(2009) 03 KAR CK 0084

In the Karnataka High Court

Case No : Sales Tax Appeal No. 10 of 2009

Kolte Patil Developers Ltd. APPELLANT

Vs

Additional Commissioner of Commercial Taxes Zone I RESPONDENT

Date of Decision : 24-03-2009

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 20, 22, 22 A (1)

Citation : (2011) 42 VST 226

Hon'ble Judges : Manjula Chellur, J;K.N. Keshavanarayana, J

Bench : Division Bench

Advocate : B.P. Gandhi, for the Appellant; Geetha Menon, A.G.A., for the Respondent

Final Decision : Allowed

Judgement

Manjula Chellur, J.—This appeal is filed challenging the ex parte orders of suo motu revisional authority which has made fresh order of assessment contending as illegal, without jurisdiction and bad on various grounds, raising the following substantial questions of law:

1. Is the Additional Commissioner justified in invoking Section 22A(1) of the Act in view of the fact that the order u/s 20 is subject-matter of appeal u/s 22 filed before the Karnataka Appellate Tribunal ?

2. Is the Additional Commissioner justified in initiating SMR action when matter is subject to an appeal u/s 22 in view of the bar placed u/s 22A(3)(b) ?

3. Is the Additional Commissioner justified in enhancing the total turnover and taxable turnover and by this process bring escaped turnover to tax by making a fresh order of assessment in view of the law declared in Shankar Construction Comp. v. Additional Commissioner of Commercial Taxes, Belgaum Zone (2001) 124 STC 265 (Karn) and State of Kerala Vs. K.M. Charia Abdullah and Co., ?

4. Whether the Additional Commissioner was justified in presuming the sale

consideration amount for sale of undivided share of land and built apartment as works contract receipt?

5. Is the Additional Commissioner justified in withdrawal of deductions granted for KST RC purchases both by assessing authority as well as appellate authority despite clear law under Rule 6(4)(n) ?

6. Is the Additional Commissioner justified in withdrawing the gross profit earned on labour allowable as per Gannon Dunkerley and Co. and Others Vs. State of Rajasthan and Others, ?

7. Is the Additional Commissioner justified in not appreciating the fact that gross receipts figures adopted by assessing authority included the receipts for earlier year and that the appellate authority after examination had adopted the receipts for 2001-02 and 2002-03 in the appeal order ?

8. Is the order passed by the Respondent/Commissioner just, legal and sustainable ?

2. The Deputy Commissioner of Commercial Taxes, Intelligence II, Bangalore, made assessment; orders for 2000-01, 2001-02 and 2002-03 u/s 12(3) of the KST Act and levied penalty u/s 12(4) of the Act by assessment orders dated December 18, 2007, December 29, 2007 and January 29, 2008, respectively. Aggrieved by the said assessment and penalty orders, the Appellant preferred statutory appeals which came to be partly allowed by the first appellate authority vide orders dated April 29, 2008 in KST AP 188, 190 and 229 of 2007-08. The appellate authority held that agreement to sell is to be treated as works contract. Therefore, the Appellant being aggrieved by such opinion filed second appeal in respect of all the three orders before the Karnataka Appellate Tribunal on June 27, 2008. When the matter was pending before the Tribunal, suo motu the revisional authority invoking powers u/s 22A initiated proceedings and passed ex parte orders by making a fresh order of assessment. Therefore, the present appeal is filed.

3. In the case of State of T.N. Vs. Tvl. Jeevanlal Ltd., , the apex court with reference to suo motu powers in similar situation pertaining to the Tamil Nadu General Sales Tax held as under (pages 105 and 106 in 103 STC):

... Once the order of the Appellate Assistant Commissioner is made the subject-matter of appeal before the Appellate Tribunal by the Assessee, who is aggrieved by only a part of such order, the Board of Revenue cannot exercise its revisional jurisdiction against the remaining part of that very order of the Appellate Assistant Commissioner which is in favour of the Assessee and against the Revenue...

4. So far as the Karnataka Sales Tax Act, the Appellant preferred second appeals against Section 20 order u/s 22 for all the three assessment orders. By virtue of the impugned order, the appeals filed u/s 22 to the Tribunal by the Appellants are jeopardised and the matters are made complicated. When there is a right to file

cross-objections to an appeal filed by an Assessee, if the Department has not preferred any appeal, there was no occasion for the revisional authority to invoke suo motu revisional power since the Tribunal can adjudicate all the issue involved. Section 22A(3) specifically bares exercise of SMR jurisdiction.

5. Under these circumstances, we pass the following order against the Revenue:

The impugned order of the Additional Commissioner of Commercial Taxes, Zone I, Bangalore, in S.T.A. Nos. 851, 852 and 853 of 2008 u/s 22A(1) of the Karnataka Sales Tax Act, 1957 dated January 29, 2009, is set aside. The Revenue is at liberty to file cross-objections in the appeals already preferred by the Appellant/Assessee herein, pending before the Karnataka Appellate Tribunal.

6. Accordingly, the appeal is allowed.