(2007) 03 KAR CK 0038

In the Karnataka High Court

Case No : S.T.A. No. 62 of 2006, reversed

Dilip Hanumant Phadnis APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 15-03-2007

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 5(3)(A)
Karnataka Sales Tax Rules, 1957 — Rule 6(4)(B)(I)

Citation : (2009) 67 KarLJ 578

Hon'ble Judges : Anand Byrareddy, J;R. Gururajan, J

Judgement

R. Gururajan, J.-M/s. Hope Technologies Limited is before us, aggrieved by the order of the Karnataka Appellate Tribunal, Bangalore (hereinafter referred to as ''the Tribunal'' for brevity) passed in S.T.A. Nos. 61 and 62 of 2006, dated 29th June, 2006, in this revision petition.

2. The petitioner is a registered dealer engaged in business of Trading in Computer Software. According to petition averment, the petitioner is an authorised dealer of M/s. Autodesk Inc., an American Company. It manufactures its High End CADCAM/GIS/MULTIMEDIA Softwares in USA and sells them in India through a channel of distributors, dealers and resellers. One M/s. Tech Pacific India Limited, as their authorised distributors, used to import their packaged softwares in Bangalore and then sell it to petitioner. The petitioner, in turn, subsequently sells the same to authorised customers in India. The petitioner does not develop or manufacture any software on its own in terms of the averments made in the petition.

3. The petitioner filed Form 3 statement to the Department. It also filed Form 4 for the year ending 31-3-2002. The petitioner filed a revised return. An order was passed by the Assessing Authority in favour of the assessee. The Revising Authority, after noticing the error, issued revision notices and thereafter passed an adverse order. The order of the Revising Authority is confirmed by the Tribunal. The assessee is therefore before us.

4. Heard Sri K.S. Suryanarayana, learned Counsel appearing for the petitioner and Smt. S. Sujatha, learned Government Advocate appearing for the respondent-State. Perused the material placed on record.

5. In the original file, we see that several credit notes have been filed. The Assessing Officer in his order, would hold, that the sales returns are covered by credit notes during the taxable period. Verification would show that the sales returns are made within six months of sale and found acceptable subject to cross-examination. However, without cross-examination, he has chosen to accept the same. Noticing the same, the Revising Authority, rightly in our view, has chosen to issue a revising notice and thereafter concluded the proceedings. When the same was challenged before the Tribunal, the Tribunal would say that the Revising Authority, who verified the records, noticed that there are no documentary evidence in respect of the sales returns. This finding, strictly speaking, would not be right in the light of various credit notes. However, those credit notes were not subjected to cross-examination and without cross-examination the authority has chosen to accept the same. In the circumstances, we are of the view that the Revising Authority ought to have cross-examined or cross-checked and verified the same in the light of the credit notes available on record. That exercise is necessary for the purpose of consideration of prejudicial interest of the State.

6. In the circumstances, we set aside the order of the Tribunal and also the Revising Authority. The matter is remitted back to the Revising Authority for reconsideration of the matter for the purpose of verification by way of cross-check with the customers. The Revising Authority is to consider afresh in terms of this order without in any way influenced by the earlier proceedings and thereafter proceed to pass an order in accordance with law. Time for completion of the proceedings is six months from the date of receipt of a copy of the order. The questions of law are not answered in the light of the remand order. No costs.