
(2011) 04 KAR CK 0046
In the Karnataka High Court
Case No : Sales Tax Appeal No. 12 of 2009

Emson Spraytech India Ltd.	Vs	APPELLANT
State of Karnataka and Others		RESPONDENT

Date of Decision : 26-04-2011

Acts Referred:

Citation : (2011) 46 VST 428

Hon'ble Judges : Manjula Chellur, J;K. Govindarajulu, J

Bench : Division Bench

Advocate : G. Sasidhara for M/s. Kamath and Kamath, for the Appellant; T.K. Vedamurthy, High Court Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K. Govindarajulu, J.—This is an appeal u/s 24(1) of the Karnataka Sales Tax Act, 1957. The assessee is the appellant. Facts necessary for the consideration of the subject involved in this case are as under:

The case of the assessee is, it is a private limited company engaged in the manufacture of aerosol valves and non-aerosol pumps. Assessee supplies these articles to the exporter. Export units are situated in export zones. The assessee further contend that the exporters after getting the export order from their foreign clients, place orders with the assessee. In pursuance of the same, supplies are made under form H. The petitioner is carrying on this trading activity for the period from 1998-99, 1999-2000, 2000-01, 2001-02, 2003-04 and 2004-05. The assessee has claimed exemption u/s 5(3) of the Central Sales Tax Act, 1956 by submitting form H and sought for reduced rate of tax at four percent against sale of C forms.

2. It is stated that for the period 1998-99 to 2001-02 claim of the appellant for exemption of these articles being used for export is upheld by the Karnataka Appellate Tribunal but inspite of it, for the periods 2003-04, 2004-05, the Additional Deputy Commissioner of Commercial Taxes (Assessment)-16/

respondent No. 3, had rejected the claim. Hence, appeal is preferred.

3. It is contended that the controversy is considered by the honourable apex court in Azad Coach Builders Pvt. Limited Vs. State of Karnataka, State of Karnataka Vs. Azad Coach Builders Pvt. Ltd. and Another, In view of the subject of exemption being upheld by the Karnataka Appellate Tribunal for the earlier years, the action of respondent No. 3 in initiating the assessment, directing the assessee to pay the sum as per the impugned order dated January 1, 2009 bearing No. ZAC-1/BCD-1-III/SMR-36-89/06/07 passed by respondent No. 3 is bad in law. Hence, seek for restoration of the order of the first appellate authority dated November 28, 2007 in CST Appeal No. 80-07-08 and 23/07-08.

4. The learned advocate for the assessee places reliance on the ruling of the honourable apex court in State of Karnataka v. Azad Coach Builders Pvt. Ltd. [2010] 36 VST 1 (SC) (CA 5616-5617/2000) to contend that the honourable apex court has already clarified the position, once a product is for the export, exemption should be granted. Therefore seek for allowing the appeal.

5. On the other hand, the learned Government Pleader seeks for confirmation of the order of respondent No. 3.

6. We have carefully considered the material placed on record after hearing the learned advocate for the appellant and the learned Government Pleader.

7. Section 5 of the Central Sales Tax Act, 1956 (hereinafter referred to as "the Act of 1956") deals with sale or purchase of goods in the course of export or import business. Sub-section (3) enumerates the sale or purchase of any goods occasioning the export of those goods out of the territory of India which shall also be deemed to be in the course of such export. It reads as follows:

5. (3) Notwithstanding anything contained in sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export.

8. The honourable apex court in State of Karnataka Vs. Azad Coach Builders Pvt. Ltd. and Another, has laid down the following principles while answering whether the sale of goods come within the purview of section 5(3) of the CST Act (pages 12 and 13 in 36 VST):

24. The phrase "sale in the course of export" comprises in itself three essentials: (i) that there must be a sale; (ii) that goods must actually be exported; and (iii) that the sale must be a part and parcel of the export. The word "occasion" is used as a verb and means "to cause" or "to be the immediate cause of. Therefore, the words "occasioning the export" mean the factors, which were immediate cause of export. The words "to comply with the agreement or order" mean all transactions which are inextricably linked with the agreement or order

occasioning that export. The expression "in relation to" is words of comprehensiveness, which might both have a direct significance as well as an indirect significance, depending on the context in which it is used and they are not words of restrictive content and ought not be so construed.

25. Therefore, the test to be applied is, whether there is an inseverable link between the local sale or purchase on export and if it is clear that the local sale or purchase between the parties is inextricably linked with the export of the goods, then a claim u/s 5(3) for exemption from State sales tax is justified, in which case, the same goods theory has no application.

9. In the facts of the present case the assertion of the assessee is that aerosol valves and non-aerosol pumps are supplied to the persons involved in the export, so also situated within the export zones. To substantiate the claim, forms H and C are relied upon by the assessee. The export of the containers fitted with the valves and pumps are not at all disputed by the Revenue. So, the valves and pumps involved in the transactions in the case would become goods supplied in relation to export. Hence, the contention of the State that the pumps are different from the items that exported by the assessee is not justified.

10. Yet there is one more reason to accept the above contention. For the earlier years, commencing from 1998-99 to 2001-02, exemption was granted. The exemption declared by the Tribunal is not at all challenged by the Revenue. So, the submission of the learned advocate for the assessee deserves to be accepted. Submission of the learned Government Pleader cannot be held as correct. Accordingly, we pass the following:

ORDER

Appeal is allowed. The impugned order of respondent No. 3 is set aside. The order of the first appellate authority dated November 28, 2007 passed in CST AP No. 80/07-08 and 23/07-08 is confirmed.