

(2015) 06 KAR CK 0332
In the Karnataka High Court
Case No : S.T.R.P. Nos. 458-469 of 2012

JMC Projects (India) Ltd.

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 18-06-2015

Acts Referred:

Income Tax Act, 1922 — Section 34

Karnataka Value Added Tax Act, 2003 — Section 15, 38(1), 62, 63, 64

Citation : (2015) 52 GST 435 : (2015) 86 VST 205

Hon'ble Judges : Vineet Saran, J;Aravind Kumar, J

Bench : Division Bench

Advocate : Madhusudan R. Naik, Senior Counsel and Atul K. Alur, for the Appellant; K.M. Shivayogiswamy, A.G.A., Advocates for the Respondent

Judgement

Vineet Saran, J—This Court by order dated 07.02.2014, having noticed that the Tribunal had framed two questions for its consideration, had admitted these revision petitions to adjudicate the very same questions framed by the Karnataka Appellate Tribunal for adjudication and they read as under:

(1) "Whether, in the facts and circumstances of the appellant's case, the RA had the jurisdiction to invoke revision proceedings U/s.63-A of the Act.

(2) Whether, the turnover relatable to purchases of goods made from dealers availing of composition benefit U/s. 15 is deductible from the total contract receipts for purposes of arriving at the taxable turnover?"

2. The issue involved in these revision petitions relates to invoking of suo moto revisional powers by the Joint Commissioner of Commercial Taxes in exercise of the powers vested under Section 63A of the Karnataka Value Added Tax Act, 2003 (for short "KVAT Act"). It has been contended by the revision petitioner that Joint Commissioner did not possess jurisdiction to exercise the power under Section 63A of the Act on the ground that that said provision came to be inserted by Act No. 4/2006 with effect from 01.04.2006 and as such, for the period

anterior to 01.04.2006, Joint Commissioner cannot exercise the suo moto power to revise the order of assessment.

3. The petitioner is a Limited Company engaged in the business of civil works contracts of construction of commercial and residential buildings and is registered under the provisions of the KVAT Act.

4. The dispute in the present revision petitions relate to the assessment year 2005-06 i.e., for the period 01.04.2005 to 31.03.2006. For the said period, vide order dated 08.06.2006, the assessment was completed and the assessment order was passed under Section 38(1) of the KVAT Act. Invoking the provisions of Section 63A of the KVAT Act, which was inserted by the Karnataka Value Added Tax (Amendment) Act, 2006 [Karnataka Act No. 4 of 2006], the revisional authority issued notice for revising the order of assessment passed on 08.06.2006. A detailed reply was filed by the petitioner before the respondent-Joint Commissioner. After considering the same, the revision was partly allowed in favour of the assessee. Challenging the order of the revisional authority, the petitioner filed an appeal before the Karnataka Appellate Tribunal (KAT), which has been dismissed by order dated 27.06.2012. An objection was taken with regard to the applicability of Section 63A of the KVAT Act as the period of assessment was prior to 01.04.2006. Such objection of the petitioner was rejected by the Tribunal and the matter was dismissed on merits. Aggrieved by the said order, these revision petitions have been filed.

5. We have heard Sri Madhusudan R. Naik, learned Senior Counsel appearing along with Sri Atul K. Alur, on behalf of the petitioner as well as Sri K.M. Shivayogiswamy, learned AGA appearing for the respondent and perused the record.

6. Learned counsel for the petitioner has not challenged the order of the Tribunal on merits of the case and limited his submissions only with regard to the applicability of Section 63A of the KVAT Act. The case of the petitioner admittedly relates to the period prior to the date on which the Act No. 4 of 2006 had come into effect by which Section 63A was inserted. It has been submitted that in view of the fact that the said provision has not been given retrospective effect, the assessment order could not have been re-opened and proceedings initiated by the Joint Commissioner by invoking the provision of Section 63A of the KVAT Act is without authority of law. In support of his submission, reliance has been placed on the decision of the Apex Court in the case of Commissioner of Income Tax Vs. Vatika Township Private Limited, (2014) AIRSCW 5674 .

7. Per contra, Sri K.M. Shivayogiswamy, learned AGA appearing for the respondent has submitted that in the present case, the question of provision being retrospectively made applicable does not arise, as Section 63A of the KVAT Act was brought in prospectively with the power given to the Joint Commissioner to re-open or revise assessment of a period four years prior. He, thus, submitted that the Joint Commissioner has power to revise the assessment for the period

01.04.2005 to 31.03.2006, even though the period related prior to 01.04.2006, which was the date on which Section 63A of the KVAT Act had been inserted.

8. Chapter VII of the KVAT Act deals with Appeals and Revision. Section 62 of the KVAT Act provides for appeals to be filed against an order of assessment or any other order, before the appellate authority Section 63 of the KVAT Act provides for appeal against the order of the appellate authority before the appellate Tribunal. Section 64 provides for Revisional powers of Additional Commissioner and Commissioner, who may on his own motion call for and examine the record of any proceedings. Section 65 of the KVAT Act provides for Revision by High Court in certain cases. The Legislature, by the Amendment Act No. 4 of 2006, besides making several other amendments under the KVAT Act, also inserted a new Section 63A of the KVAT Act providing for Revisional powers of Joint Commissioner, which were in the same terms as provided for Additional Commissioner under Section 64 of the KVAT Act The said Section 63A of the KVAT Act came into effect from 01.04.2006. For ready reference, Section 63A of the KVAT Act is produced below:

"63-A. Revisional powers of Joint Commissioner.-

(1) The Joint Commissioner may on his own motion call for and examine the record of any order passed or proceeding recorded under this Act and if he considers that any order passed therein by any officer, who is not above the rank of a Deputy Commissioner, is erroneous in so far as it is prejudicial to the interest of the revenue, he may, if necessary, stay the operation of such order for such period as he deems fit and after giving the person concerned an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or canceling the assessment or directing a fresh assessment.

(2) The Joint Commissioner shall not exercise any power under this section, if.-

(a) the time for appeal against the order has not expired; or

(b) more than four years have expired after the passing of the order sought to be revised.

(3) The Joint Commissioner shall pass order under this section within a period of one year from the date of initiation of proceeding or calling for the records under this section, as the case may be.

(4) Every order passed in revision under this section shall, subject to the provisions of sections 63 and 64 be final.

(5) In computing the period of limitation for the purpose of sub-section (2), any period, during which any proceeding under this Section is stayed by an order or injunction of any court, shall be excluded.

(6) For the purposes of this Section, "record" shall include all records relating to

any proceedings under this Act available at the time of examination by the Joint Commissioner."

Clause (a) of Sub-Section (2) of the said Section provides for when the said power can be exercised by the Joint Commissioner and Clause (b) of Sub-Section (2) provides that the Joint Commissioner shall not exercise any power under the section if more than four years have expired after the passing of the order sought to be revised.

Sub-section (3) provides for conclusion of the proceedings, which is one year from the date of initiation of the proceedings.

9. The question which is to be considered by us is whether in the facts of this case, the power could have been exercised by the Joint Commissioner under Section 63A of the KVAT Act which came into force from 01.04.2006 for the assessment period 01.04.2005 to 31.03.2006. If we arrive at a conclusion that the Joint Commissioner can exercise such powers only for the tax period after 01.04.2006, as the Section 63A has come into effect from the said date, then exercise of such power by the Joint Commissioner in the present case cannot be justified as the same relates to Assessment Year 2005-06, which is prior to 01.04.2006. However, sub-section (2) of Section 63A of the KVAT Act makes it clear that the Joint Commissioner has the power to exercise revisional jurisdiction for a period which is not prior to four years from the date of the order sought to be revised. Meaning thereby that the Joint Commissioner gets the revisional power only after 01.04.2006 but the period with regard to which such power can be exercised could be prior to 01.04.2006.

10. Much emphasis has been laid by the learned counsel for the petitioner that if the concerned provision of the taxing statute is ambiguous and vague and is susceptible to two interpretations, then the interpretation which favours the assessee has to be preferred and not the one which favours the revenue. But such a question would arise only when there is ambiguity in the provision. From a plain reading of Section 63A of the Act, it is explicitly clear that the Joint Commissioner can exercise the power of revision with effect from, 01.04.2006. Sub-section (2)(b) of Section 63A of the KVAT Act would make it clear that such power cannot be exercised if four (4) years have expired after passing of the order sought to be raised. In such view of the matter, we need not also go into the question of retrospective applicability of Section 63A of the KVAT Act. In our view, the question of the said Section (inserted by Act 4 of 2006) being retrospectively applicable is not there at all. In the present case, it is only the provision as it exists which is to be interpreted and in our considered view, when the Section itself is clear that the Joint Commissioner can revise order which is issued up to four years prior, we need not consider as to whether Section 63A of the KVAT Act would be retrospectively applicable or not. In fact our view is supported by the judgment of Hon'ble Apex Court in the case of Addl. Commissioner (Legal) and Another Vs. Jyoti Traders and Another, AIR 1999 SC 526 : (1998) 8 JT 60 : (1998) 6 SCALE 141 : (1999) 2 SCC 77 : (1998) 3 SCR

67 Supp : (1998) AIRSCW 3825 : (1998) 8 Supreme 517 wherein the assessment for Assessment year 1985-86 was completed on 27.01.1989 and 28.02.1990 respectively. Notices for reopening came to be issued on 08.09.1994 and 11.01.1994 respectively. High Court of Allahabad quashed the same on the ground that sanction given after more than four (4) years from the end of Assessment Year 1985 was barred by virtue of limitation prescribed under Section 21(2) of U.P. Trade Tax Act, 1948 and as such amendment to Section 21 by adding proviso with effect from 19.02.1991 would not revive the limitation and on the date of amendment coming into force assessment orders has become time barred. This finding of the High Court was reversed and held that it is immaterial if the period of assessment or reassessment under Section 21(2) before the addition of the said proviso had expired and as such while reversing the decision of Allahabad High Court, it was held as under:

"25. The two decisions in the cases of Ahmedbad Manufacturing & Calico Printing Co. Ltd. and Biswanath Jhunjhunwalla & Anr. are more closer to the issue involved in the present case before us. They laid down that it is the language of the provision that matters and when meaning is clear, it has to be given full effect. In both these cases, this Court held that the proviso which amended the existing provision gave it retrospectively. When the provision of law is explicit, it has to operate fully and there could not be any limits to its operation This Court in Biswanath Jhunjhunwalla case said that if the language expressly so states or clearly implies, retrospectively must be given to the provision. Under Section 34 of the Income Tax, 1922, it is the service of the notice which is sine qua non, an indispensable requisite, for the initiation of assessment or reassessment proceedings where income had escaped assessment. That is not so in the present case. Under sub-section (1) of Section 21 of the Act before its amendment, the assessing authority may, after issuing notice to the dealer and making such inquiry as it may consider necessary, assess or reassess the dealer according to law. Sub-section (2) provided that except as otherwise provided in this section, no order for any assessment year shall be made after the expiry of 4 years from the end of such year. However, after the amendment, a proviso was added to sub-section (2) under which the Commissioner of Sales Tax authorizes the assessing authority to make assessment or reassessment before the expiration of 8 years from the end of such year notwithstanding that such assessment or reassessment may involve a change of opinion. The proviso came into force w.e.f. February 19, 1991. We do not think that sub-section (2) and the proviso added to it leave anyone in doubt that as on the date when the proviso came into force, the Commissioner of Sales Tax could authorise making of assessment or reassessment before the expiration of 8 years from the end of that particular assessment year. It is immaterial if a period for assessment or reassessment under sub-section (2) of Section 21 before the addition of the said proviso had expired. Here, it is the completion of assessment or reassessment under Section 21 which is to be done before the expiration of 8 years of that particular assessment year. Read as it is, these provisions would mean that the

assessment for the year 1985-86 could be re-opened up to March 31, 1994. Authorization by the Commissioner of Sales Tax and completion of assessment or reassessment under sub-section (1) of Section 21 have to be completed within 8 years of the particular assessment year. Notice to the assessee follows the authorization by the Commissioner of Sales Tax, its service on the assessee is not a condition precedent to re-open the assessment. It is not disputed that a fiscal statute can have retrospective operation. If we accept the interpretation given by the respondents, the proviso added to sub-section (2) of Section 21 of the Act becomes redundant. Commencement of Act can be different than the operation of the Act though sometime both may be the same. Proviso now added to sub-section (2) of Section 21 of the Act does not put any embargo on the Commissioner of Sales Tax not to reopen"; the assessment if period, as prescribed earlier, had expired before the proviso came into operation. One has to see the language of the provision. If it is clear, it has to be given its full effect. To reassure oneself, one may go into the intention of the legislature in enacting such provision. The date of commencement of the proviso to Section 21(2) of the Act does not control its retrospective operation. Earlier the assessment/re-assessment could have been completed within four years of that particular assessment year and now by the amendment adding proviso to section 21(2) of the Act it is eight years. The only safeguard being that it is after satisfaction of the Commissioner of Sales Tax. The proviso is operative from February 19, 1991 and a bare reading of the proviso shows that the operation of this proviso relates and encompasses back to previous eight assessment years. We need not refer to the provisions of the Income Tax Act to interpret proviso to Section 21(2) the language of which is clear and unambiguous and so is the intention of Legislature. We are, thus, of the view that the High Court was not right in quashing the sanction given by the Commissioner of Sales Tax and notices issued by the Assessing Authority in pursuance thereof."

11. Learned Senior counsel appearing for the petitioner has also placed reliance on the decision of the Apex Court in the case of Vatika Township Private Limited (supra) to bring home the point that the rule against retrospective operation is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act or arises by necessary and distinct implication. There is no quarrel with this proposition as unless a provision is made retrospectively applicable, it would deem to be applicable prospectively. However, as we have already observed above, we need not go into the question of the provision being applicable retrospectively or not, as sub-section 2(b) of Section 63A is itself clear that the Joint Commissioner can exercise power of revision upto four years prior to the passing of the order sought to be revised.

12. For the forgoing reasons, we are of the firm view that the Joint Commissioner had power to revise the assessment order dated 08.06.2006 relating to the assessment period 2005-06 under Section 63A of the KVAT Act. We do not find any good ground to interfere with the order of the Tribunal which is impugned in

these petitions.

Accordingly, the questions of law are answered in favour of the Revenue and these Revision Petitions are dismissed.

13. At this stage, Sri Madhusudan R. Naik, learned Senior Counsel appearing for the petitioner sought leave of the Court to challenge the vires of sub-section (4) of Section 15 of the KVAT Act. In our view, it is always open to the petitioner to avail such remedy available under law for redressal of his grievance, if any.