(2016) 03 KAR CK 0203

In the Karnataka High Court

Case No : STA No. 127/2012

Gujarat Co-operative Milk Marketing, Federation Limited — APPELLANT

Vs

The Additional Commissioner of Commercial Taxes Zone-I — RESPONDENT

Date of Decision : 14-03-2016

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 12, Section 12-A, Section 22-A (1), Section 6

Citation : (2016) 03 KAR CK 0203

Hon'ble Judges : Jayant M. Patel and B.V. Nagarathna, JJ.

Bench : Division Bench

Advocate : Atul K. Alur, Advocate, for the Appellant; Shivayogiswamy, AGA, for the Respondent

Final Decision : Dismissed

Judgement

Jayant M. Patel, J.—1. The present appeal is directed against the order dated 21.4.2012 passed by the Additional Commissioner of Commercial Taxes in exercise of his revisional power under Section 22-A (1) of Karnataka Sales Tax Act, 1957 (hereinafter referred to as ''the Act'') whereby, the order passed by the first Appellate Authority is set aside and the order passed by the Assessing Authority is restored.

2. The brief facts of the case are that, the appellant is a premier Co-operative Society dealing in manufacture and sale of Milk products including milk powder. The appellant is registered under the provisions of the Act as well as Central Sales Tax Act.

3. After verification of the goods by the assessing authority under Section 12 of the Act, the assessment order was passed. At the time when the assessment order was passed, additional tax under Section 6 of the Act was not levied but, tax was levied keeping in view notification dated 31.5.2003 and the exemption sought was not granted. The appellant carried the matter in appeal before the first appellate authority and the said authority found that the exemption was

available to the appellant and that levy of tax under Section 6-E was not permissible and the first appellate authority set aside the order of the Assessing Authority. The matter was taken up in revision before the revisional authority i.e. the Additional Commissioner of Commercial Taxes. Notice was issued to the appellant. The same was replied to by the appellant and ultimately by the impugned order, the revisional authority found that the exemption is not available as under notification dated 31.5.2003 and the tax was leviable and therefore, the revisional authority confirmed assessment made under Section 12-A of the Act and set aside the order of the first appellate authority. Under the circumstances, the present appeal is filed before this Court.

4. We have heard Mr. Atul K. Alur, learned counsel appearing for appellant-assessee and Mr. Shivayogiswamy, learned AGA for respondent-revenue.

5. The only question which arises for consideration is, as to whether, the appellant is entitled to exemption of tax as per notification dated 31.5.2003 or not.

6. The basis of the claim for exemption by the appellant is, Entry No. 7 of the said notification which reads as under:

"Baby foods including milk powder"

The aforesaid shows that, all kinds of baby food including milk powder used as baby food are exempted for the purpose of tax. However, the contention of the learned counsel for the appellant is that, since the word is ''including'', it would include all type of milk powder and therefore even if milk powder is not used as baby food, it would get included in Entry No. 7 for the purpose of exemption. In our view, the contention is not only misconceived but has no basis. When one reads and gives meaning to the subsequent words after ''baby food'', one cannot forget nor ignore the earlier words ''Baby Food''. Baby Food includes milk powder but, all milk powder necessarily does not come within the scope of the expression baby food. Milk powder used or marketed as baby food can be considered for the purpose of exemption but not other kinds of milk powder.

7. Further, in the very notification, there is entry No. 76 which reads as under:

"Skimmed milk powder when sold by KMF to its unions and inter-union sale..."

When the contention of the appellant''s counsel is further considered and tested, with entry No. 76, it is apparent that skimmed milk powder may be consumed or not consumed as baby food or marketed as baby food; skimmed milk will have relevance under Item No. 76 only when it is sold by KMF to its unions or when there is an inter union sale. Therefore, one has to independently consider for interpretation of the entry regarding ''milk powder'' in entry No. 7 & 76. It may fall in Item No. 76 and the exemption may be available if sold by K.M.F to its union or inter union sale. If both the entries at Item No. 7 and 76 are considered in juxtaposition, it is not possible to accept the contention of the appellant that all milk powder would get included in Entry No. 7. As such, if such a contention is accepted, it would make entry No. 76 redundant. Further, even otherwise also, initially, Entry No. 7 includes milk powder used only as baby food or marketed as baby food and not as milk powder per se.

8. If the discussion made by the revisional authority is considered, we do not find that there is any error committed by the revisional authority.

9. Learned counsel for the appellant did rely upon the decision of Andhra Pradesh High Court in case of State of Andhra Pradesh v. Guntur District Milk Producers Co-operative Unit Ltd., reported at , 1990 STC 211 to contend that skimmed milk powder is nothing but a dehydrated form of pasteurized milk and he also relied upon another decision of the same High Court, in the case of State of Andhra Pradesh v. Indian Dairy Corporation reported in , 2001 STC 395 to contend that skimmed milk powder is nothing but milk powder and not liable to tax.

10. In our view, the question before the authority was not as to whether milk and milk powder are the same or not, more particularly, because the question of milk is an item exempted or not for the purpose of tax did not arise for consideration, nor was it pressed into service and therefore, said decisions have no applicability to the facts of the present case.

11. Learned counsel next contended that, interest is charged in the subsequent demand notices based on the impugned order of the revisional authority. In our view, such aspect of the matter is outside the scope of the present appeal. If there is any valid ground available in law to the appellant, same may be agitated as and when the question arises and at that stage the rights and contentions of the revenue are kept open but, we do not find it appropriate to express any view on the said aspect as the same stands outside the scope of this case for the present.

12. In view of the above, the answer to the question raised earlier is in negative in as much as, the appellant-assessee is not entitled to the exemption by virtue of Entry No. 7 as per notification dated 31.5.2003. Hence, the same is held in favour of the revenue and against the assessee. In view of the same, order passed by the revisional authority cannot be said to be illegal. In the result, the appeal being meritless is, dismissed.

No order as to costs.

In view of dismissal of main appeal, I.A.2/12 filed for stay would not survive and hence dismissed.

