(2013) 09 KAR CK 0074

In the Karnataka High Court

Case No : Sales Tax Appeal No. 46 of 2011

Featherlite Products (Private) Limited	APPELLANT
Vs	
The Additional Commissioner of Commercial Taxes, Zone-1 and Others	RESPONDENT

Date of Decision : 26-09-2013

Acts Referred:

Citation : (2013) 77 KarLJ 383

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

Bench : Division Bench

Final Decision : Allowed

Judgement

Dilip B. Bhosale, J.—Heard learned Counsel for the parties. This appeal is directed against the order dated 27-7-2011 passed by the Revisional Authority namely the Additional Commissioner of Commercial Taxes, Zone-1, Bangalore, whereby suo motu revision u/s 22-A(1) of the Karnataka Sales Tax Act, 1957 (for short, the ''KST Act'') was allowed and the order passed by the Joint Commissioner of Commercial Taxes (Appeals), DVO-I and III, Bangalore (for short, the ''AA''), dated 6-1-2007, passed in KST. AP. No. 2/06-07 was set aside. Before the AA, the appellant had questioned the reassessment order dated 2-3-2006 passed u/s 12-A of the KST Act for the assessment year 2000-2001 passed by the Deputy Commissioner of Commercial Taxes (Transition-31), Bangalore. The Revisional Authority, set aside the order passed by the AA. The operative portion of the order passed by the Revisional Authority reads thus:

The order passed by the First Appellate Authority is set aside. The order passed by the Assessing Authority is modified. The Assessing Authority is directed to levy tax on the turnover of Rs. 3,95,16,208.00 (exemption claimed on E.O.U. sales which does not satisfy the conditions stipulated in the notification). The Assessing Authority is also directed to give exemption on the turnover of Rs. 12,98,151.00 as supported by declarations. Taxable turnover and exempted turnover in respect of the other transactions as found in the order u/s 12-A left undisturbed. The Assessing Authority is directed to calculate the taxes payable by the dealer company and issue demand notice accordingly.

2. The appellant-dealer company is the manufacturer of furniture. The appellant claims that, during the financial year 1-4-2000 to 31-3-2001, they supplied furniture to 100% Export Oriented units (for short, the ''EOU'') and in view thereof, they are entitled for exemption under the notification dated 15-11-1996 bearing No. FD 32 CSL 96(V).

3. We have perused the notification dated 15-11-1996. It was issued in exercise of the powers conferred by Section 8-A of the KST Act. By this notification, the Government of Karnataka reduced, with immediate effect, the rate of tax payable under the Act to ''nil'' on sales of raw materials, component parts, packing materials, consumables, capital goods, spares, materials handling equipments, intermediate and semifinished goods and sub-assemblies by a registered dealer to 100% EOU located in the State subject to the conditions prescribed therein.

4. From bare perusal of the notification, it is clear that a dealer claiming an exemption was supposed to satisfy two conditions, firstly, he should be a registered dealer, and secondly, the purchaser of furniture should be 100% EOU located in the State. In the Notification, the registered dealer was supposed to issue certificate in the prescribed form signed by 100% EOU. The notification further provides that the Certificate issued by the Director of Industries and Commerce, Government of Karnataka or Government of India, certifying that it is registered as a 100% EOU and that the said certificate shall be produced, in proof of its being valid, in each assessment year, within 60 days of commencement of the assessment year.

5. The claim of the appellant is based on the aforementioned notification. The appellant-company claims that during the financial year 1-4-2000 to 31-3-2001, they supplied furniture to 100% EOUs and in support thereof, they filed on record certificates in the form of declaration signed by the purchasers. Though such claim was made, learned Counsel appearing for the respondent, on the basis of the record, submitted that no such declarations were in fact placed on record. We would not like to enter into this controversy. We specifically asked learned Senior Counsel appearing for the appellant whether certificates issued by the Director of Industries and Commerce, Government of Karnataka or Government of India certifying the purchasers as 100% EOUs were filed before the authorities below, the answer was in the negative. It was submitted that no opportunity was given to the appellant. It was further submitted that the only question, the Revisional Authority was supposed to examine, was whether the ''furniture'' would fall in the category of capital goods so as to claim exemption under the notification dated 15-11-1996. In view thereof, on 13-9-2013 we had passed the following order:

Learned Counsel for the appellant seeks time till. 19-9-2013 to produce copies of the certificates issued by the Director of Industries and Commerce, Government of Karnataka or Government of India certifying that the purchasers, to whom the appellant sold furniture, are registered as 100% Export Oriented Units (for short, the ''EOU'').

We have noticed that Revisional Authority has not considered the question whether the ''Furniture'' would fall in the category of "Capital Goods" as contemplated by Notification dated 15-11-1996. We make it clear that, if we are satisfied that the purchasers were having EOU Certificates, we may consider the prayer of learned Counsel appearing for the appellant to remand the matter to consider the issue of "capital goods" with direction to the Revisional Authority to verify genuineness of the Certificates".

In view of the above order, learned Counsel appearing for the appellant placed before us six certificates issued in favour of the six units, to whom, the appellant had supplied furniture during the relevant financial year.

6. Smt. Sujatha, learned AGA appearing for the respondent, on the basis of record, submitted that except M/s. PSI Data Systems Limited, the names of other five purchasers of furniture, during the relevant financial year, do not appear in the list that was furnished before the authorities below. In other words, she submitted that neither the certificates issued in favour of the five purchasers are one record nor their names appear in the list of purchasers of the furniture supplied by the appellant at the relevant time. Insofar as M/s. PSI Data Systems Limited is concerned, the benefit as per the certificate was given by the Revisional Authority. Despite the opportunity given to the appellant to produce certificates, no such certificates of the purchasers to whom the furniture was supplied during the relevant financial year are produced before this Court. The notification, in our opinion, makes it clear that unless the purchaser unit is 100% EOU, the supplier of furniture, to such unit is not entitled for exemption. Since we are satisfied on facts that the appellant is not entitled to claim exemption under the notification, the questions of law, as raised in the memorandum of appeal, in our opinion, deserves no consideration and hence we dismiss the appeal.