

(2013) 06 KAR CK 0007

In the Karnataka High Court

Case No : Sales Tax Appeal No"s. 1069 to 1115 of 2010 C.H.-3

HMT Watch Factory IV

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 19-06-2013

Acts Referred:

Central Sales Tax Act, 1956 — Section 9(2)

Karnataka Value Added Tax Act, 2003 — Section 39(1), 63, 72(2)

Citation : (2013) 06 KAR CK 0007

Hon'ble Judges : P. Puttaraju, C.T.M.; Niazahmed S. Dafedar, D.J.M.

Bench : Division Bench

Advocate : S. Ramasubramanian, Chartered Accountant and M/s.MSSV and Company, for the Appellant; R.C. Yadavannavar, State Representative, for the Respondent

Judgement

P. Puttaraju, CTM

1. These forty-seven (47) appeals are filed u/s 9(2) of the Central Sales Tax Act, 1956 read with Section 63 of the Karnataka Value Added Tax Act, 2003 (for short, "the CST Act and KVAT Act") challenging the common appeal order passed by the Joint Commissioner of Commercial Taxes (Appeals-3), Bangalore (for short, "FAA") in Case Nos. CST/AP 253 to 299/2009-2010, dated 31st March, 2010 for the tax periods from April 2005 to February 2009, by which the FAA has upheld the reassessment orders dated 10th February, 2010 of the Deputy Commissioner of Commercial Taxes (Recovery), Tumkur (for brevity, "AA"). The AA has levied penalty and interest also which are also upheld by the FAA. Aggrieved by the same, these 47 (forty-seven) appeals have been preferred. In view of the fact that the appellant-company has not furnished 50% proof of payment of tax due, the appeals were not admitted. In pursuant to the same, the appellant approached the Hon"ble High Court by filing writ petition seeking relief with respect to the payment of 50% of the tax, penalty and interest due vide W.P. Nos. 19648 to 19695 of 2010 (T-RES). The Hon"ble High Court has directed the Tribunal to allow the petitioner to deposit only Rs. 25.00 lakhs

instead of 50% of the demand as a precondition and permitted the Tribunal to prosecute the appeals. The appellant having deposited Rs. 25.00 lakhs as pre-deposit by Demand Draft No. 395467, dated 14th July, 2010 before ACCT, LVO, Tumkur, the appeals have been admitted for adjudication.

2. The appellant-company has submitted common statement of facts and the grounds of appeals which are stated thus in brief:

(i) The appellant is a public sector undertaking having its showrooms all over India from where retail sales are made to individual customers. In Karnataka, the showrooms are located in Tumkur and Bangalore whereas outside the State the showrooms are located in different places.

(ii) Apart from retail sales to the customers, the appellant-company has also effected institutional sales to various institutions and companies.

(iii) The appellant-company submits that based on the information from the showrooms regarding their requirements of watches, the marketing division of the company raises an indent on the factory mentioning the name of the institution. In case of retail sales, the indent raised by the appellant will mention only the type and quantity.

(iv) As far as showrooms located within the State when the sales are made to retail customers or to the institutional customers applicable VAT is charged by the showrooms and paid also. As far as showrooms outside the State of Karnataka are concerned, such showrooms have paid applicable local VAT in that State in case of retail sales and institutional sales. The commodity namely watches are dispatched outside the State to different showrooms located throughout India on the basis of stock transfers.

(v) The appellant-company classifies the stock transfer types into four categories.--

(a) Stock transfer to showrooms or retail sales in Karnataka on which KVAT has been paid when the sale has taken place.

(b) In case of institutional sales within Karnataka, KVAT has been admitted and paid.

(c) Stock transfers effected outside the State showrooms meant for only retail sales, the company claims the same as legal stock transfers.

(d) Stock transfers to showrooms to outside the State of Karnataka meant for institutions. In this regard, the appellant-company has not offered any remarks or the nature of transactions.

(vi) The appellant submits that initially the concerned LVO has called to submit statutory forms namely "F" Forms for the tax periods of 2005-2006 to 2008-2009 for the 48 tax periods and the same have been furnished.

(vii) The DCCT (Recovery), Tumkur after due audit of the books of accounts has

initiated reassessment proceedings u/s 39(1) of the KYAT Act and also u/s 9(2) of the CST Act. The AA has treated the entire stock transfer value falling under the purview of the CST Act as a sale and has levied CST accordingly.

(viii) Aggrieved by the same, the appellant filed first appeal before the FAA who has allowed the appeals partly and has given directions to the AA to re-compute the turnovers for each tax periods by taking into consideration exempted stock transfers and the stock transfers treated and held as inter-State sales as computed by him and to levy CST accordingly and also to calculate the penalty and interest under Sections 72(2) and 36(1) of the KVAT Act for the transactions which are treated as inter-State sales instead of stock transfers and to issue revised demand notice. This has been compiled by the AA which is not disputed by the appellant.

(ix) It has been urged by the appellant that the learned authorities below erred in law and on facts in holding that the turnover for each tax periods being stock transfers against the orders received from specific parties are liable for tax u/s 3(a) of the CST Act. The appellant in the grounds has enumerated such turnovers for each month/tax period in the grounds of appeal filed for each month/tax period covering 47 tax periods commencing from April 2005 to February 2009.

(x) The appellant assails the appellate order on the ground that enough time is not furnished to furnish "F" Forms and also erred in law and on facts in rejecting the Form "F" and treating the stock transfers as inter-State sales.

(xi) In case of defective "F" Forms, the appellant urges that first proviso to Rule 12(5) is only directory.

(xii) The appellant questions the levy of interest on tax attributable to denial of exemption on account of non-submission of Form "F" and alleged defective Form "F". In addition to this, the appellant also questions the levy of interest on transactions which have been denied the benefit of stock transfers exemptions and being taxed as inter-State sales. Thus, the appellant assails the levy of interest and urges that the same is attracted from the date of service of demand notice, demanding the tax payable under CST Act.

(xiii) Finally, the learned Counsel for the appellant also urged that the lower authorities have erred in law and on facts in levying penalty attributable to non-submission of Form "F" and alleged defective Form "F". Further, the learned Counsel questions the penalty levied on the stock transfer transactions which are held as inter-State sales.

(xiv) The appellant has submitted written submissions by invoking Regulation 36 of the Karnataka Appellate Tribunal Regulations, 1979, wherein 10 grounds have been raised (first ground is as per grounds of appeals submitted along with appeal memorandum which has been narrated above). The second ground is with respect to validity of assessment u/s 39 and urges strongly that neither the

reassessing authority nor the Commissioner who has issued jurisdiction order for reassessment u/s 39 of KVAT Act as recorded the reasons and grounds to make reassessment. It was been submitted that the prescribed authority gets jurisdiction only when he has grounds to believe that any return to furnished which is deemed as assessed or any assessment issued u/s 38 of the Act understates the correct tax liability. In this regard, the reliance is placed on the Hon"ble Apex Court decisions in Manish Maheshwari Vs. Asstt. Commissioner of Income Tax and Another, rendered under income tax Act, 1961 in GKN Driveshafts (India) Ltd. Vs. Income Tax Officer and Others, . The appellant urges that the fundamental requirement to reassess is that the AA should have grounds to believe that the returns furnished are not correct or understates the correct tax liability.

(xv) The third ground is with respect to treating institutional sales as inter-State sales even though "F" Forms have been accepted by the concerned LVO. The appellant submits that no action is taken by the LVO after the submission of "F" Forms but the AA without any strong reasons or grounds has reassessed the stock transfer transactions as inter-State sales. In this regard, the appellant cites Ashok Leyland Ltd. Vs. State of Tamil Nadu and Another, , decided by the Hon"ble Supreme Court. In addition to this, the appellant has cited (2007) 10 VST 451 and Ricoh India Ltd. vs. The Commissioner of Trade Tax . Relying on the same, it is submitted that the reassessment is not permitted if the tax authority comes to the conclusion that stock transfers are not genuine but rather inter-State sales when Form "F" has been accepted by the Assessing Officer. In substance, the appellant questions the reassessment done u/s 9(2) of the CST Act. Further, the appellant brings to the notice that Section 6A(3) is not applicable to the facts of the present case as the order of reassessment is concluded on 10-2-2010 before the introduction of Section 6A(3) of the CST Act. In ground number 4, the appellant submits that under a bona fide belief, the branches of the appellant have paid taxes applicable in respective states by treating the institutional sales as a local sale in such respective States. Therefore, according to the appellant, collection of CST once again from the State Government of Karnataka is unjustified. For this, Union of India (UOI) and Another Vs. K.G. Khosla and Co. Ltd. and Others, , has been cited. In this regard prayer is made to direct the State Government to collect the tax from the Union of India citing a service tax case-law. The fifth ground is with respect to the admission of "F" Forms obtained from its branches as additional evidence. The sixth to the eighth grounds are regarding the levy of interest for the belated submission of "F" Forms citing BHEL case decided by this Tribunal in STA Nos. 2512 to 2514 of 2010, dated 4th August, 2011. It has been urged that to follow the said Tribunal decision since the same fastens the interest from the date of assessment rather than from the date of return. In the ninth and tenth grounds, it has been submitted that the lower authorities have erred in levying penalty on the transactions which are treated as inter-State sales and for non-receipt of Form "F" and defective Form "F". It is urged that such default does not fall u/s

10 or 10A of the CST Act and hence the penalty cannot be levied by invoking Section 9(2) of the CST Act read with Section 72(2) of the KVAT Act. Here again, the appellant relies on service tax decision rendered in Essar Telecom Infrastructure Pvt. Ltd. Vs. Union of India (UOI), State of Karnataka and Deputy Commr. of Comm. Taxes (Audit 52) .

3. On the above grounds, the learned Counsel appearing on behalf of the appellant-company vehemently argued that the impugned order of the FAA is not correct and prayer is made to set aside the orders of the lower authorities. The State Representative defended the impugned orders of the FAA and AA, on the ground that the reassessment made by the AA u/s 9(2) of CST Act read with Section 39(1) of the KVAT Act is correct and it is as per the assignment allotted by the Commissioner. Further, the State Representative put forth the defence stating that the AA has proved beyond doubt that the stock transfers effected to outside the State showrooms are actually in reality inter-State sales falling u/s 3(a) of CST Act and hence the same is exigible to tax under the said Act. In view of the Section 9(2) of CST Act, penalty and interest is also attracted and hence the orders of the lower authorities are correct as per SR.

4. Heard both the learned Counsel and the State Representative.

5. The following points which arise for our consideration are:

Point No. 1: Whether the Commissioner has issued authorisation to reassess as prescribed authority under CST Act and whether the case has been made by the AA to have such assignment?

Point No. 2: Whether the AA is correct in invoking Section 9(2) of CST Act read with Section 39(1) of KVAT Act to reassess the impugned 47 tax periods?

Point No. 3: Whether the FAA is correct in upholding the levy of tax on stock transfers which are treated as inter-State sales?

Point No. 4: Whether the FAA is correct in directing the AA to re-compute the penalty under CST Act?

Point No. 5: Whether the FAA is correct in directing the AA to re-compute the interest u/s 9(2) of CST Act?

Point No. 6: Whether penalty and interest is attracted for non-submission of "F" Forms and defective "F" Forms?

Point No. 7: Whether interference by this Tribunal is necessary?

Point No. 8: What order?

6. Our answer to the above points are as under:

Point No. 1: In the affirmative.

Point No. 2: In the affirmative. Point No. 3: In the affirmative.

Point No. 4: In the affirmative.

Point No. 5: In the affirmative.

Point No. 6: In the affirmative.

Point No. 7: In the negative.

Point No. 8: As per the final order for the following:

REASONS

7. Point No. 1.--There is no dispute to the fact that the AA is the prescribed authority as defined u/s 2(24) of the Act. As per the same, the PA means an officer of the Commercial Tax Department, authorised by the Government or the Commissioner to perform such functions as may be assigned to him. Perusal of the AA's records reveals that the DCCT (Recovery), Tumkur who is the AA has been given assignment by the Commissioner of Commercial Taxes vide assignment Note No. 874490, dated 8-10-2009. The assignment note bearing No. 874490, dated 8-10-2009 is available at page No. 1 of 2005-2006 reassessment records. This assignment note has been generated using the software system called "VAT SOFT CEN". This assignment has been issued by the Commissioner with respect to the appellant-company for the purpose of reassessment under KVAT Act and CST Act for the audit for the tax periods of April 2005 to March 2009. With the introduction of "Management Information System" (MIS), the assignments are given by the Commissioner on line and in such assignment note, the Commissioner has authorised the AA for the purpose of reassessment. This has been further clearly described by the AA in his reassessment order at page Nos. 1 and 2. Only after the assignment of the case, the visit audit has been taken up by the AA. In response to the Notice No. DCCT/REC/TMK/T 370/09-10, dated 17-11-2009, the appellant-company has stated as under:

Sub: Stock transfers.

This has reference to your Notice No. DCCT/REC/TMK/T 370/09-10, dated 17-11-2009, we write to confirm that stock transfers within State and outside State since inception are on the same line and manner which is being prevailed and practiced even today.

Thanking you,

Yours faithfully,

For HMT Watches Limited,

Watch Factory-IV

Sd/-

Name Manager (Finance)

The AA has called for information having known that the stock transfers are not genuine and for that purpose only the assignment had been sought for reassessment. Therefore, the AA had reasons to believe that the stock transfers are to be examined in depth. When thousands of stock transfers transaction have taken place, it is impossible to record all the reasons by the Commissioner while issuing the assignment note and it is also pragmatic approach of the AA not to reveal everything openly.

8. At this juncture, it is necessary to emphasise that under the KVAT Act, 2003 every return filed by the dealer u/s 35 of the Act is deemed to have been assessed to tax based on the return filed, except in cases where the Commissioner may notify the dealer of any requirement of the production of accounts before the Prescribed Authority in support of the return filed for any period. This is not a case which is not notified by the Commissioner for the production of books of accounts u/s 38 of the KVAT Act but rather the assignment is given for the purpose of reassessment. The deemed assessment does not mean that the return has been scrutinised with respect to the books of accounts to certify the same as correct or incorrect to pass an order. As soon as the appellant-company has filed the return in Form VAT 100 for the impugned tax periods commencing from April 2005 to February 2009, all such returns are deemed to have been assessed to tax which means whatever the tax admitted by the appellant is simply accepted. In case of CST transactions, it is the bounden duty of the appellant to furnish the necessary statutory forms or declarations to claim either exemption or concessional rate of tax. In case of concessional rate of tax in inter-State sales, "C" Forms are to be adduced whereas, in case of stock transfer by dispatch of goods outside the State other than by way of sale "F" Forms are to be furnished. This has been clearly envisaged under Rule 12(6) of Central Sales Tax (Registration and Turnover) Rules, 1957. In general Rule 12(6) of the said Rules envisages what are the declarations and forms to be furnished in order to claim exemption or concessional rate of tax. Whereas, Central Sales Tax (Registration and Turnover) Rules, 1957 stipulates the time-limit to furnish such declarations or certificates such as Form "C" or Form "F" or Form E-I/E-II within three months after the end of the period to which the declaration or certificate relates. But the proviso to the said rule has given an opportunity to the dealer to have extension of time to submit such declaration or certificates. This extension could be done only by the authority to whom the dealer furnishes the said declarations or certificates. In the instant case, the authority to whom the appellant-company has to furnish the declaration or certificates is the concerned ACCT, LVO. On the strength Rule 12(7) of the CST (R and T) Rules, the LVO has called for submission of statutory declarations and certificates. It is pertinent to note that it is not for the purpose of assessment or reassessment, the concerned LVO has called to submit the said Forms. This calling for Forms has been taken as the acceptance of the return to the finality as finalised assessment as per the perception of the appellant-company is totally wrong. The appellant-company has misunderstood the

aforementioned Rules namely Rule 12(7) of CST (R and T) Rules and Rule 12(6) of CST (R and T) Rules. The LVO has simply followed the procedural law to ensure the submission of required statutory certificates or declarations as the authority who is entitled to give registration and supply of statutory Forms required to the appellant-company and at the same time has called for submission of certificates or declarations as per said Rules. This does not mean that the return filed by the appellant-company is either scrutinised by the concerned LVO for the purpose of assessment or reassessment, since the concerned ACCT, LVO is not a prescribed authority at all. It is only the AA who has been given assignment by the Commissioner is the prescribed authority for the purpose of reassessment. The reason for the purpose of reassessment is to scrutinise the statutory forms with respect to the returns and the books of accounts. Otherwise the question of issuing the assignment note by the Commissioner never arise. The assessment under CST Act is almost mandatory in view of the statutory forms, the reassessment is always allotted by way of assignment note by the Commissioner to the designated Prescribed Authority. Therefore, the contention of the appellant so far as that the AA is not the prescribed authority or has not made out the case for the purpose of reassessment is negated. In view of the above facts, it is decided that the Point No. 1 has to be answered in the affirmative.

9. Point No. 2.--The AA is correct in invoking Section 9(2) of CST Act read with Section 39(1) of KVAT Act for the purpose of reassessment, since Section 9(2) of the CST Act envisages the same principles which holds good for the purpose of assessment or reassessment under the General Sales Tax Law which in the instant case being KVAT Act, 2003. As the AA found non-submission of "F" Forms, defective "F" Forms and also evidences to come to the conclusion that the stock transfers effected by the appellant-company is not actually stock transfers but rather the movement of goods to outside the State showrooms occasioned by the orders placed by the ultimate buyers. In such scenario, the AA is correct in invoking Section 9(2) of CST Act, 1956 as the AA has rejected the Form "F" submitted by the appellant-company. Since, the AA has come to the conclusion that it is inter-State sales falling u/s 3(a) of CST Act, rightly the reassessment has been done u/s 9(2) of CST Act. The case-laws cited by the learned Counsel so far as validity of Section 39(1) assessment is examined. The Hon'ble Apex Court decision in Manish Maheshwari's case is not applicable to the present case as the same one relates to the seizure of incriminating documents rather than reassessment. In the present appeals, the AA has not taken up on any search of the business premises of the appellant-company or has not seized any incriminating documents. Secondly, Section 158BC of IT Act, 1961 is distinct from Section 39(1) of KVAT Act. Therefore, the Manish Maheshwari's case is not at all applicable. The second case-law cited by the appellant relates to Section 39(1)(a) is not *pari materia* the same as Section 39(1) of the KVAT Act. More than anything else, the AA in his order has intimated in the reassessment notice clearly that the stock transfers on which exemption

has been claimed is actually the inter-State sales to fulfill the orders received by the customers at branches. In fact, the second decision of the Apex Court relied by the appellant squarely states the same. Therefore, the contention put forth by the appellant-company to the effect that the AA erred in law and facts so far as invoking Section 9(2) of CST Act read with Section 39(1) of KVAT Act to reassess the inter-State transactions is not acceptable and the AA has rightly followed the statutory provisions while reassessing the impugned tax periods. Therefore, Point No. 2 is answered in the affirmative.

10. Point No. 3.--The FAA in his impugned order dated 31st March, 2010 has given his clear finding with respect to (i) local stock transfers meant for institution; (ii) local stock transfers meant for retail showrooms; and (iii) inter-State stock transfers to retail showrooms. On these three types of stock transfers transactions, the FAA has decided that the same are not exigible to tax under KVAT Act and in case of retail showrooms located outside the State, the FAA has come to the conclusion that there is no pre-existing order. However, on inter-State stock transfers to showrooms outside the State of Karnataka meant for institutional orders which is taken as the third issue has decided categorically that all such dispatches are in pursuant to the order placed by the such institutions located outside the State and because of such orders occasioning the movement of goods from Karnataka to outside State branches has taken place which clearly falls u/s 3(a) of CST Act exigible to tax. In fact, the verification of AA's records as well as the AA's reassessment order clearly demonstrates that such dispatches are to fulfill the pre-existing orders placed by institutions located outside the State. For example, the AA in his reassessment order from page Nos. 2 to 21 has reproduced the entire orders placed by the branches wherein, the description of the watches including matter of printing the logo are all elucidated in detail which establishes beyond doubt that the dispatches effected by the appellant-company to outside the State branches showrooms is with regard to institutional sales is in pursuant to the orders placed by such institutions. Perusal of the AA's records for the reassessment years namely 2005-2006 to 2008-2009 reveals that purchase order/indent photocopies are available in five spiral bound books. For the year 2005-2006, the same is available at page Nos. 517 to 792. For the year 2006-2007, the two spiral bound books are available at page Nos. 307 to 725. Similarly, for the years 2007-2008 and 2008-2009, one spiral bound book for each year containing purchase order/indent photocopies are available on the respective reassessment records from page Nos. 297 to 480 and page Nos. 284 to 495. These spiral bound books containing communication letters clearly proves that the purchase orders place by the ultimate institutional buyers have paled order on the branches located outside the State which in turn has been communicated to the head office to dispatch required quantity, required brand, required logo, required print out and also the dead line to dispatch the goods including the rate of watches.

For example, M/s. Ordinance Factory, Kanpur has placed order to the Lucknow Showroom, Uttar Pradesh. This has been forwarded by the DGM (IS) and has

addressed inter departmental correspondence letter to the Group General Manager (WFT), HMT Watches Limited, WFIV, Tumkur with the subject caption "institutional order received from M/s. Ordinance Factory, Kanpur". In the communication, the following details are available:

We have received the order for the following watches with OFB logo printed on the dial:

In this letter, there are instructions to arrange to procure 18 MM Brown Leather Straps Qty. 300 Nos. in stock No. S 0201 520 on or before 24-2-2007.

In addition to the same, there is remarks recorded regarding dispatch of the consignment on 22-2-2007.

This particular indent or purchase order is available at page No. 322 of 2006-2007 records.

Such type of purchase orders/indents are available on the five spiral bound books mentioned above available in the respective reassessment records. All such POs/ Indents are all with respect to the institutional order received from the ultimate institutional buyers or customers located outside the State. This has been narrated by the AA extensively in his reassessment orders.

The analysis of communication letters or correspondence from the branch showrooms located outside the State proves that the same is nothing but the POs/indents placed by the institutional buyers which has been communicated to the appellant-company Head Office at Tumkur to arrange for dispatches of required quantity of watches to fulfill the pre-existing orders placed by such institutional buyers. Thus, the occasioning the movement of goods from the head office to branches located outside the State are in pursuant to the purchase orders/indents placed by the institutional buyers of the respective States where the branches of the appellant-company are situated. Therefore, this is nothing but a sale falling u/s 3(a) of CST Act, 1956 which is nothing but inter-State liable for tax. Therefore, the stock transfers transactions so far as dispatches to outside the State showrooms being inter-State sales, the AA has rightly held the same as taxable sales under CST Act. In addition to the same, the AA has also relied on the decisions of the Hon"ble Apex Court rendered in this subject-matter especially English Electric Co. of India Ltd. and Another Vs. The Deputy Commercial Tax Officer and Others, and Sahney Steel and Press Works Limited and Another Vs. Commercial Tax Officer and Others, to strengthen his stand and to frame the reassessment orders. This aspect has been analysed by the FAA and has upheld the findings of the AA. Secondly, only after proving that the stock transfers are in reality inter-State sales has proceeded to reassess by rejecting the "T" Forms. It is not a case where "F" Forms are accepted and then reopened as reassessment. The reliance placed by the appellant-company in second Ashok Leyland Limited's case is of no of help since the AA has not invoked Section 6A(2) of CST Act but rather assessed the appellant u/s 9(2) of CST Act. Another ground raised by the appellant citing M/s. K.G. Khosla and Company's case of

the Apex Court and Essar Telecom Infrastructure Private Limited's case decided by our Hon'ble High Court under service tax having bearing on commodity tax is not a matter to be dealt by this Tribunal but rather by the Central Sales Tax Appellate Authority as contemplated u/s 19 of the CST Act. In view of the above facts, it is decided that the FAA is correct so far as upholding the stock transfers transactions to showrooms outside the State of Karnataka meant for the institutional sales as inter-State sales liable for tax. Hence, Point No. 3 is answered in the affirmative.

11. Point No. 4.--Section 9(2) of the CST Act contemplates the levy of penalty as per the general law and as the KVAT Act clearly stipulates the levy of penalty in case of understatement of output tax or understatement of net tax or over statement of input tax, the penalty is leviable as per Section 72(2) of the said Act. When such being the case the FAA is correct in directing the AA to re-compute the penalty. Secondly, if any understatement or overstatement exceeds 5%, then Section 72(2) mandates the levy of penalty at 20% of the such under stated tax upto 31-3-2006 and at 10% of such under stated tax with effect from 1-4-2006. As there is no discretion left to the AA, the FAA is correct in directing to levy penalty after due re-computation. Penalty levied under the taxation law is only civil obligation and there is no need to find out any willful act or intention or fraudulent behavior. The concept of mens rea has been taken away from the taxing statute throughout the World, unless the statute explicitly provides for such concept. The element of mens rea is not built under Section 72(2) of the KVAT Act. Hence, the direction given by the FAA is correct. The classical view that "no mens rea no crime" has long ago been eroded in taxation law specially with regard to economic offences as decided by the Hon'ble Supreme Court in R.S. Joshi, Sales Tax Officer, Gujarat and Others Vs. Ajit Mills Limited and Another, and also this view has been affirmed by the Apex Court in Union of India (UOI) and Others Vs. Dharamendra Textile Processors and Others, . Hence, Point No. 4 is answered in the affirmative.

12. Point No. 5.--It is to be noted that Section 9(2) of the CST Act, 1956 has been amended by substituting for the word "penalty" by words "interest or penalty", and Section 9(2-B) has been newly inserted by Act No. 10 of 2000. Therefore, interest is applicable when there is default in payment of CST or belated payment of CST. The question which arises here is whether the interest clock runs from the date of return or from the date of demand notice being served. Since Section 9(2) and 9(2-B) of CST Act refers to the General Law and in the present case the same being KVAT Act, Section 36 and Section 37 are applicable squarely in the present case. The analysis of Sections 36 and 37 clearly reveals the fact that the interest is payable from the date the tax had become payable to the date to the date of its payment or to the date of any assessment under the Act whichever is earlier. In the instant case, it is from the date of return when the tax becomes due and the interest runs from that date upto the payment of tax. Even though, this Tribunal has given the decision in STA Nos. 2512 to 2514 of 2010, dated 4th August, 2011 in M/s. BHEL case to the

effect that the liability to pay interest arises from the date of assessment is on the basis of J.K. Synthetics Limited and Birla Cement Works and another Vs. Commercial Taxes Officer, State of Rajasthan and another, , rendered by the Hon''ble Apex Court based on the statutory language used in Section 11-B of the Rajasthan Sales Tax Act as it stood then. However, it is to be noted that at that point of time Section 9(2) of CST Act has not been amended and Section 9(2-B) was not in existence and following the amendment by Act No. 10 of 2000 to the CST Act, the Hon''ble Kerala High Court in Terumo Penpol Limited Vs. State of Kerala, has decided that the interest is attracted from the date of return. Section 9(2-B) has been inserted specifically for the payment of interest for the delayed payment of tax by Act No. 10 of 2000 and all the provisions of delayed payment of such tax and all the provisions relating to due date of payment of tax, rate of interest for delayed payment and assessment and collection of such interest is as per the General Sales Tax Law i.e., KVAT Act, 2003 in the present appeals. Therefore, we disagree with the decision of this Tribunal rendered in case of BHEL so far as interest payment is concerned and the calculation of interest from the tax due date. Therefore, the FAA is correct in directing the AA to re-compute the interest payable in his impugned appellate order. Hence, we decide that the interest is payable from the date of tax due and not from the date of communication of the reassessment order and thereby Point No. 5 is answered in the affirmative.

13. Point No. 6.--Both penalty and interest is attracted when a dealer fails to submit "F" Forms since, the dealer fails to demonstrate to prove that the transactions are exempt from tax by virtue of Section 6A of the CST Act. Once the tax becomes due, the tax demand so created attracts penalty and interest as per the provisions KVAT Act. Since, the appellant has failed to submit "F" Forms and in certain cases has furnished only defective "F" Forms, both penalty and interest is attracted. This is applicable not only to stock transfer transactions which are held as inter-State sales by the FAA but also applicable to the stock transfer transactions not covered by "F" Forms and covered by defective "F" Forms. Further, the learned Counsel has not been able to produce any "F" Forms in lieu of defective "F" Forms or any new "F" Forms in support of stock transfers transactions. Hence interest and penalty is attracted in such cases. Therefore Point No. 6 is answered in the affirmative.

14. Point No. 7.--As Point Nos. 1 to 6 are answered against the appellant and in favour of revenue, we find that there is no need to interfere with the orders of the FAA since the FAA has answered all the issues in his impugned order succinctly. Further FAA has also has granted relief with respect to stock transfers within the State to retail showrooms and has allowed the appeals partly. The learned Counsel for the appellant focuses more on technicality rather than on merits of the case. Hence, Point No. 7 is answered in the negative. Point No. 8.--Hence, we proceed to pass the following:

ORDER

- (1) All the forty-seven (47) appeals are dismissed.
- (2) The impugned orders of the FAA are upheld.
- (3) Keep the original judgment in STA No. 1069 of 2010 and copies of the same in STA Nos. 1070 to 1115 of 2010.
- (4) The Registrar of the Tribunal is directed to comply Regulation 53(b) of Chapter IX of Karnataka Appellate Tribunal Regulations, 1979 by communicating this order to the persons mentioned therein.
- (5) The office is directed to send back the lower authorities records immediately within 15 days.