

(2013) 09 KAR CK 0133

In the Karnataka High Court

Case No : Sales Tax Revision Petition No's. 241 of 2011 and 53 to 67 of 2012

Indian Rayon and Industries Limited (Now Known as Aditya Birla Nuvo Limited) APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 02-09-2013

Acts Referred:

Citation : (2013) 77 KarLJ 293

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

Bench : Division Bench

Advocate : M.N. Shankare Gowda, for the Appellant; S. Sujatha, Additional Government Advocate, for the Respondent

Judgement

Dilip B. Bhosale, J.—We have heard this group of revision petitions, filed by the very same petitioner, against identical orders passed by the authorities below and dispose it of by this common order. We make it clear that we are dismissing the revision petitions at the threshold, since, in our opinion, no case for admission or for consideration of any substantial questions of law is made out. The substantial questions of law as framed in the revision petitions read thus: 1. Whether on the facts and in the circumstances of the case the Hon"ble Tribunal, Bangalore, and the Authorities below are right in holding that the tax amount will be deducted under Rule 3(2)(h) of the Karnataka Value Added Tax Rules, 2005 to arrive at a taxable turnover only when the tax amount is collected separately in the invoice in the petitioner"s case?

2. Whether on the facts and in the circumstances of the case the Hon"ble Tribunal, Bangalore, is right in saying that Section 9 provides for collection of taxes separately in the invoice in the petitioner"s case?

Mr. Shankare Gowda, learned Counsel appearing for the petitioner, at the outset, invited our attention to Section 9 of the Karnataka Value Added Tax Act, 2003 (for short, the "Act") and Rule 29(1)(h) of Karnataka Value Added Tax Rules, 2005 (for short, the "Rules") and contended that u/s 9 every registered dealer,

liable to pay tax under the Act, shall collect such tax and under Rule 29(1)(h) of the Rules, a tax invoice shall contain the rate and amount of tax charged in respect of taxable goods. These two provisions have no direct relation and in view thereof, merely because invoice does not contain the rate and amount of tax charged in respect of taxable goods would not mean that the assessee/dealer in the present case cannot seek deduction as contemplated by Rule 3(2)(h) of the Rules. He submitted that Rule 3(2)(h) does not specify the tax to be charged and collected separately for seeking deduction since it would amount to double taxation. He then submitted that failure on the part of a dealer to specify in the invoice the rate and amount of tax charged in respect of taxable goods would at the most attract penal provision and would not render the invoice invalid to seek deduction as prayed for by the petitioner. 2. The submissions advanced by Counsel for the petitioner, at the outset, deserve to be rejected outright. It is not in dispute that invoices produced before the authorities below did not contain the details such as the rate and amount of tax charged in respect of taxable goods. Admittedly, the invoices produced on record show the price of the goods inclusive of all taxes. In view of this admitted fact the authorities below have rightly observed that Section 9 of the Act provides for collection of tax separately and therefore, the claim of the petitioner is unacceptable and devoid of any merit. Section 9 of the Act provides that every registered dealer who is liable to pay tax under the Act shall collect such tax at the rate or rates at which he is liable to pay tax and the tax collected shall be accounted for under the provisions of the Act and Rules made thereunder. The expression "the rate or rates of the tax" also finds place in Rule 29(1)(h) of the Rules whereby the Legislature has made its intent clear that every registered dealer, who is liable to pay tax shall collect such tax at the rate or rates at which he is liable to pay tax, as mentioned in the invoice. If the invoice does not specify the amount of tax to be charged in respect of taxable goods, in our opinion, one cannot seek deduction, as prayed for by the petitioner. The Karnataka Appellate Tribunal (for short, the "KAT") has considered this aspect in proper perspective in paragraphs 13 and 14, which read thus: 13. An analysis of the provisions of Section 9 of the KVAT Act indicates that every registered dealer shall collect such tax at the rates at which he is liable to pay tax and the tax collected shall be accounted for under the provisions of this Act. This section must be interpreted as it reads with no additions and no subtraction and on the basis of the legislative objects of the KVAT Act. The emphasis in Section 9 is upon collection of tax at the prescribed rates and the taxes collected shall be accounted. There is no merit in the argument that the sale price including tax can be bifurcated into tax amount to determine the taxable turnover. The Rule 3(2)(h) is very clear and it is not for the Tribunal to read down the rules, a taxing statute has to be strictly construed and nothing can be read in it. The intention of the Legislature in enacting the VAT Law is very clear that there should be transparency in the incidence of tax or the quantum of the tax paid on a commodity and to ensure the VAT chain. The argument of the Counsel for the appellant cannot be accepted that it is permissible to bifurcate the tax from the value and to claim the benefit of deduction. It is specifically

stated that the provisions of Section 9 read with Sections 10(4), 29(1) and Rule 3(2)(h) that taxes separately collected alone are liable for deduction under the scheme of VAT. Therefore the claim of the appellant's Counsel to allow deduction in respect of taxes not collected in the invoices is not permissible and the provisions do not warrant such an interpretation.

14. However if the Act provides for bifurcation of sales price into net sale price and tax element as provided u/s 8A of the Central Sales Tax Act, 1956. The arguments of the learned Counsel for the appellant could have been accepted whereas there is no such similar provision under the KVAT Act. The scenario under the KVAT Act is for different from that of the Karnataka Sales Tax Act, 1957, as already stated in the earlier part of the order, KST Act was based on a single point taxation, whereas VAT works under multipoint taxation. To eliminate the cascading effect, the Act provides for claim of input tax paid on his purchases while working out the net tax payable. This very much requires that the taxes collected in the tax invoices should be explicitly shown and made known to the purchaser to maintain the VAT chain.

Having regard to the reasons recorded by the KAT whereby it has affirmed the findings recorded by the authorities below, we do not find any reason to interfere with the same. No case whatsoever is made out to Admit these revision petitions. We may also observe that merely because Section 76 of the Act provides for penalties relating to tax invoices, bills of sale, credit notes and debit notes against a registered dealer who provides a tax invoice otherwise than in accordance with the provisions of Section 29 does not mean that without providing a tax invoice in accordance with the said provision, he can go ahead and seek deduction under the Rules. If we hold that in view of the penal provision, a dealer, like the petitioner, can go ahead and seek deduction as contemplated by Rule 3(2)(h) of the Rules, that would amount to putting premium on the wrong done by the petitioner. Hence, we dismiss the revision petitions in limine.