
(2006) 06 KAR CK 0095
In the Karnataka High Court
Case No : T.A. and E.T. No. 6 of 2002

Kirloskar Power Supply Co. Ltd.

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 22-06-2006

Acts Referred:

Karnataka Entry Tax Act, 1979 — Section 15 (2), 3 B

Citation : (2007) 5 VST 395

Hon'ble Judges : R. Gururajan, J;Jawad Rahim, J

Bench : Division Bench

Advocate : R.V. Prasad, for the Appellant; S. Sujatha, HCGA, for the Respondent

Final Decision : Allowed

Judgement

R. Gururajan J.

1. Appellant is before this Court praying to set aside the order dtd 25-2-2002 passed by the Addl., Commr., of Commercial Taxes.

2. Appellant is engaged in the activity of generation of electrical energy for sale and is a dealer registered under the provisions of the Karnataka Entry Tax Act. The appellant company commenced its activity of generation of electrical energy to be sold to its sister concern, M/S Kirloskar Ferrous Industries Ltd., and to other parties in the State of Karnataka through banking and wheeling of energy generate with the Karnataka Power Transmission corporation ltd., The Government issued a licence to M/S Kirloskar Oil Engines Ltd., in the matter of generation of power. Agreements were entered into and thereafter the appellant started generation of power using high speed diesel and since 1997, it has been using furnace oil as a raw material for the said activity. The furnace oil was initially procured from M/S Bharath Petroleum Corporation Ltd, Chennai and M.S Indian Oil Corporation Ltd., Goa, Besides causing the entry of furnace oil, the appellant has also been causing the entry of goods, among others such as high speed diesel and lube oil etc. The assessing authority passed an exparte

assessment order for the year 1997-98 subjecting to tax the causing of the entry of furnace oil, diesel, lube oil and diesel engine spares etc., at the rate of 4%. Aggrieved by the same, appellant filed an appeal before the Joint Commissioner of Commercial Taxes, who by his order dtd 29-9-1999 disposed of the appeal by setting aside the order of assessment and remanded the matter for redecision on the ground of violation of rules of natural justice. After remand, a fresh order of assessment was passed subjecting to tax the causing of the entry of furnace oil, diesel and lube oil at the rate of 1% for the period from 1-4-1997 and upto 6-1-1998 and at the rate of 2% for the period from 7-1-1998 and upto 31-3-1998 treating the same as raw materials. Rectification application was filed before the authorities. During the pendency of the rectification proceedings, the revisional authority issued a suo-moto revisional notice dtd 10-12-2001 proposing to revise the order dtd 29-9-1999 passed by it for the reason that the said order was erroneous and prejudicial to the interest of the revenue. Reply was filed and thereafter the revisional authority has chosen to pass the impugned order setting aside not only the order of the first appellate authority but also the order of the assessing authority dtd 9-12-1999. Aggrieved by this order, appellant is before us by raising the following questions of law:

Whether on the facts and in the circumstances of the appellant's case,

1. the revisional authority was justified in law in dwelling upon a topic which was not the subject matter of the appeal considered by the first appellate authority, whose order was sought to be suo moto revised u/s 15(2) of the Act.
2. the revisional authority was justified in considering the aspect of refund of taxes especially in the light of the fact that the application for rectification of mistake apparent on the face of record was pending consideration before the assessing authority?
3. the revisional authority was justified in law in coming to the conclusion that the appellant has passed on the element of tax to its customers and therefore hit by the doctrine of unjust enrichment, especially in the light of the fact that the revisional authority did not have an occasion to examine the books of accounts maintained by the appellant?
4. can it be said that the order dtd 29-9-1999 passed by the first appellate authority remanding the matter to the assessing authority for fresh disposal in accordance with law erroneous and prejudicial to the interest of the revenue for the revisional authority to invoke the revisional power vested in him u/s 15(2) of the Act?
5. can it be held that u/s 15(2) of the Act, the revisional authority had the powers to revise the order passed by an assessing authority, who is below the rank of a Deputy Commissioner of Commercial Taxes?
6. the revisional authority was justified in law in levying penalty u/s 3-B of the Act and whether at all, the revisional authority had the power and jurisdiction to

levy penalty u/s 3-B of the Act?

3. Notice was issued and respondents have entered appearance.

4. Sri Prasad, learned Counsel would essentially argue that the revising authority could not have set aside the assessment order as has been done in the case on hand. He refers to us Section 15 of the Act to contend that only the joint commissioner could set aside the order of the assessing authority. In so far as the merits of the matter is concerned, he would say that subsequent to remand, assessment order has already been passed and that therefore the revisional authority could not have set aside that order in the light of the appellate order having been acted upon by the parties in the case on hand. He would further argue that a look at the order of the appellate authority would show that the appellate authority has not considered any issues on merits for the purpose of prejudice to the State in terms of Section 15 of the Act. He therefore wants an interference.

5. Per contra, learned Counsel for the State would say that the revisional authority was justified in the light of the order passed by the Joint Commissioner of Commercial Taxes. She would say that what is impermissible in law is done by the assessing officer and that therefore the revisional authority is justified in the case on hand.

6. After hearing, we have carefully perused the material on record.

7. Section 15 of the Karnataka Entry Tax Act provides for revisional powers to the Commissioner, Additional Commissioner, Joint Commissioner and Deputy Commissioner. The Commissioner has power of revision as against an order passed by the Additional Commissioner, Joint Commissioner, and Deputy Commissioner. Additional Commissioner has power of revision as against the order passed by the Joint Commissioner. Joint Commissioner similarly has revisionary powers in case of an order being passed by the Deputy Commissioner. Jurisdiction is clearly defined u/s 15 of the Act. In the case on hand, it is seen that the Additional Commissioner has rightly invoked his power u/s 15 of the Act for the purpose of revising the order passed by the Joint Commissioner. However, while passing the final order he has chosen to set aside the subsequent assessment order passed by the Assessing Authority, This could not have been done by him in terms of Section 15 of the Act. Mr. Prasad, learned Counsel is therefore right in his submission that the revisional order dated 9-12-1999 has acted beyond the power grants to him in terms of Section 15 of the Act. His submission is well founded.

8. It is further seen from the material on record that the Assistant Commissioner of Entry Tax has passed an exparte order in the case on hand. That order was challenged before the Joint Commissioner. The Joint Commissioner after noticing the contentions has come to a categorical conclusion on facts that before the expiry of the time asked, for producing the books of accounts, the assessing authority has passed the exparte order which is not correct. He in those

circumstances, set aside the exparte order and remanded the matter back for fresh disposal in accordance with law. The said order in our view does not deal with the merits of the matter. The order was passed only in the light of violation of rules of natural justice. That cannot be construed as prejudicial to the interest of the revenue in terms of Section 15 of the Act. In fact a similar contention was noticed by the Supreme Court in 119 STC 558 SC. The Supreme Court has ruled in unmistakable terms that setting aside of the assessment order on the ground of rules of natural justice cannot said to be prejudicial to the interest of the revenue for the purpose of revision. The said judgment is applicable to the facts of this case. His submission is well founded and it is to be accepted in the light of the judgment of Apex Court.

9. Before concluding, we deem it proper to notice the submission of the learned HCGA in the case on hand. She says that the time for revision by Joint Commissioner is over in terms of Section 15(2) of the Act. She would say that the assessment order suffers from errors of law and errors of fact and that therefore she says that the Government has to be given an opportunity to workout its remedial action on the facts of this case. Her submission is reasonable.

10. In the result, we accept this appeal. The order of the revisional authority is set aside. Questions of law framed are answered in favour of the assessee and against the State. However, we deem it proper to reserve liberty to the respondent to workout their remedial measure if available in law and in accordance with law.