

(2008) 07 KAR CK 0030

In the Karnataka High Court

Case No : Sales Tax Revision Petition No. 58 of 2007

J.C. Industries

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 02-07-2008

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 12 A, 17 (6), 17 (6) (ii), 5 B

Citation : (2009) 26 VST 495

Hon'ble Judges : V. Gopala Gowda, J;Ravi Malimath, J

Bench : Division Bench

**Advocate : K. Aravind Kamath, for Kamth and Kamth, for the Appellant;
Gangadhar Sangolli, AGA, for the Respondent**

Final Decision : Allowed

Judgement

V. Gopala Gowda, J.—The correctness of the order passed by the Karnataka Appellate Tribunal dated September 19, 2006, in STA No. 1421 of 2004 rejecting the appeal in relation to the reassessment order passed u/s 12A of the Karnataka Sales Tax Act of 1957 (hereinafter in short called as, "the Act") for the year 1996-97 is questioned in this revision urging various grounds.

2. In this order, we will not advert to the facts as the same are referred to in the order passed by the Tribunal which is impugned in this revision petition.

3. The ground of attack of the impugned order passed by the Tribunal is that, the levy of turnover tax by way of composition u/s 17(6) of the Karnataka Sales Tax Act (in short, "the Act") is contrary to Clause (ii) of the aforesaid provision as there is no permission granted by the assessing officer to the petitioner-dealer to elect payment of tax on the total consideration for the works contract. The application was filed before the assessing officer within the stipulated period seeking permission to pay composition as provided under Rule 8B of the Karnataka Sales Tax Rules, 1957 but no order is passed thereon.

4. Under Rule 8B of the Rules, not permitting the petitioner to withdraw the

application does not amount to grant of deemed permission for payment of composite tax under the above provision of the Act. Therefore, the learned Counsel submits that the assessing authority committed an error in law in bringing the alleged suppression of total turnover amount of Rs. 1,13,71,257 and the advance tax u/s 12A of the Act. The reassessment order passed u/s 17(6) of the Act for payment of composite tax at four per cent read with Section 12A of the Act is contrary to the law. Therefore, the order passed by the assessing officer, which is affirmed by the first and second appellate authorities is not only erroneous but also suffers from error in law and the same is liable to be set aside.

5. The learned AGA has sought to justify the correctness of the impugned order and also the reasons recorded by the Tribunal on the basis of certain undisputed facts, namely, the petitioner has filed an application before the assessing officer opting to avail of payment of composite tax u/s 17(6) of the Act on the total turnover of the business of the petitioner. He has further contended that the assessing officer, after referring to the decision of the Supreme Court in the case of State of Kerala and another Vs. Builders Association of India and others, , has rejected the contention urged by the petitioner that the dealer shall not be assessed u/s 17(6) for payment of composite tax as it is not permitted to do so. The said finding is affirmed by the first and second appellate authorities. Therefore, the learned AGA submits that the questions of law framed does not arise for consideration in this case to interfere with the finding of fact recorded by both the assessing officer and appellate authorities.

6. With reference to the abovesaid rival legal contentions urged on behalf of the parties, we have carefully examined the orders passed by the first appellate authority and the Tribunal to find out whether the order passed by the assessing officer u/s 17(6) of the Act in the absence of permission under Clause (ii) of Sub-section (6) of Section 17 of the Act is legal and valid.

7. Our answer to the aforesaid point is in the affirmative for the following reasons:

It is an undisputed fact that the assessee opted to avail composite tax benefit u/s 17 of the KST Act. No doubt, the petitioner has filed application before the assessing officer within the stipulated period seeking permission to avail of the benefit of payment of composite tax on its total turnover. The said application was not considered by the assessing officer by passing an order. Therefore, reliance is placed by the assessing officer upon Rule 8B that application filed by the assessee cannot be permitted to be withdrawn on the basis of amended rule which came into force on June 8, 2001. Firstly, it has no application to the fact-situation as it has no retrospective effect. Secondly, amended rule not permitting the applicant to withdraw the application does not amount to granting permission to avail of the payment of composite tax by the petitioner u/s 17(6)(i) of the Act. A careful reading of Section 17(6)(ii) of the Act clearly discloses that any application filed by the dealer to avail of the benefit of payment of composite tax to the assessing authority, unless permitted dealer cannot avail of the said

benefit under the said provision.

8. Undisputedly, there is no such permission accorded by" the assessing officer under the above provision in favour of the petitioner. Therefore, the benefit availed of by the petitioner-assessee regarding payment of tax u/s 5B cannot be stopped as the petitioner is not permitted to avail of the benefit u/s 17(6)(ii). Therefore, finding recorded by the assessing officer and the appellate authorities is not only erroneous but also suffers from error in law and the conclusions arrived on the basis of judgment of apex court referred to supra for the assessment year is totally inapplicable to the fact-situation. The assumption of the assessing officer and appellate authorities that the assessee has opted to avail of the benefit u/s 17(6)(ii) of the Act is a non-existing fact as there is no permission granted in this regard by the assessing officer. Therefore, the impugned orders of the assessing officer as well as the appellate authorities are liable to be set aside.

9. The revision petition is allowed. The orders passed by the appellate authorities and the assessing officer are hereby set aside. The matter is remitted back to the assessing officer with a direction to re-examine the claim of the petitioner by considering the statement of objection and the books of account maintained in the normal course of business in accordance with law within eight weeks from the date of receipt of a copy of this order.