
(2016) 02 KAR CK 0297

In the Karnataka High Court

Case No : STA Nos. 2/2016, 22-32/2016 and STA Nos. 3/2016, 55-65/2016, 4/2016, 44-54/2016, 5/2016 and 33-43/2016

Jones Lang Lasalle Property Consultant India (P) Ltd.

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 22-02-2016

Acts Referred:

Karnataka Value Added Tax Act, 2003 — Section 39 [2], Section 39[2], Section 64[1]

Citation : (2016) 02 KAR CK 0297

Hon'ble Judges : Jayant M. Patel and S. Sujatha, JJ.

Bench : Division Bench

Advocate : R.V. Prasad, Advocate, for the Appellant; K.M. Shivayogiswamy, AGA, for the Respondent

Final Decision : Disposed Off

Judgement

Jayant M. Patel, J.—1. The appeals are admitted. Mr. K.M. Shivayogiswamy, learned Additional Government Advocate takes notice on admission for the respondent and with the consent of learned Counsel for the parties the matters are taken up for final disposal.

2. As in all appeals, common questions arise for consideration, they are being considered simultaneously. We may record that since the respective assessment period differ, separate matters are numbered. Otherwise, the issues involved are common and can be considered by common decision.

3. The short facts of the case appears to be that the appellant herein filed return under the Karnataka Value Added Tax Act, 2003 [hereinafter referred to as "KVAT Act", for short] beyond the period of six months showing the additional tax liability of Rs. 5,02,09,566/-. The Deputy Commissioner of Commercial Taxes passed an order for re-assessment under Section 39 [2] of the KVAT Act and the tax was determined with penalty, by different orders. The matters were carried in revision before the Additional Commissioner of Commercial Taxes [hereinafter

referred to as "Revisional Authority" for short] in suo motu revision by issuance of notice under Section 64[1] of the KVAT Act. The appellant herein filed reply by way of objections to the notices issued by the Revisional Authority on 2.12.2015. The Revisional Authority passed the order under Section 64[1] of the Act, revising the Order dated 23.07.2013 passed by the Assessing Authority - Assessing Officer. On 21.01.2016, the Prescribed Authority passed the consequential Order under Section 39[2] in addition to levying of penalty and interest. Under the circumstances, the present appeals before this Court.

4. We have heard Mr. R.V. Prasad, learned Counsel for the Appellant in all the matters and Mr. K.M. Shivayogiswamy, learned Additional Government Advocate appearing for the Respondent-Revenue.

5. There are mainly two aspects of the matter. One is the binding effect of the circular issued by the Commissioner dated 7.7.2008 and the interpretation thereof and the another is interpretation of the view taken by this Court in the decision which have been referred to as that of the learned Single Judge and of the Division Bench in the Order.

6. On the first aspect, one may record that the Circular dated 7.7.2008 vide No. VAT/CR-31/2008-09 it has been provided as under:

"Any revised return filed by a dealer beyond six months from the end of the relevant tax period is liable to be rejected. However, if such revised return indicates any additional tax liability, then in such a case, the return filed should be accepted with any payment made and re-assessment proceedings should be got initiated through the jurisdictional JC-DVO."

7. We may, at the outset, record that so far as binding effect of the Circular is concerned, learned Counsel for the Appellant did assert and the learned Government Advocate for the Revenue has not been able to dispute the binding effect of the circular.

8. It further transpires that the Revisional Authority considered that the circular refers to the additional tax liability of tax and it does not refer to any credit of input tax. Learned Additional Government Advocate appearing for the Revenue also supported the said say of the Revisional Authority in the impugned order.

9. On the plain and simple reading of the circular, it transpires that whenever the word is "any additional tax liability" it would mean "additional net tax liability" because the moment there is use of the word "additional", it would mean that either the tax is already paid, but shortly paid or even after the credit of input tax, the further liability of the tax remains which is required to be paid by the return. The attempt to contend that it should be revised return only for the purpose of absolute additional tax liability and not to include the adjustments thereof with input credit, cannot be countenanced for the simple reason that whenever the matter pertains to payment of additional tax liability, it would always mean the credit or set off to be made of the tax already paid and the

consequential amount of tax by way of additional tax liability. If the credit or adjustment is to be given to the amount of tax already paid, there is no reason why the credit of input tax should not be adjusted against the tax liability and thereafter to arrive at the additional tax liability. In our view, the interpretation put forward on behalf of the Revenue to the circular dated 7.7.2008 cannot be accepted.

10. On the second aspect, while dealing with the decision of this Court, the observations are made by the Revisional Authority in the impugned order that in the case of *M/s. Infinite Builders & Developers and Centum Industries Bangalore v. Additional Commissioner of Commercial Taxes, Zone-II, Bangalore*", the observations were made otherwise for the credit of the input tax and therefore the claim made by the assessee of input tax cannot be accepted when the revised return is filed beyond the period of six months.

11. We may first refer to the decision of the learned Single Judge of this Court in the case of *"Federal Mogul Goetze [India] Limited v. Additional Commissioner of Commercial Tax [Audit] 52, Bangalore and Others"* reported in [(2011) 42 VST 439 (KARN)]. It was observed by the learned Single Judge that the Commissioner's circular is absolutely sustainable. Further, the learned Single Judge did observe that filing of the belated revised returns and their acceptance by the concerned Officer would not put the exchequer to any prejudice and ultimately it was found that the revised return for the additional tax was permissible.

12. It is also brought to our notice during the course of the hearing that the above referred decision of the learned Single judge in the case of *"Federal Mogul Goetze [India] Limited [supra]* was carried before the Division Bench of this Court in Writ Appeal No. 4900/2011 and allied matters and vide Judgment dated 22.04.2015, the Division Bench of this Court did not interfere with the view taken by the learned Single Judge.

13. In another decision of the Division Bench of this Court in the case of *"State of Karnataka v. Centum Industries Private Limited, Bangalore"* reported in [, (2014) (80) KLJ 65 [HC] [DB], it was a case where no claim of input tax credit was ever made. In the appeal before the Tribunal, the input tax credit was granted. When the matter came up for further revision before this Court, this Court found at paragraph-14 as under:

"If the assessee is not putting forth a claim for input tax deduction in the returns filed in July 2006 nor as he put forth such a claim in a revised claim which he could have filed within 6 months there from his right to claim input deduction is lost. He cannot for the first time in the returns filed in February 2007 put forth a claim for input tax deduction as the said return was not related to the tax period during which the input tax was paid."

14. This Court further found that the Tribunal did not consider the said aspect and ultimately set aside the Order of the Tribunal. The distinguishing aspect

which deserves to be taken note of is that it was not matter of input credit to be reflected in the return of the tax period during which input tax was paid. Since the amount relating to input tax was to be decided in the respective period, the Court made observation thereto. As such, in the said decision, this Court did not find that even if the input tax credit is claimed for the respective tax period for which the return has been filed resulting into additional tax liability, then also input tax credit cannot be given adjustment thereof or would be unavailable. We are of the view that the Revisional Authority has not properly considered the above referred decision of this Court in Centum Industries Private Limited [supra].

15. If the matter is examined in the light of the aforesaid two aspects and the reasons recorded by the Revisional Authority are considered, we find that the order cannot be sustained in the eye of law. Broadly, there are two reasons. One is that the correct interpretation of the circular as observed by us hereinabove has not been made nor the Revisional Authority has properly considered the decisions of this Court even if the principles of law of binding nature of the precedent to be followed.

16. Considering the facts and circumstances, we find that it would be appropriate to refer the matter to the Revisional Authority for reconsideration thereof in the light of the observations made by this Court in the present Judgment for a fresh decision.

17. In view of the aforesaid observation and discussion, the impugned order passed by the Revisional Authority are quashed and set aside with a further direction that the proceedings of the revision shall stand restored. The Revisional Authority is further directed to decide the matter in the light of the observations made by this Court in the present Judgment and after giving opportunity of hearing to the parties concerned. The decision shall be rendered as early as possible preferably within a period of three months from the date of receipt of certified copy of the Judgment of this Court.

18. It has been stated by the learned Counsel for the Appellant that based on the order of the Revisional Authority, the demand notice has been issued and therefore when we have quashed the order passed by the Revisional Authority, any consequential order based on the order of the Revisional Authority would also no more survive for consideration. Hence, the appeals are allowed to the aforesaid extent. Considering the facts and circumstances, no order as to costs.

19. I.A. No. 2/2016 would not survive for consideration in view of final disposal of the appeals. Hence, IA No. 2/2016 shall stand disposed of.