(2012) 12 KAR CK 0040

In the Karnataka High Court

Case No : Sales Tax Appeal No''s. 11, 24 and 25 of 2011

Image Labels Private Limited	APPELLANT
Vs	
The Additional Commissioner of commercial Taxes	RESPONDENT

Date of Decision : 03-12-2012

Acts Referred:

Citation : (2013) 75 KarLJ 1 : (2013) 63 VST 23

Hon'ble Judges : K. Sreedhar Rao, J;B. Manohar, J

Bench : Division Bench

Advocate : Atul K. Alur, for the Appellant; Sujatha, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

B. Manohar, J.—Appellant has filed this appeal being aggrieved by the order dated 15-12-2010 passed by the Revisional Authority in No. ZAC-1/BNG/SMR-20/2010-11 by the Additional Commissioner of Commercial Taxes, Zone-I, Bangalore, wherein the Revisional Authority set aside the order passed by the Appellate Authority confirming the order passed by the Assessing Authority imposing penalty for the assessment months of April, May and June 2005. The assessee is a private limited company incorporated under the provisions of Companies Act, 1956 and registered under the provisions of Karnataka Value Added Tax Act, 2003 and Central Sales Tax Act, 1956. The appellant-company is engaged in the business of manufacturing and sale of printed labels. The appellant-company has filed the returns for the months of April, May and June 2005 in Form VAT 100. In the returns, the assessee claimed refund and also sought for exemption of the tax on the ground of export of goods. The assessee also claimed deduction on input tax. The Assessing Authority after noticing the returns inspected the premises of the appellant and verified the books of accounts maintained by the appellant. Though the appellant is liable to pay the tax at the rate of 4%, the assessee claimed exemption in the guise of export of goods, though the sale was made locally. The deduction of input tax is not correct. Accordingly, the assessee has filed revised returns for the months of April, May and June 2005 deducting the exemption claimed, and claiming 4% tax though the assessee was liable to pay tax at the rate of 12.5%. It was brought to the notice of assessee that the assessee is liable to pay tax at the rate of 12.5%. Accordingly, the assessee filed second revised returns, showing the tax at the rate of 12.5% after correcting the deduction made in the input tax. The Assessing Authority accepting the second revised returns filed by the assessee concluded best judgment assessment and passed the assessment order u/s 38(1) of the Act on 25-8-2005. The Assessing Authority issued notice u/s 72 of the KVAT Act proposing to levy penalty u/s 72(2) of the Act on the ground that differences of the tax paid and payable is more than 5%. Hence, the assessee is liable to pay the penalty. The assessee filed objections to the said proposition notice. The Assessing Authority after considering the objection filed by the assessee passed the order on 26-3-2008 imposing penalty u/s 72(2) of the Act. The assessee being aggrieved by the order dated 26-3-2008 passed by the Assessing Authority imposing penalty preferred an appeal before the Joint Commissioner for Commercial Taxes contending that the Act came into force with effect from 1-4-2005 there was lot of confusion with regard to the new enactment. The percentage of tax payable was also not made known to the assessee and the Government has also not framed the rules. In view of that, there is a mistake in filing the returns. Subsequently, revised returns has been filed by paying interest. Hence, the Assessing Authority cannot invoke Section 72 of the Act and impose penalty. The Appellate Authority after considering the matter by its order dated 24-10-2008 allowed the appeal, setting aside the order of penalty imposed u/s 72(2) of the KVAT Act. The Revisional Authority after verification of the records found that the order passed by the Appellate Authority is contrary to law and prejudicial to the interest of the Revenue. Accordingly, the Revisional Authority issued notice u/s 64(1) of the KVAT Act calling upon the assessee to file his objections. The assessee filed objections to the notice issued u/s 64(1) of the KVAT Act. The Revisional Authority without considering the objections filed by the assessee by its order dated 15-12-2010 allowed the revision petition setting aside the order passed by the First Appellate Authority and issued direction to the Assessing Authority to levy interest u/s 36(3) of the KVAT Act and to pass appropriate order. Being aggrieved by the order passed by the Revisional Authority, the appellant has preferred this appeal.

2. Sri. Atul K. Alur, learned Counsel appearing for the appellant contended that the order passed by the Revisional Authority is contrary to law. The Revisional Authority has no jurisdiction to pass the order u/s 64 of the KVAT Act. He further contended that as per Section 61 of the KVAT Act, the Commissioner is empowered to fix the jurisdiction of the Additional Commissioner. In the instant case, the Additional Commissioner himself addressed a letter to the Commissioner to issue necessary notification u/s 64 of the KVAT Act. Hence, the order passed by the Additional Commissioner is without authority of law and the same is liable to be set aside. Further, the KVAT Act was introduced with effect

from 1-4-2005. The State Government has also not framed rules. There was lot of confusion with regard to the new enactment. As per the Government Notification issued u/s 4(1)(a) of the Act, the industrial input are exempted from payment of tax. The printed labels fall under the notification issued by the State Government. Hence, he has claimed exemption. In the revised returns, he paid tax at the rate of 4%. In the second revised returns, he paid tax at the rate of 12.5%. Further he has paid the interest for the differences of the tax between 4% and 12.5%. u/s 35(4) of the Act, the assessee has got six months time to file revised returns. Hence, the Assessing Authority cannot invoke Section 72(2) of the Act to impose penalty and also levy interest u/s 36(2)(b) of the Act. The Appellate Authority after considering the matter in detail has allowed the appeal and set aside the order of imposing penalty, since the Assessing Authority had already accepted the returns filed by the appellant. Hence, the order passed by the Revisional Authority is contrary to law and sought for setting aside the same by allowing this appeal.

3. Smt. Sujatha, learned Additional Government Advocate appearing for the State Government argued in support of the order passed by the Revisional Authority and contended that u/s 64 of the KVAT Act, the Revisional Authority has got power to revise any order on his own motion, after calling for examination of the records, if it is prejudicial to the interest of the revenue, he can pass the order. In the instant case, the assessee has claimed exemption in respect of the goods which is taxable at 4% and paid tax at the rate of 4% whereas the assessee has to pay tax at the rate of 12.5%. Though the goods which was meant for export has been sold in the local market and claimed exemption which is contrary to law. Only after the inspection of the books of accounts, the assessee has filed the revised returns, thereafter second revised returns. The differences of tax paid and tax payable is more than 5%. Accordingly, the Revisional Authority has rightly revised the order passed by the Appellate Authority. There is no infirmity or irregularity in the said order. With regard to the jurisdictional issue raised by the appellant, passing of the order by the Additional Commissioner is covered by the order passed by the Division Bench of this Court in STA No. 64 of 2009 and other connected matters. Further, the appellant has not raised the jurisdictional issue before the Competent Authority u/s 67 of the Act. Hence it is not open for him to raise this issue in this appeal and sought for dismissal of the same.

4. The above appeal is admitted for considering the following substantial questions of law:

(i) Whether the order of the Revisional Authority in setting aside the order of the Appellate Authority and levying penalty is bad in law?

(ii) Whether the Additional Commissioner passes the orders in revision was vested with jurisdiction to exercise the power of revision?

5. We have carefully considered the arguments addressed by the learned Counsel

for the parties and perused the orders passed by the Revisional Authority, the Appellate Authority as well as the Assessing Authority.

6. The records clearly disclose that the assessee filed the returns for the months of April, May and June 2005. In the returns he claimed certain exemptions and also deduction of tax on the ground of export of goods and deduction of input tax and claimed refund. The Assessing Authority on inspection of the factory premises and verification of the records found that the exemption claimed by the assessee is contrary to law and assessee is not entitled for the exemption as well as deduction. Accordingly, the assessee filed revised returns claiming to pay 4% tax. Thereafter on verification of records it was found that the assessee has to pay tax at the rate of 12.5%. Accordingly, the assessee filed second revised returns deducting the exemption claimed and paying 12.5% tax. The Assessing Authority concluded the best judgment assessment. Accordingly, the order has been passed u/s 38(1) of the Act on 25-8-2005. Thereafter, Assessing Authority issued notice u/s 72 of the Act proposing to levy penalty on the ground that the differences of the tax paid and liable to pay is more than 5%. Accordingly, the assessee is liable to pay penalty. The assessee filed objections filed by the assessee. The Assessing Authority after considering the objections filed by the assessee passed the order on 26-3-2008. The said order was set aside the by the Appellate Authority on 24-10-2008. The Revisional Authority taken up suo motu revision and revised the said order on the ground that the order passed by the Appellate Authority setting aside the order passed by the Assessing Authority u/s 72 of the Act is erroneous in law and prejudicial to the interest of the revenue.

7. The main contention urged by the assessee is that u/s 35(1) of the Act, the assessee has to file the returns within 15 days after the end of preceding month. Further Section 35(4) of the Act provides for filing of the revised returns within six months from the end of the relevant tax period. In the instant case, the assessee has filed the revised returns within a period of three months. Hence, the Assessing Authority cannot impose penalty.

8. The Assessing Authority levied penalty on the ground that the assessee on his own has not filed the revised returns, only after inspection of the factory premises on verification of the records found that the returns filed by the assessee is not in accordance with law, then only revised and second revised returns has been filed. Hence, the assessee is liable to pay penalty. Further, Section 35(4) of the Act is subject to sub-section (2) of Section 72 of the Act. Hence, even though the assessee filed revised returns, if it is filed in consequences of inspection, then the assessee has to pay penalty.

9. The records clearly disclose that the assessee along with the revised returns has paid the tax as well as the interest. He also contended that the Act came into force with effect from 1-4-2005, there is lot of confusion with regard to the new enactment. The Government has also not framed the rules in this regard, whether the assessee is entitled for exemption or not, is also not clear. In the absence of the same, the returns has been filed. Subsequently, in the revised

returns, the tax has been paid at the rate of 4% thereafter, in the second revised returns, the tax has been paid at the rate of 12.5% with interest. The Assessing Authority has not taken into consideration the contention taken by the assessee. Further, Section 2(28) defines return which includes revised returns. Hence, the question of imposing penalty by the Assessing Authority for filing the revised returns has to be reexamined. The issue regarding the jurisdiction of passing the order u/s 64 has not been taken before the Revisional Authority or the Assessing Authority. Hence, the Assessing Authority has to reconsider the matter afresh. With regard to the interest is concerned, the Assessing Authority has not levied any interest. However, the Revisional Authority has directed the Assessing Authority to levy interest on the differences of the tax paid by the assessee. The specific contention taken by the assessee is that he has already paid the differences of the tax with interest, hence the question of paying interest does not arise. This issue is also to be considered by the Assessing Authority. Hence, without going into the issue raised in this appeal, we remand the matter to Assessing Authority to reconsider the same afresh with regard to the penalty, interest as well as the jurisdictional issue in accordance with law. Accordingly, the appeal is allowed setting aside the order passed by the Revisional Authority and remanded the matter to the Assessing Authority to reconsider the same and pass fresh orders in accordance with law.