(2010) 07 KAR CK 0082

In the Karnataka High Court

Case No : Sales Tax Revision Petition No. 96 of 2009

Mahendra Perfumery Works APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 30-07-2010

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 12 (3), 6 C, 8 A

Citation : (2011) 42 VST 195

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

Bench : Division Bench

Advocate : K. Hema Kumar for R.V. Prasad, for the Appellant; T.K. Vedamurthy, High Court Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

N. Kumar, J.—The petition is by the Assessee, challenging the order passed by the authorities upholding the claim for additional tax u/s 6C of the Karnataka Sales Tax Act (for short, "the KST Act").

2. The facts of the case leading to the filing of this petition are that the Petitioner-Assessee who is a dealer registered under the KST Act, is engaged in the activity of manufacture and sales of agarbathies. The assessing authority had passed an order of assessment u/s 12(3) of the Act subjecting to additional tax on turnover, when the tax on turnover was exempted from tax under a notification dated March 31, 2000 as per annexure F. Aggrieved by the said order, the Petitioner preferred an appeal before the Joint Commissioner of Commercial Taxes (Appeals). The appellate authority upheld the demand and dismissed the appeal. Aggrieved by the same, the Petitioner preferred a second appeal before the Karnataka Appellate Tribunal, which also dismissed the appeal upholding the demand. Aggrieved by these orders, the Petitioner is before this Court.

3. The learned Counsel for the Petitioner submits that, by a notification dated March 31, 2000, the Government of Karnataka has exempted with effect from

April 1, 2000, the tax payable u/s 6 of the Act together with turnover tax payable u/s 6B of the said Act on certain items which includes raw bathi for manufacture of agarbathi for sale in the State or in the course of inter-State trade. Section 6C of the Act deals with the levy of additional tax. The additional tax is payable in addition to the tax payable u/s 6 of the Act. When there is exemption from the payment of the principal tax u/s 6, the levy of additional tax is not warranted. The authorities have committed a serious error in ignoring this fundamental principle and in charging additional tax though they have not charged the principal tax u/s 6 of the Act.

4. Per contra, the learned Counsel appearing for the learned Government Advocate supported the impugned orders.

5. Section 8A of the Karnataka Sales Tax Act confers powers to Government to issue notifications granting exemptions or reduction in rate in respect of any tax under the Act. By virtue of such powers conferred, the Government of Karnataka has issued notification on March 31, 2000, which reads as under:

In exercise of the powers conferred by Section 8A of the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957), the Government of Karnataka hereby exempts with effect from the first day of April, 2000 the tax payable u/s 6 together with turnover tax payable u/s 6B of the said Act on the following:

1. Butter for manufacture of ghee;

2. Old jewellery when used in the manufacture of new jewellery and tax under Karnataka Sales Tax Act, 1957 or Central Sales Tax Act, 1956 is paid on such new jewellery;

3. Raw bathi for manufacture of agarbathi for sale in the State or in the course of inter-State trade.

6. Section 6 of the Act provides for levy of purchase tax under certain circumstances. Similarly, Section 6B provides for levy of resale tax on the same goods, which has suffered tax under Sections 6 and 6B of the Act. Section 6C provides for levy of additional tax. Section 6C reads as under:

6C. Levy of additional 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 per cent of such portion of the total turnover which is liable to tax under Sections 5, 5B, 5C, or 6.

7. A perusal of the aforesaid provision makes it clear that every registered dealer shall be liable to pay tax at the rate of one per cent of such portion of the total turnover, which is liable to tax under Sections, 5B, 5C, or 6. So, the liability to pay tax u/s 6C is in addition to tax liable to pay u/s 6 on the total turnover. When once an exemption is granted exempting the dealer from the payment of tax u/s 6, the question of levying additional tax on such basic tax does not arise. The

learned Counsel for the Appellant submits that the tax payable u/s 6C is an additional tax to the tax payable u/s 6 of the Act. In that view of the matter, when the basic tax is exempted automatically, the additional tax and the basic tax is also exempted. There is no necessity to issue any separate notification specifically prescribing exemption for payment of tax. In that view of the matter, the authorities are not justified in levying tax u/s 6C on the Petitioner-Assessee, when the exemption is granted from payment of basic tax u/s 6 of the Act. Hence, the appeal is allowed. The impugned orders are hereby set aside. Parties to bear their own costs.