(2005) 04 KAR CK 0049

In the Karnataka High Court

Case No : N.P. No. 39803 of 2004

L.G. Electronics India Private Ltd. APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 04-04-2005

Acts Referred:

Central Sales Tax Act, 1956 — Section 12, 12 A, 12 B
Karnataka Sales Tax Act, 1957 — Section 28 (3), 28 (6), 28 (7), 29

Citation : (2005) ILR (Kar) 5814 : (2005) 3 KCCR 1860 : (2007) 8 VST 495

Hon'ble Judges : Abdul Nazeer, J

Bench : Single Bench

Advocate : G. Rabhinathan, for the Appellant; H.S. Surendra HCGP, for the Respondent

Judgement

Abdul Nazeer, J.—Petitioner is a Company incorporated under the Companies Act and is a Dealer registered under the Karnataka Sales Tax Act, 1957 (for short ''KST Act'') and Central Sales Tax, 1956 (for short ''CST Act''). The Assessing Authority of the Petitioner is the Deputy Commissioner of Commercial Taxes (Assts. 41-Fast Track), Bangalore City Division IV, Bangalore.

2. The Commercial Tax Officer (Intelligence-XII) (4th respondent herein) inspected the premises of the Petitioner on 05.06.2003 and seized certain documents. He issued a notice dated 17.04.2004 u/s 29 of the KST Act for compounding the offences in terms of the said notice. The Joint Commissioner of commercial Taxes (Intelligence), South Zone (Respondent No. 3) permitted the 4th respondent to make provisional assessment as per Section 28(6) of the KST Act on 02.08.2004. Thereafter, the 4th respondent has passed the orders u/s 28(6) of the Act on 21.08.2004 as per Annexure ''G'' and H respectively.

3. Sri G. Rabhinathan, Learned Counsel appearing for the Petitioner submits that by Act No. 26/2004, Section 28(6) of the KST Act has been amended, w.e.f. 01.08.2004 to the effect that the Officer taking action under the said Sub-Section shall not be below the rank of the Assessing Authority of the Dealer. Therefore,

the permission granted by the 3rd respondent permitting the 4th respondent to make provisional assessment is contrary to law, and the provisional assessment made by the 4th respondent is without jurisdiction.

4. Section 28 of the Act deals with the powers of the Officer empowered by the State Government or the Commissioner to order production of accounts and powers of entry, inspection and seizure,

Sub-Section (6) of Section 28 of the Act empowers such Officer to pass provisional orders of assessment. Section 28(6) has been amended by Act No. 26 of 2004 w.e.f. 01.08.2004, whereby fourth and fifth proviso''s have been inserted, which are as follows:

"Provided also that no provisional assessment under this Section shall be made in the case of the any dealer after one hundred and eighty days from the date of seizure of accounts, registers, records and documents under Sub-Section (3).

Provided also that the Officer taking action under this Sub-section shall not be below the rank of the assessing Officer of the dealer."

Section 28(3) has been amended by inserting the words "or that the year to which such turnover relates to has come to an end." and Section 28(7) has been amended by inserting the words "proceed to recover the tax and" w.e.f 01.08.2004.

5. It is clear from the 5th Proviso as amended that the Officer empowered to pass provisional assessment u/s 28(6) of the Act shall not be below the rank of the Assessing Officer of the dealer for the relevant assessment year. It follows that the Joint Commissioner or the Commissioner shall not permit an Officer below the Assessing Authority of the dealer to make provisional assessment in exercise of the power vested in them under the first proviso to Section 28(6) of the Act.

6. The reasons assigned by the 4th respondent for making the provisional assessment is that the Petitioner has admitted lower rate of tax in their monthly returns for the assessment years. 2002-2003 and 2003-2004. It is not in dispute that the Assessing Officer of the Petitioner for the said assessment years is the Deputy Commissioner of Commercial Taxes (Asst. 41-Fast Track), Bangalore City Division, Bangalore. The Joint Commissioner has permitted the Commercial Tax Officer the 4th respondent herein to take action against the Petitioner u/s 28(6) of the KST Act after coming into force the amendment Act. The 4th respondent is below the rank of the Assessing Officer of the Petitioner for the said assessment years. In my view, permission granted as above is contrary to law. Pursuant to the said order, the 4th respondent has made provisional assessments dated 21.8.2004 which are without juridiction.

7. As noticed above, the provisional assessments relate to the assessment year 2002-2003 and 2003-2004. The 4th proviso inserted to 28(6) of the Act by Act 26 of 2004 states that no provisional assessment shall be made in the case of

any dealer after 180 days from the date of seizure of accounts, registers, records and documents u/s 28(3) of the Act, Section 28(6) as amended read with 4th proviso makes it clear that the Competent Intelligence Authority has Jurisdiction to make provisional assessment within 180 days from the date of seizure of accounts, registers, records and documents u/s 28(3) of the Act, even if the year to which the turnover relates has come to an end notwithstanding anything contained in Section 12, 12A or 12B of the Act. Such Officer is also empowered to recover tax assessed as above and send a copy of the provisional assessment order to the Assessing Authority of the dealer for the purpose mentioned in Section 28(7) of the Act. This is the change brought about by the amendment Act in so far as making provisional assessment and recovery of taxes pursuant to the said assessment by the Intelligence Authority.

8. However, in this case, the Competent Intelligence Authority cannot be permitted to make the provisional assessment at this belated stage. It is open for the Intelligence Authority to send a report along with such documents as necessary whereupon the Assessing Authority shall complete the assessment or re-assessment as the case may be in accordance with law.

9. In the light of the above discussion, I pass the following Order:

i) The order passed by the 3rd respondent dated 02.08.2004 (Annexure ''F'') and the Provisional order of assessment passed by the 4th respondent dated 21.08.2004 (Annexures ''G'' and ''H'') are hereby quashed.

ii) Liberty is reserved to the 4th respondent to send a report to the Assessing Authority of the Petitioner relating to the search of the business permises of the Petitioner and seizure of documents made by him on 5.7.2003, along with such documents as are necessary whereupon the Assessing Authority shall complete the assessment or re-assessment as the case may be in accordance with law.

iii) Petitions are disposed of accordingly. No costs.

