(2010) 06 KAR CK 0029

In the Karnataka High Court

Case No : S.T.A. No. 143 of 2009

Emcee Associates APPELLANT

Vs

State of Karnataka and Others RESPONDENT

Date of Decision : 07-06-2010

Acts Referred:

Citation : (2011) 42 VST 248

Hon'ble Judges : N.K. Patil, J;B.V. Nagarathna, J

Bench : Division Bench

Advocate : Kamath, for Kamath and Kamath, for the Appellant; T.K. Vedamurthy, Government Pleader, for the Respondent

Judgement

N.K. Patil, J.—The Appellant being aggrieved by the order impugned dated September 15, 2009 in case No. ZAC-1/BCD-1/SMR-45/09-10 on the file of the Additional Commissioner of Commercial Taxes, Zone 1, Bangalore, vide annexure A, has presented this appeal to restore the first appeal order dated December 15, 2007 vide annexure J including other reliefs.

2. The Appellant claims that he is a dealer registered under the Karnataka Sales Tax Act, 1957 (hereinafter referred to as, "the Act") and engaged in food catering. He has opted to remit tax under the composition scheme as provided u/s 17(4) of the Act. Accordingly, he has filed the application seeking permission for composition of tax payable in form No. 8 along with statement in lieu of return of turnover/estimated turnover in form No. 9 on April 21, 2004 in the office of the Commercial Tax Officer, 12th Circle, Bangalore and acknowledged copies produced at annexures B and C, respectively.

3. During the assessment year 2004-05, he has furnished the returns in form No. 3, within the stipulated time and remitted the tax applicable therewith. Thereafter, annual return in form No. 4 was filed declaring his gross and taxable turnover and admitted tax, and the same has been remitted with the respective monthly returns. Be that as it may, the third Respondent has passed the

assessment order dated May 17, 2007 u/s 12C(8) of the Act read with Notification No. FD 116 CSL 2006 (3) dated March 31, 2006 levying tax at the rate of 12 per cent, plus cess of 15 per cent, on the amount of tax and additional tax at the rate of one per cent, on the turnover totalling to Rs. 2,19,269 in the said assessment order. But without considering the notification dated March 31, 2006, which provides for completion of deemed assessments of dealers on the basis of the turnover and taxes payable as declared by such dealers in their annual return subject to the conditions stated therein, the authority has proceeded to extend the benefits entitled as provided under the Act, without considering his application. The said order has been proceeded without giving sufficient opportunity to substantiate the case and without complying with the principles of natural justice. Thereafter, the authority issued a demand notice dated May 17, 2007. Assailing the correctness of the same, the Appellant/ Assessee has filed rectification application apparent on the face of the record u/s 25A of the Act. Instead of considering his application for rectification, the authority has proceeded to issue an endorsement stating that form Nos. 8 and 9 filed by the Appellant/Assessee are not tallying with each other and issued endorsement dated October 16, 2007. Being aggrieved by the endorsement dated October 16, 2007, the Appellant herein filed an appeal before the Joint Commissioner of income tax (Appeals) and proceedings No. KST.AP.No 141/07-08 dated December 15, 2007 came to be passed and the said matter had come up for consideration before the jurisdictional competent authority and the competent authority accepting the xerox copies of form Nos. 8 and 9, allowed the appeal filed by the Appellant. Be that as it may. The Additional Commissioner of Commercial of Commercial Taxes, Zone 1, Bangalore, invoking the revisional powers u/s 22-A(1) of the Act, initiated the proceedings in No. ZAC-1/BNG-1/ SMR-45/09-10. In turn, the Additional Commissioner of Commercial Taxes, after going through the original record and order passed by the revisional authority, set aside the order passed by the appellate authority holding the rejection of the rectification application by an endorsement dated October 16, 2007 is just and proper and the endorsement issued consequent to the order of assessment was restored. Being aggrieved by the order impugned passed by the revisional authority vide annexure A dated September 15, 2009 the Appellant herein felt necessitated to present this appeal seeking restoration of the order passed by the first appellate authority dated December 15, 2007.

4. We have heard the learned Counsel appearing for the Appellant and the learned Government Pleader appearing for Respondent No. 1.

5. After analysing the material on record made available by the learned Government Pleader and after perusal of the order passed by the revisional authority dated September 15, 2009 and the order passed by the first appellate authority, what emerges is that, all the authorities have failed to proceed in accordance with the Act and Rules. The manner in which they have proceeded and concluded the proceedings accepting the xerox copies of form Nos. 8 and 9, without cross verification in the register maintained in the Department for having

received the original form Nos. 8 and 9 does not inspire the confidence of this Court. This aspect of the matter has not been looked into nor considered nor verified as to whether the procedure prescribed under the statute has been followed.

6. It is submitted by the learned Counsel for the Appellant that the assessing officer has not given opportunity to substantiate his case while considering the notice issued and there is a substance in the submission of the learned Counsel appearing for the Appellant. Hence in view of non-compliance of the principles of natural justice and for not conducting proper enquiry in accordance with law and not deciding the matter strictly in accordance with the material on record, we are of the considered view that such orders cannot be sustained and are liable to be quashed. Taking all these relevant factors into consideration, it would suffice for this Court to remand the matter before the original authority, i.e., before the assessing officer to decide the matter afresh, strictly in compliance with the provisions of the Act and Rules.

7. In the light of the facts and circumstances of the case, as stated above, the instant appeal is allowed in part and the order impugned passed by the revisional authority dated September 15, 2009 in case No. ZAC-1/BCD-1/ SMR-45/09-10 on the file of the Additional Commissioner of Commercial Taxes, Zone 1, Bangalore, vide annexure A, order dated December 15, 2007 vide annexure J, the order passed by the assessing officer dated May 17, 2007 vide annexure D and endorsement-annexure E dated October 16, 2007 are all hereby set aside and the matter stands remitted back to the jurisdictional assessing officer to reconsider the matter afresh and to pass the order strictly in accordance with law, following the provisions of the Act and Rules and after affording reasonable opportunity to both parties and to dispose of the matter expeditiously.