to

the interest of the Revenue. Accordingly, issued notice to the appellant. After hearing the appellant, the Revisional Authority passed the order impugned in this appeal.

12. The provisions of the Act clearly disclose that if the expenditure incurred for executing the work contract is ascertainable from the books of account maintained by the dealer, then he is eligible for deduction as per the expenditure he has incurred. On the other hand, if the expenditure incurred for the work contract is not ascertainable, then the provision of Rule 3(2)(m) has to be invoked. Rule 3(2)(1) of the KVAT Rules is not applicable to the facts of the present case. In the instant case, during the time of auditing the accounts of the appellant-company, the Assessing Officer clearly noticed that the appellant has failed to maintain books of account and also to produce the bills and vouchers pertaining to the labour charges in execution of the work contract. In the proposition notice, the specific allegation has been made that the appellant has not produced bills and voucher with regard to the work contract carried on by him either before the First Appellate Authority or before the Revisional Authority. The First Appellate Authority without looking into the bills and vouchers set aside the order passed by the Assessing Authority only on the ground that the Assessing Authority has not verified the bills and vouchers. When the bills and vouchers have not been produced before the Assessing Authority, the question of verifying the said bills and vouchers does not arise. In our view, the order passed by the First Appellate Authority is contrary to law. The Revisional Authority taking into consideration all these aspects of the matter revised the order passed by the First Appellate Authority. The Revisional Authority also noticed that the appellant has failed to produce the bills and vouchers and books of account regarding the labour charges in executing the work contract. Accordingly invoked the revisional power u/s 64(1) of the KVAT Act. In the absence of necessary records, the expenditure incurred for the work contract has to be assessed invoking Rule 3(2)(m) of the KVAT Rules. Since the work contract carried on by the appellant do not fall under any type of the contracts between Entries 1 to 13, invoking clause Entry 14 of the table which is "any other work contract", the Revisional/Authority allowed the deduction to an extent of 25% as per clause 3 of the said table. We find no infirmity or irregularity in the said order. Hence, substantial questions of law framed in these appeals are held against the appellant. Accordingly, these appeals are dismissed.

