

(2015) 11 KAR CK 0351
In the Karnataka High Court
Case No : Civil Revision Petition No. 126/2012

J.K. Tyre & Industries Ltd.

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 19-11-2015

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 19-C

Karnataka Tax on Entry of Goods Act, 1979 — Section 11-A, 17, 17(1), 22

Citation : (2015) 11 KAR CK 0351

Hon'ble Judges : Vineet Saran and Mohan M. Shantana Goudar, JJ.

Bench : Division Bench

Advocate : Chaitanya Hegde, Adv. for N.D. Satish Chandra, Advocate, for the Appellant; T.K. Vedamurthy, HCGP, for the Respondent

Final Decision : Allowed

Judgement

Vineet Saran, J.—This Revision Petition is filed by the assessee challenging the order dated 27th January 2011 passed by the Karnataka Appellate Tribunal "CKAT" for short), Bangalore in STA No. 2344/2010.

2. Brief facts of this case are that the petitioner-assessee is engaged in the manufacture and sale of Automotive Tyres, Tubes and Flaps and allied products including Radial Tyres for trucks and buses and registered under the Karnataka Tax on Entry of Goods Act, 1979 "CKTEG Act" for short) as well as other related Acts. The dispute relates to the Assessment Year 2001-02. The entire dispute for the said Assessment Year revolves around two notifications, one which is dated 31.3.2000, issued under Section 11-A of the KTEG Act, whereby an exemption has been provided for w.e.f. 1.4.2000 from payment of tax under the said Act "on the entry of goods into local area which are for use by an Industrial Unit (excluding an oil refinery) as raw materials and component parts of goods manufactured and exported outside the country by such Unit". As such, by the said notification, exemption was granted from payment of entry tax on raw materials purchased for export of the manufactured goods. Although it is not on

record, but learned counsel for the parties accept that such benefit was given to the assessee for the assessment year 2000-01.

3. The other notification which requires consideration is dated 12.3.2001, again issued under Section 11-A of the KTEG Act, which provides for exemption from payment of tax under the said Act "on entry of raw materials, components, consumables (excluding petroleum products like diesel and furnace oil), packing materials for use in manufacture of products under expansion programme into a local area caused by the industrial Unit for a period of ten years from the commencement of production, subject to the same restrictions and conditions as specified under Notification dated 12.3.2001 issued under Section 19-C of the Karnataka Sales Tax Act, 1957." Another Notification of the same date dated 12.3.2001 provided for the similar exemption, but conditions had been laid down, which shall be dealt with later at the relevant stage.

4. The petitioner - JK Tyre & Industries Limited is the successor of Vikrant Tyres Limited. For the relevant Assessment Year 2001-02, the Assessing Officer vide its order dated 16.5.2005 has granted the benefit of both the Notifications to the petitioner-assessee, and made the calculation, regarding which there is no dispute between the parties. By the said order, the total entry tax on raw materials was determined at Rs. 2,98,12,716.43, and after computing the total production of the Unit to be 47,945 tons and the export sales to be 15,224 tons, the proportionate entry tax on raw materials used for production which was exported was determined at Rs. 94,66,447/-. This benefit was thus given by the Assessing Officer under the Notification dated 31.3.2000.

5. The Assessing Officer then proceeded to calculate the benefit to be granted to the assessee under the Notification dated 12.3.2001. For determining the expanded or enhanced production for the year in question, one of the accepted procedure was to calculate the average production of the previous three years, and taking that as the base production quantity, the production made in excess of the same was to be considered as the expanded capacity. By adopting such method, the average tax paid on the production in the previous three years was determined at Rs. 1,81,51,939/-. The total tax payable (without exemption) for the year in question was found at Rs. 2,98,12,717/-. Thus the difference of the two, which comes to Rs. 1,16,60,778/-, was the exemption to be granted under the Notification dated 12.3.2001. Accordingly, after determining the exemption for export under Notification dated 31.3.2000 to be Rs. 94,66,447/-, and the exemption on the expanded production under Notification dated 12.3.2001 to be Rs. 1,16,60,778/-, the total exemption allowable to the assessee for the assessment year in question came to Rs. 2,11,27,225/-. The matter became final, as the said order of the Assessing Officer was not challenged by either of the parties.

6. Then after a gap of a little less than five years, a notice under Section 17 of the KTEG Act was issued to the petitioner-assessee, stating that the computation of entry tax on raw materials was found to be erroneous and thus resulted in

short levy of entry tax on raw materials, for which the assessee was required to give its reply. After considering the reply, the Assessing Officer deleted the benefit granted under the notification dated 31.3.2000 (relating to exports) and allowed only such exemption which was to be granted under the notification dated 12.3.2001 (relating to expansion of existing unit), and accordingly rectified the assessment order exercising powers under Section 17 . The appeals filed by the assessee before the Joint Commissioner of Commercial Taxes as well as the KAT, were both dismissed. Aggrieved by the said orders, this Revision Petition is filed.

7. We heard Sri Chaitanya Hegde, learned counsel appearing alongwith Sri N.D. Satish Chandra, learned counsel for the petitioner as well as Sri T.K. Vedamurthy, learned Government Pleader appearing for the respondent and perused the records.

8. This petition was admitted on the following questions of law:

1. Under the facts and circumstances of the case whether the original assessment order suffered with any mistake apparent on record as stated by the authorities and the Appellate Tribunal conferring jurisdiction on them to invoke Section 17 of the KTEG Act?

2. Whether the finding of the authorities and the Appellate Tribunal ultimately amounting to depriving the petitioner from any benefit provided under the 31.03.2000 notification (Annexure-"B") is sustainable in law?

3. Whether the impugned judgment is based upon irrelevant considerations and reasoning, ignoring the binding decisions of the Apex Court cited in the case and therefore not sustainable in law?

9. The submission of the learned counsel for the petitioner is that Section 17 of the KTEG Act can be invoked only for rectifying any mistake apparent from the record, and not for correcting the order which may have been passed on merits and could be challenged in appeal or Revision. In this regard it is contended, that once after having considered the two Notifications, an opinion has been formed by the Assessing Officer, and benefit has been granted to the assessee, subsequently forming an opinion that the benefit of both the notifications could not be granted, would amount to change of opinion, for which the provisions of Section 17 of the KTEG Act could not be invoked. On merits, learned counsel has submitted that there is no bar to a Unit being granted exemption under two notifications, which function independently. In the present case, one notification is for grant of exemption for promoting exports, whereas the other notification is for promoting expansion of the existing Unit. If a Unit qualifies for being granted benefit under both the notifications, then unless the law prohibits such benefit to be given under both the notifications, the petitioner would be entitled to the same.

10. Per contra, Sri Vedamurthy, learned High Court Government Pleader

appearing for the respondent has submitted that the assessee would not be entitled to the benefit of both the notifications with regard to export as well as expansion of existing unit, and that there has been arithmetical calculation mistake in the initial order of the Assessing Officer, whereby the assessee has been granted exemption under both the notifications, which goes to the detriment of the Revenue. According to him, the exemption was extended to the Unit in both the notifications with regard to export, taking average of the previous three years tax liability into consideration.

11. Having heard learned counsel for the parties and considering the entire facts and circumstances of the case, we are of the opinion that this petition deserves to be allowed for the following reasons.

12. Section 17(1) of the KTEG Act reads as under:

17. Rectification of mistakes:-- (1) With a view to rectifying any mistake apparent from the record, the assessing authority, appellate authority or revising authority may, at any time, within five years from the date of an order passed by it, amend such order:

Provided that an amendment which has the effect of enhancing an assessment or otherwise increasing the liability of the assessee shall not be made unless the assessing authority, appellate authority or revising authority, as the case may be, has given notice to the assessee of its intention to do so and has allowed the assessee a reasonable opportunity of being heard.

13. The Supreme Court, in the case of Deva Metal Powders Pvt. Ltd. Vs. Commissioner, Trade Tax, U.P., , while considering a similar provision relating to rectification of mistakes under the U.P. Trade Tax Act, held, in paragraphs 10 and 11, as under:

10. A bare look at Section 22 of the Act makes it clear that a mistake apparent from the record is rectifiable. In order to attract the application of Section 22 , the mistake must exist and the same must be apparent from the record. The power to rectify the mistake, however, does not cover cases where a revision or review of the order is intended. "Mistake" means to take or understand wrongly or inaccurately; to make an error in interpreting; it is an error, a fault, a misunderstanding, a misconception. "Apparent" means visible; capable of being seen, obvious; plain. It means "open to view, visible, evident, appears, appearing as real and true, conspicuous, manifest, obvious, seeming." A mistake which can be rectified under Section 22 is on which is patent, which is obvious and whose discovery is not dependent on argument or elaboration. In our view rectification of an order does not mean obliteration of the order originally passed and its substitution by a new order. What the Revenue intends to do in the present case is precisely the substitution of the order which according to us is not permissible under the provisions of Section 22 and therefore, the High Court was not justified in holding that there was mistake apparent on the face of the record. In order to bring an application under Section 22 , the mistake must be

"apparent" from the record. Section 22 does not enable an order to be reversed by revision or by review, but permits only some error which is apparent on the face of the record to be corrected. Where an error is far from self-evident, it ceases to be an apparent error. It is, no doubt, true that a mistake capable of being rectified under Section 22 is not confined to clerical or arithmetical mistake. On the other hand, it does not cover any mistake which may be discovered by a complicated process of investigation, argument or proof. As observed by this Court in *Master Construction Co. (P) Ltd. Vs. State of Orissa and Another*, , an error which is apparent from record should be one which is not an error which depends for its discovery on elaborate arguments on questions of fact or law.

11. "Mistake" is an ordinary word but in taxation laws, it has a special significance. It is not an arithmetical error which, after a judicious probe into the record from which it is supposed to emanate is discerned. The word "mistake" is inherently indefinite in scope, as to what may be a mistake for one may not be one for another. It is mostly subjective and the dividing line in border areas is thin and indiscernible. It is something which a duly and judiciously instructed mind can find out from the record. In order to attract the power to rectify under Section 22 , it is not sufficient if there is merely a mistake in the order sought to be rectified. The mistake to be rectified must be one apparent from the record. A decision on a debatable point of law or a disputed question of fact is not a mistake apparent from the record. The plain meaning of the word "apparent" is that it must be something which appears to be so *ex facie* and it is incapable of argument or debate. It, therefore, follows that a decision on a debatable point of law or fact or failure to apply the law to a set of facts which remains to be investigated cannot be corrected by way of rectifications.

(emphasis supplied)

14. The mistake which is to be rectified should be apparent on the face of the record. It should not be a case of change of opinion. In the present case, the calculation made by the Assessing Officer in its order dated 16.5.2005, is admitted by both the parties to be as per the record. As has been rightly submitted by learned counsel for the petitioner, if a Unit is entitled to benefit of exemption under two notifications, which are independent of each other, and law does not bar or prohibit grant of such benefit, the assessee would be entitled to benefit under both the notifications. The first notification is with regard to the export and the other one is with regard to the expansion of an existing Unit. In the present case, the assessee is qualified for grant of exemption under both the notifications.

15. This may be explained by way of an example. A Unit which has a turnover of sales of, say, Rs. 10 crores, and exports goods worth Rs. 3 crores, it would be liable to pay tax only on raw materials required for production of goods of Rs. 7 crores, which would be as per the notification dated 31.3.2000. The same Unit may expand its production capacity and increase its turnover to Rs. 15 crores, in

which case, it would be entitled to additional benefit under the notification dated 12.3.2001, which would be exemption from payment of tax for the raw materials used for production of the additional turnover of Rs. 5 crores. By way of this example, it would be clear that the same Unit could be entitled to the benefit of both the notifications, i.e., dated 31.3.2000 and 12.3.2001. This position is not disputed by the parties.

16. The Tribunal, while dismissing the appeal, has held that the exemption benefit pertaining to 31.3.2000 notification would merge with the tax exemption already quantified, after deducting three years average tax liability from the total tax liability, and hence denied the benefit to the petitioner-assessee. This does not appear to be correct. There is no overlapping of exemption benefit to be granted to the petitioner-assessee in the present case. The Assessing Officer in its original assessment order dated 16.5.2005, has made very clear calculation segregating the benefit which was to be granted to the assessee under the two notifications, and after arriving at different amounts under each of the two notifications, the benefit was extended to the assessee.

17. Even otherwise, since it was a conscious decision taken by the Assessing Officer in granting benefit to the assessee under both the notifications, in our view, eventhough we find that the said benefit was rightly given, but if according to the Revenue, the same was incorrectly given, it could not be corrected by invoking the provisions of Section 17 of the KTEG Act.

18. As such, on merits, as well as on the question of invocation of the provisions of Section 17 of the KTEG Act, we are of the opinion that the questions of law are to be answered in favour of the assessee and against the Revenue.

Accordingly, the impugned order is quashed. Revision Petition is allowed.