(2014) 07 KAR CK 0069

In the Karnataka High Court

Case No : Writ Petition Nos. 12380 and 16018 to 16028 of 2014 (T-RES)

IFB Industries Limited APPELLANT

Vs

The Commercial Tax Officer (Audit-5.3) RESPONDENT

Date of Decision : 31-07-2014

Acts Referred:

Citation : (2014) 80 KarLJ 292

Hon'ble Judges : B.V. Nagarathna, J

Bench : Single Bench

Advocate : Chythanya K.K, Advocate for the Appellant; S.V. Girikumar, Additional Government Advocate, Advocate for the Respondent

Judgement

B.V. Nagarathna, J.—Petitioner is a Limited Company registered as a dealer under the provisions of the Karnataka Value Added Tax Act, 2013 (hereinafter referred to as ''KVAT Act'' for the sake of brevity). Petitioner has assailed the order of the 1st respondent dated 11-11-2003 (Annexure-A) and has sought a direction to that authority to give effect to the directions of the Karnataka Appellate Authority (hereinafter referred as ''Tribunal'' for short) with regard to the Assessment Year 2006-2007.

2. The facts germane to the disposal of these writ petitions are that, in respect of the aforesaid assessment year, reassessment order was passed and on the outstanding dues, interest and penalty was levied by order dated 28-3-2008. The reassessment order was assailed before the Joint Commissioner (First Appellate Authority) and being unsuccessful therein, the petitioner assailed the orders of reassessment as well as the order of the Joint Commissioner before the Tribunal. By judgment dated 23-4-2010, the Tribunal allowed the appeals which were 12 in number by setting aside the order of the First Appellate Authority dated 18-6-2008 and a direction was issued to the 1st respondent-authority to reconsider the matter in light of its judgment containing pertinent observations. Pursuant thereto, the matter was taken-up by the 1st respondent-Authority and order dated 14-10-2011 (Annexure-D) was issued. Being aggrieved by that

order, the petitioner had filed W.P. No. 8370 of 2012 and connected writ petitions before this Court. By order dated 16-4-2012, the writ petitions were dismissed reserving liberty to the petitioner to avail the alternative remedy of appeal under Section 62 of the Act. Thereafter, the petitioner approached the 1st respondent-Authority by filing an application seeking rectification of the order dated 14-10-2011. On that application, the impugned order dated 11-11-2013 has been passed, which is at Annexure-A. Being aggrieved by the orders at Annexures-D and A, the petitioner once again is before this Court.

3. I have heard the learned Counsel for the petitioner and learned Additional Government Advocate for the respondents and perused the material on record.

4. During the course of submissions, learned Counsel for the petitioner drew my attention to judgment of the Tribunal dated 23-4-2010 and contended that the 1st respondent-Authority was to give effect to the directions contained therein. Instead, the 1st respondent-Authority taking note of the subsequent decision of the Division Bench of this Court, held that the judgment of the Tribunal was nullified. He contended that the 1st respondent could not have taken such a view in the matter, particularly when the order of the Tribunal had attained finality and that any change in the position of law subsequent to the order of the authority attaining finality could not have been applied to the petitioner''s case, inasmuch as the Tribunal''s order had only to be given effect to. In support of his contention, he relied upon certain decisions of the Hon''ble Supreme Court as well as of this Court. He therefore contended that, although the petitioner had assailed order dated 14-10-2011 before this Court and the petitioner was relegated to the appeal remedy, there being no appeal remedy as such, the petitioner was constrained to approach the 1st respondent-Authority once again and in the impugned order at Annexure-A, what has been stated in the earlier order dated 14-10-2011, has been repeated. He therefore, contended that the petitioner has been constrained to once again approach this Court assailing the orders at Annexures-D and A. It was submitted that all that the petitioner is seeking, is a direction to the 1st respondent-Authority to give effect to the directions contained in the judgment of the Tribunal dated 23-4-2010.

5. Per contra, learned Additional Government Advocate appearing for the respondents contended that the impugned orders would not call for any interference as the 1st respondent-Authority has only applied the law declared by the Division Bench of this Court, which is a Superior Authority, as compared to the Tribunal, which had passed the judgment in favour of the petitioner. At the time of giving effect to the order of the Tribunal, the law on the point was declared by this Court and therefore, that has been considered by the 1st respondent-Authority. He also submitted that in the earlier writ petition filed by the petitioner, this Court had relegated the petitioner to the Appellate Tribunal. Also, petitioner had sought rectification of the order dated 14-10-2011 and being unsuccessful, he is at liberty to approach the Appellate Authority and at this stage, no interference could be made to the impugned orders.

6. I have considered the aforesaid submissions in light of the material on record and on the facts as have emerged in the present case. It is not in dispute that the petitioner had approached the Tribunal in STA Nos. 924 to 935 of 2008 being aggrieved by the orders passed by the Assessing Authority as well as the First Appellate Authority. The Tribunal by its judgment dated 23-4-2010, allowed those appeals and held as under:

"(a) These twelve appeals are partly allowed.

(b) The impugned common appeal order dated 18-6-2008 passed in these cases by the FAA is hereby set aside.

(c) The impugned reassessment orders insofar as they relate to the disallowance of discount allowed to the appellant''s purchasers through credit notes is set aside and the matters are remanded to the PA for the limited purpose set out hereinbelow.

(d) The appellant is directed to file details of discount allowed to its purchasers before the PA showing the date of sale, date of credit note etc., as required under the KVAT Act and the Karnataka Value Added Tax Rules, 2005 framed thereunder within 60 days from the date of receipt of this order.

(e) The PA is directed to take note of such details and to allow deduction on the discounts allowed by the appellant to its purchasers wherein the same is within six months from the date of sale and to disallow deduction if such discount is allowed after the period of six months.

(f) The PA shall recalculate the Tax liability of the appellant keeping in view the directions contained in this order.

(g) The consequential penalty and interest levied consequent to levy of tax on discount is set aside.

(h) The original order shall be kept in STA No. 924 of 2008 and copies thereof in STA Nos. 925 to 935 of 2008".

The Tribunal opined that the deductions towards discount claimed by the petitioner herein in respect of discounts allowed by it through credit notes, within six months from the date of issue of relevant bill of sale/tax invoice to its purchasers namely, to the retail dealers was admissible, as a deduction in terms of Section 30(3) of the Act read with Rule 31 of the Karnataka Value Added Tax Rules, 2005.

7. In the aforesaid premise, directions were issued to the 1st respondent to give effect to its order in terms of the aforesaid finding. No doubt, after the said directions were issued, the Division Bench of this Court in the case of State of Karnataka Vs. Kitchen Appliances India Limited, , had given a contra ruling as had been given by the Tribunal in the appeals filed by the petitioner herein. That decision is subsequent to the judgment of the Tribunal dated 23-4-2010. However, the 1st respondent placed reliance on the aforesaid judgment and held

that the decision of the Tribunal in the case of the petitioner stood nullified. Being aggrieved by that order, W.P. No. 8370 of 2012 was filed, which was dismissed on 16-4-2012 and thereafter, the petitioner once again approached the 1st respondent-Authority. While considering the application seeking rectification made by the petitioner herein, the order at Annexure-A, dated 11-11-2013 was passed. That order referred to another decision of the Division Bench of this Court in the case of Southern Motors Vs. State of Karnataka, , disposed of on 3-4-2013. Therefore, based on the subsequent declaration of law by this Court in the case of Kitchen Appliances India Limited and Southern Motors, the impugned orders have been passed.

8. Learned Counsel for the petitioner while drawing my attention to the impugned orders, has contended that the order of the Tribunal having attained finality, vis-a-vis the petitioner of that was required to be done by the 1st respondent-authority was to give effect to the directions of the Tribunal de hors the subsequent development of law or change in law. It was his contention that the position of law which would change or declared by a Superior Authority would not affect the orders or judgments which have already attained finality. I find considerable force in the submission inasmuch as basic principle of the administration of justice is to achieve finality in the orders of the Courts or Tribunals. Whatever may be the change in the law subsequent to orders passed or the judgment rendered by a judicial authority, would not have the effect of undoing the earlier orders or judgments passed by that authority. It would have been a different matter if the appeals were pending before the Tribunal and the subsequent judgments of this Court giving contra opinion on the position of law would have been made applicable to the case of petitioner. But when once the Tribunal had disposed of the appeals by allowing them and directing the 1st respondent-authority to give effect to its directions, that order was binding on the parties to the appeals and any subsequent change in law would not have a retrospective effect on the judgment passed by the Tribunal so as to re-open the entire issue. In this context, reliance placed by the learned Counsel for the petitioner on certain observations of the Hon''ble Supreme Court in the cases of The Bhopal Sugar Industries Ltd. Vs. The Income Tax Officer, Bhopal, , Union of India and others Vs. Kamlakshi Finance Corporation Ltd., and Prakash Narain Sharma Vs. Burmah Shell Cooperative Housing Society Ltd., , are squarely applicable.

In the last of the aforesaid judgments, the Hon''ble Supreme Court has stated that a judicial order, not invalid on its face, must be given effect entailing all consequences, till it is declared void in a duly constituted judicial proceeding.

In the first of the aforesaid decisions, a writ of mandamus was issued to respondent to carryout the directions given to him by the Income Tax Appellate Tribunal, Bombay. In the instant case also, the respondent ought to be directed to give effect to the order of the Appellate Tribunal.

In the second of the aforesaid cases, the Hon''ble Supreme Court has observed strongly that the principles of judicial discipline require that the orders of the higher Appellate Authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the Appellate Authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a Competent Court. If this healthy rule is not followed, the result will only be undue harassment to assesses and chaos in administration of Tax Laws.

9. It is also significant to note that as against the judgment of the Tribunal, the respondents did not take any steps to assail the same before the higher authority, therefore, they had no option but to give effect to the directions of the Tribunal. In this context, the observations of a Division Bench of this Court in CIT Vs. Vrinda P. Issac, are relevant, wherein this Court has opined that if no steps are taken to assail a decision of a Court or Tribunal before the higher forum, then such a decision, even if it is erroneous, is binding on the parties and therefore, at subsequent point of time, the said decision cannot be rendered ineffective by any of the parties thereto. Possibly, in the instant case, the 1st respondent-authority was concerned about the interest of the revenue and therefore, thought that he was bound by the decision of the superior forum i.e., this Court rather than that of the Tribunal, insofar as the petitioner was concerned. It is under a bona fide erroneous impression the impugned orders have been passed. The 1st respondent-authority has failed to understood the implication of finality of orders of Courts or Tribunals and the fact that the subsequent change in the position of law would not affect the orders which have already attained finality.

10. In this view of the matter, despite the petitioner approaching this Court in the earlier round and the order made by this Court on 16-4-2012, I am of the view that the ends of justice would be met in quashing the impugned orders and directing the 1st respondent-authority to give effect to the directions of the Tribunal in the judgment dated 23-4-2010 de hors the subsequent law that has been declared by this Court. In the result, the writ petitions are allowed. The 1st respondent-authority to give effect to the directions of the Tribunal for the period 2006-2007 within a period of three months from the date of receipt of a certified copy of this order. Parties to bear their respective costs.

