(2014) 07 KAR CK 0086

In the Karnataka High Court

Case No : Sales Tax Revision Petition Nos. 313, 350 and 351 of 2012

Kolte Patil Developers Limited — APPELLANT

Vs

State of Karnataka — RESPONDENT

Date of Decision : 10-07-2014

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 10, 12(3), 18(3), 5, 5-A

Citation : (2014) 79 KarLJ 553 : (2015) 85 VST 207

Hon'ble Judges : N. Kumar, J;B. Manohar, J

Bench : Division Bench

Advocate : B.P. Gandhi, Advocate for the Appellant; S. Sujatha, Additional Government Advocate, Advocate for the Respondent

Judgement

N. Kumar, J.—These revision petitions are filed challenging the order passed by the Tribunal declining to grant the benefit of exemption from payment of tax u/s 6-B of the Karnataka Sales Tax Act, 1957, for the assessment years 2000-2001 and 2001-2002 though the said benefit was granted for the assessment year 2002-2003. The assessee is a limited company engaged in the works contract of construction of multistoried apartments. The business premises of the assessee was inspected. During the course of inspection, the inspecting authorities seized certain documents, thereafter processed and verified. The assessment orders were concluded under Sections 12(3) and 18(3) of the Karnataka Sales Tax Act on 18-12-2007 for the assessment year 2000-2001 and on 29-12-2007 for the year 2001-2002. The assessee has disputed the levy of turnover tax for the assessment years 2000-2001 and 2001-2002. Therefore, he has preferred appeals to the First Appellate Authority challenging the said levy. The First Appellate Authority dismissed the appeals confirming the order of the Assessing Authority. The assessee preferred the second appeals to the Karnataka Appellate Tribunal. The Tribunal after considering the rival contentions held that levy of resale tax was introduced with effect from 1-4-2002 as a prelude to the introduction of Value Added Tax system, in order to prepare the dealers for a smooth transition to Value Added Tax. Then, relying on the judgment of this

Court in the case of MFAR Constructions Limited, Bangalore v. The Commissioner of Commercial Taxes (Karnataka), Bangalore 2011 (70) Kar. L.J. 367 (HC) (DB), held that, in that judgment the High Court was not dealing with the issue pertaining to turnover tax as it existed prior to 1-4-2002. Therefore, it extended the benefit of Section 6B, proviso, clause (x) with effect from 1-4-2002 and for the earlier two years, the benefit was denied. The review petitions filed before the Tribunal questioning the said order were also dismissed. Aggrieved by the said order, the present revision petitions are filed.

2. The learned Counsel for the assessee assailing the impugned order contends that though Section 6-B was substituted by Act No. 5 of 2002 which came into effect from 1-4-2002, the law prior to the said amendment also provided for exemption from payment of tax if the goods falls within clause (xiv) of the proviso to Section 6-B, which effect has not been noticed by the Tribunal and therefore, he submits that even in respect of assessment years 2000-2001 and 2001-2002, the assessee is entitled to the benefit. Further, he contended that when once the imposition of resale tax for the year 2002-2003 was set aside, the Tribunal committed a serious error in remitting the matter to the Assessing Authority for recomputation of the tax and that portion of the order also requires to be set aside.

3. Per contra, learned Counsel for the revenue submitted that there is a marked distinction between the law prior to 1-4-2002 and subsequent to 1-4-2002. The judgment of this Court in the case of MFAR Constructions Limited only refers to assessment period subsequent to 1-4-2002 which has no application to the earlier orders and therefore, the Tribunal was justified in denying the exemption benefit for the assessment years 2000-2001 and 2001-2002.

4. In the light of the aforesaid facts and the rival contentions, the points that arise for our consideration is:

(i) Whether the assessee was entitled to exemption from payment of turnover tax for the assessment years 2000-2001 and 2001-2002?

(ii) Whether the Tribunal was justified in passing the order of remand in respect of STA No. 853 of 2008?

5. Section 6-B as substituted by Act No. 5 of 2002 with effect from 1-4-2002 reads as under:

"6-B. Levy of Resale tax.--(1) Every registered dealer and every dealer who is liable to get himself registered under sub-sections (1) and (2) of Section 10 whose total turnover in a year is not less than the turnovers specified in the said sub-sections, shall be liable to pay tax at the rate of one and half per cent of such portion of the total turnover which is not liable to tax u/s 5, 5-A, 5-B, 5-C or 6:

Provided that no tax under this sub-section shall be payable on that part of such turnover which relates to.-

X X X

(x) the total amount paid or payable by the dealer as a consideration for the purchase of any of the goods in respect of which tax is leviable at the point of sale".

6. This proviso fell for consideration in the case of MFAR Constructions Limited and this Court has held thus:

"Held, allowing the appeal, that though Sections 5, 5-A, 5-B, 5-C, 6 and 6-B of the Act are independent charging sections, if a registered dealer had paid tax under anyone of these sections, he was not liable to pay resale tax u/s 6-B on that turnover which formed part of levy under these provisions and was liable to pay resale tax only on such portion of the total turnover which had not yet suffered tax. Clause (x) of the proviso to Section 6-B of the Act exempted resale tax on consideration paid on purchase of goods, i.e., turnover of goods which were liable to tax on the first point of sale. Therefore, the tax paid by the registered dealer on the turnover which was the subject-matter of tax u/s 5-B of the Act and tax paid by the registered dealer which was the subject-matter of clause (x) of the proviso to Section 6-B were to be excluded from the purview of Section 6-B of the Act. This was clear from the budget speech of the Finance Minister. There was no intention to levy double tax on dealers and the object was only to tax that portion of the turnover which had not suffered tax under the Act. More importantly, that tax was made collectable from the customers. The reasoning of the Commissioner ran counter to the express provisions contained in Section 6-B of the Act and to the assurance given by the Finance Minister at the time of initiating the amendment on the floor of the State Legislature and could not be sustained.

7. The law prior to 1-4-2002 reads as under:

"6-B. Levy of Turnover Tax.--(1) Every registered dealer and every dealer who is liable to get himself registered under sub-sections (1) and (2) of Section 10 whose total turnover in a year is not less than the turnovers specified in the said sub-sections whether or not the whole or any portion of such turnover is liable to tax under any other provisions of this Act, shall be liable to pay tax:

(i) at the rate of one and half per cent of the total turnover, if the total turnover is not more than one thousand lakh rupees in a year; or

(ii) at the rate of three per cent of the total turnover, if the total turnover is more than one thousand lakh rupees in a year:

Provided that the rate of tax payable for any year shall be at one and half per cent on the turnovers upto one thousand lakh rupees and at three per cent on the turnovers exceeding one thousand lakh rupees, if, the total turnover in the year immediately preceding that year was not more than one thousand lakh rupees:

Provided further that no tax under this sub-section shall be payable on that part of such turnover which relates to.--

x x x x x x

(xiv) the total amount paid or payable by the dealer as a consideration for the purchase of any of the goods in respect of which tax is leviable at the point of sale".

The word used in clause (x) and the aforesaid clause (xiv) are identical. After amendment, it is called as resale tax. Earlier it was called as turnover tax. Both are leviable unless the goods falls under the proviso. If the goods falls under the proviso, the benefit of exemption was granted. Therefore, the Tribunal was not justified in denying the exemption when the earlier proviso also provided for such exemption. In that view of the matter, to that extent, the judgment of the Tribunal requires to be set aside and accordingly, it is set aside. It is held that assessee is entitled to the benefit of exemption from payment of turnover tax for the assessment years 2000-2001 and 2001-2002 in terms of the law which was prevailing then and is entitled to exemption from payment of resale tax for the assessment year 2002-2003 as held to be entitled by the Tribunal. However, the Tribunal has observed that from the material on record it is not possible to make out what is the tax which is leviable and what is the exemption to which the assessee is entitled to and therefore, the matter has been remitted back to the Assessing Authority. That approach cannot be found fault with. We make it clear that the Assessing Authority shall grant exemption to the assessee for the assessment years 2000-2001 and 2001-2002 from payment of turnover tax in terms of clause (xiv) to the proviso to Section 6-B. For the assessment year 2002-2003, the assessee is entitled to the benefit of exemption from payment of resale tax in terms of clause (x) of proviso to Section 6-B. After giving the aforesaid exemption, if the assessee is still liable to pay any tax, the Assessing Authority is at liberty to frame an appropriate assessment order. Ordered accordingly.