
(2008) 12 KAR CK 0035

In the Karnataka High Court

Case No : Writ Petition No"s. 16211-13 of 2008

J.M.C. Projects (India) Ltd., Engineers and Contractors

APPELLANT

Vs

The Deputy Commissioner of Commercial Taxes, The
Commercial Tax Officer and The Commissioner of Commercial
Taxes, Karnataka Commercial

RESPONDENT

Date of Decision : 16-12-2008

Acts Referred:

Karnataka Value Added Tax Act, 2003 — Section 2 (24), 39

Citation : (2009) ILR (Kar) 1736 : (2009) 1 KCCR 403 : (2009) 25 VST 216

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : G. Sarangan for K.S. Ramabhadran, for the Appellant; K.M. Shivoyogiswamy, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—The writ petitioner who is a dealer under the provisions of Karnataka Value Added Tax Act, 2003 is complaining that a non competent authority is delving into the affairs of the petitioner in respect of the concluded assessment for the years April 2005- March 06 , April 2006- March 07 , April 2007- March 08, by virtually holding a roving enquiry into the concluded assessment; that it is not permissible for the second respondent - the Commercial Tax Officer Audit-13, DVO-1, Gandhinagar, Bangalore-9 - to examine the matters in such a manner; that the respondent is neither competent nor the prescribed authority to examine the concluded assessments which are to be reopened; that the proceedings are one without jurisdiction and therefore the communications at Annexures U1, U2, V and X in the series are incompetent and not valid; such proposal and action are required to be quashed.

2. Submission of Sri. Sarangan, learned Senior Counsel appearing for the petitioner is that assessment for these years had been finalised by the prescribed authority, the Deputy Commissioner of Commercial Taxes; that the first

respondent, on elaborate examination of the return filed and on participation by the petitioner in the proceedings before the first respondent, the assessments had been finalised; that in respect of such matters while there was scope to reopen the assessment by the prescribed authority u/s 39 of the Act, the second respondent seeking to assume jurisdiction under the Act, to reassess, is an act lacking in jurisdiction; that the second respondent being an official inferior in rank to the first respondent, cannot be allowed to act in a manner prejudicial to the petitioner; that the second respondent is starting a roving enquiry into the assessments that had been concluded and assessed by the first respondent and therefore the impugned notices are without jurisdiction and are required to be quashed. Learned Counsel in this context has drawn my attention to the provisions of Section 39 of the Act providing for re assessment to tax any escaped turnover.

3. While an examination of the impugned communications only shows that the proceeding if at all lead to reopening of assessment in terms of Section 39 of the Act, the argument that the second respondent lacks competence or jurisdiction to issue such notices is taken care of by the appraisal of the information to the petitioner in the penultimate para of communication dated 5-7-2008 wherein the second respondent has intimated the petitioner that the Commissioner of Commercial Taxes has conferred on the Second respondent the jurisdiction for reassessment u/s 39 of the Act.

4. While it is true that any power is required to be exercised in a bona fide manner and for a legitimate purpose, a mere communication apprising the petitioner that the authorities are desirous of verifying the correctness of concluded proceedings, including production of books of accounts and records which may merit a re-look in itself cannot be characterised as an act without jurisdiction, or an act which is mala fide or with any ulterior purpose.

5. So far as the question of jurisdiction is concerned, the Act does not make distinction vis-a-vis the rank of the officer but the requirement is that the officer of the Department should have been authorised to act under the Act as Prescribed Authority" in terms of Section 2(24) of the Act read with Section 39 of the Act which reads as under:

2(24): Prescribed Authority" means an officer of the Commercial Taxes Department, authorised by the Government or the commissioner to perform such functions as they be assigned to him.

6. That the very first communication at Annexure U dated 17-9-2008 having recited that the Commissioner is conferring the power on the second respondent for the purpose of Section 39 of the Act unless this position is sought to be disputed, it cannot be disputed that the second respondent is also the Prescribed Authority".

7. The argument of the learned senior counsel for the petitioner, that the first respondent had already been authorised as Prescribed Authority" for the purpose

of Section 39 of the Act and therefore there is no question of Commissioner authorising any other officer more so an officer lower in rank for the purpose, cannot be accepted.

8. While neither Section 39 nor Section 2(24) prescribes such limitation, the further submission that the Commissioner has virtually taken away the jurisdiction to act as a Prescribed Authority" in respect of the petitioner from the first respondent and has conferred that jurisdiction on the second respondent and that too without affording an opportunity of hearing to the petitioner and is therefore violative of principles of natural justice, cannot be accepted for the reason that it is not a right of an assessee to insist that a particular officer alone has to examine the affairs of the business transactions of the assessee. The only requirement under the statutory provision is the person should be a Prescribed Authority". Who is an Assessing Authority or the Prescribed Authority, at the relevant point of time will be decided by the Government or the Commissioner even as per the statutory provisions.

9. I do not find any inhibition or limitation placed on either the Government or the Commissioner for the purpose of Section 2(24) of the Act to prescribe only one authority as Prescribed Authority". There may be several authorities who are also designated with the power to act as Prescribed Authority". That by itself will not render the action bad. The only right the petitioner has is that the petitioner should have an opportunity before finalising the reassessment even in terms of Section 39 of the Act. In a matter of this nature, even at the stage of proposition notice, the petitioner cannot complain in advance. There is a possibility of the authority being satisfied on a perusal of the books of account to be placed before the authority and under such circumstances there may not be any need to invoke the power for reopening u/s 39 of the Act.

10. Such being the position I do not find any reason to interfere with the impugned notices. It is open to the petitioner to make available the records or books of accounts or the requirements as intimated to the petitioner under the provisions of the Act by the "Prescribed Authority" or the "Competent Authority" unless the requirement of the petitioner is one which competent him to act beyond the provisions of the Act. Submission of Sri. Sarangan, learned senior counsel that mere change of opinion on the part of any competent authority cannot be a ground for proceeding u/s 39 is also not required to be examined as the petitioner has not issued any notice u/s 39 of the Act, but the present enquiry appears to be for the satisfaction of the prescribed Authority that the assessment already concluded if warrants reassessment or otherwise.

11. It is open to the petitioner to pursue other remedies as and when required and as available in law. Otherwise this writ petition is dismissed.