(2015) 04 KAR CK 0200

In the Karnataka High Court

Case No : Writ Petition No. 4363/2015 (T-RES)

Maya Appliances Pvt. Ltd. APPELLANT

Vs

The State of Karnataka and Others RESPONDENT

Date of Decision : 15-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Value Added Tax Act, 2003 — Section 30, 64(1)

Citation : (2015) 04 KAR CK 0200

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : B. Raveendran and Manohar N., for the Appellant; T.K. Vedamurthy, HCGP, Advocates for the Respondent

Judgement

Aravind Kumar, J.—Heard Sri. B. Raveendran, learned counsel appearing for petitioner and Sri. Vedamurthy, learned HCGP appearing for respondent-State.

2. Petitioner is a registered dealer under Karnataka Value Added Tax Act, 2003 and Central Sales Tax Act, 1956 (For short ''CST Act'') and it is claimed that it is engaged in the manufacture of home appliances like Mixer Grinder, Wet Grinder, Gas Stoves etc., and in the course of its business, allows discounts namely cash discount, scheme discount and quantity discount to its customers/dealers and as such same being deductable from total turnover while arriving at taxable turnover, same came to be claimed by petitioner in respect of tax period April 2006 to March 2007, April 2007 to March, 2008 and April 2008 to March 2009 and Assessing Officer has held that quantity discount (quarterly scheme discount) is not a allowable discount as the sale is not relatable to sale transactions in respect of which the invoices were raised and thereby added the amount of quarterly discount to taxable turnover and same is erroneous. Being aggrieved by this order dated 29.05.2010 assessee filed an appeal before first appellant authority who by order dated 12.10.2010 allowed the claim and extended the discount sought for by the petitioner. The Additional Commissioner

of Commercial Taxes, Zone-1 under section 64(1) of the Act exercising suo moto power revised the said order by order dated 08.05.2012 and set aside the order of first appellate authority and restored the order of Assessing Officer. Being aggrieved by this order namely SMR proceedings assessee filed an appeal before this court in STA 120/2012 and STA Nos. 1-10/2013 and this court by order dated 19.03.2014 Annexure-D affirmed the order passed by Additional Commissioner by dismissing the appeals. Petitioner is said to have filed Special Leave Petition in SLP No. 12189-199/2014 which SLP has since been converted into SLP (Civil) vide Annexure-E and same is pending.

3. Issue involved in the present writ petitions relates to petitioner-assessee claiming deduction amounts indicating discount allowed or granted by petitioner to its customers under Rule 3(2)(c) under Karnataka Value Added Tax Act. As already observed herein above the Assessing Officer in the instant case has disallowed the same and matter is now under consideration before Apex Court. In the meanwhile certain assessees who are similarly placed as that of the petitioners had approached this court in W.P. 9464/2008 in the matter of M/s. Southern Motors v. State of Karnataka and Anr. challenging the constitutional validity of proviso to Rule 3(2)(c) of Karnataka Value Added Tax Rules, 2005 raising similar and identical grounds. The Co-ordinate Bench of this court vide order dated 16.07.2008 upheld the constitutional validity and it came to be observed by the Coordinate Bench as under:

"The value of the sale transaction is as fixed at the time of sale and even in terms of the charging section. There is no scope for fixing the price later. If under the rule, the benefit is made available subject to the condition that the discounted price should have been so indicated in the invoice value of the goods, the condition is neither ultravires Section of the Act nor is discriminatory. I do not find any infirmity in the Rule nor the rule being ultravires under the provisions of Section 30 of the "KVAT Act".

4. Petitioner-assessee therein pursued its grievance before the Division Bench by filing an appeal in W.A. 1 198/2008 but for reasons best known did not press the issue regarding challenge to constitutional validity of Rule 3(2)(c) of Karnataka Value Added Tax Rules, 2005 or in other words Judgment rendered by this court in W.P. 9464/2008 has attained finality.

5. Though Sri. Raveendran, learned counsel appearing for petitioner has made valiant effort to persuade this court to take a different view from the view taken by Co-ordinate Bench in W.P. 9464/2008, I am not inclined to take a different view particularly when the Co-ordinate Bench has exhaustively dealt with the contentions raised therein and negatived. Grounds urged in this writ petition are identical and similar to the grounds urged in the said writ petition. That apart Division Bench while examining the second appeal of present assessee had the occasion to consider similar plea one which is raised in the present writ petition namely that discount allowed by assessee had been reflected in the tax invoice and it was granted as per regular practice and what the assessee received by

way of consideration was net after deducting of discount and as such assessee would be entitled to claim such deduction from its taxable turnover by allowing it under Rule 3(2)(c) of Karnataka Value Added Tax Rules, 2005. This contention came to be considered, analysed and answered by Division Bench by rejecting the same and holding as under:

"12. In the present case, the assessee seeks deduction of the value representing quantity/scheme discount allowed in the tax invoices in view of their performance during 3-6 months and not in respect of the goods sold by the said tax invoices, mentioning gross value. It is true that the invoices to which the assessee made reference, state the gross value of the goods sold plus tax and the quantity/scheme discount and then declared the same in the return filed by him to arrive at taxable turnover. The tax invoice, to which our attention was drawn, shows that certain goods manufacture by the assessee were sold to the distributors and as per the scheme, discount was offered on the basis of their past performance. From bare perusal of the invoice it is clear that the discount shown in the invoice is not relatable to the sale of goods by the said invoice, and that being so, in our opinion, the assessee cannot claim deduction under rule 3 of the Rules. It is not in dispute that the quarterly discount in the form of quantity discount/scheme discount was allowed in the tax invoices on the basis of performance of the previous quarter and not in respect of the sales reflected in the said invoices.

13. Learned counsel for the assessee fairly submits that the discount shown in the invoice was not for the sale of goods mentioned in the said invoice but it was for the performance of the assessee during 3-6 months prior to the date of invoice. The scheme discount offered clearly shows that it was by way of incentive to the dealer for doing good business during 3-6 months prior to the date of invoice. It is definitely not relatable to the sale of goods by the said invoice. It is necessary that the discount reflected in the tax invoice of sale should be in respect of the sales relating to such discount shown in the said invoice. Rule 3 of the KVAT Rules clearly provides that the tax invoice or bill of sale should be in respect of the sales relating to such discount shown therein only will be allowed to be deducted under Rule 3(2)(c) of the KVAT Rules. Admittedly, the discount shown in the relevant invoices was not relating to the sales reflected in the said invoices, but for the sales effected earlier".

Thus, both on merits and on law Co-ordinate Bench as well as Division Bench has held against petitioner and I do not find any other good ground involved in this writ petition for being examined.

6. Infact, on the ground of petitioner not having availed alternate remedy present writ petition is liable to be dismissed. Exercise of writ jurisdiction by this court when alternate remedy is available would be under contingencies like: (1) where issue of jurisdiction is involved (2) violation of principles of natural justice (3) constitutional validity or vires is under challenge as held by Hon''ble Apex Court in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai

and Others, AIR 1999 SC 22 : (1998) 7 JT 243 : (1998) 5 SCALE 655 : (1998) 8 SCC 1 : (1998) 2 SCR 359 Supp : (1998) AIRSCW 3345 : (1998) 8 Supreme 176 . Subsequently Hon''ble Apex Court in the case of United Bank of India Vs. Satyawati Tondon and Others, AIR 2010 SC 3413 : (2010) 3 BC 495 : (2010) 3 CompLJ 585 : (2010) 7 SCALE 696 : (2010) 8 SCC 110 : (2010) 9 SCR 1 : (2010) 9 UJ 4395 : (2010) AIRSCW 7049 : (2010) AIRSCW 5267 has observed that rules of self-imposed restraint evolved is bound to be kept in mind while exercising power under Article 226 of Constitution of India. It has been held by Hon''ble Apex Court as under:

"43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute".

It was also held in the said Judgment that rule of exhaustion of alternate remedy is a rule of discretion and not one of compulsion and in this regard it came to be held as under:

"45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc., and the particular legislation contains a detailed mechanism for redressal of his grievance".

It came to be noticed by Hon''ble Apex Court in Sathyawati Tondon''s case that if in a given case petitioner is able to show that its case falls within any of the exceptions carved out as noticed hereinabove namely; (1) where issue of jurisdiction is involved (2) violation of principles of natural justice (3) constitutional validity or vires is under challenge, exercise of jurisdiction by High Court cannot be disturbed. It came to be held as under:

"46. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc., seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar, AIR 1969 SC 556 : (1971) 2 SCC 489(1) : (1969) 1 SCR 518 , Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, AIR 1999 SC 22 : (1998) 7 JT 243 : (1998) 5 SCALE 655 : (1998) 8 SCC 1 : (1998) 2 SCR 359 Supp : (1998) AIRSCW 3345 : (1998) 8 Supreme 176 and Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others, AIR 2003 SC 2120 : (2002) 10 JT 561 : (2003) 2 SCC 107 : (2003) AIRSCW 126 : (2003) 1 Supreme 446 and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass appropriate interim order".

For the aforestated reasons, this court is of the considered view that issue regarding constitutional validity has reached finality in W.P. 9464/2008 disposed of on 16.07.2008 and issue on hand relating to claim deduction of "discount component" from "taxable turnover" having been laid to rest by Division Bench of this court in STA 120/2012 and STA Nos. 1-10/2013 disposed of on 19.03.2014 which is now pending before Apex Court in SLP(Civil), I am not inclined to entertain this writ petition.

Since impugned order is an appealable order this court refrains to exercise the writ jurisdiction. Hence, Writ Petitions stands dismissed. Costs made easy.

Petitioner would be at liberty to challenge the impugned order as observed herein above before the appellate authority within a period of two weeks from today and in the event of such appeal being filed on or before 30.04.2015 appellate authority shall not insist for delay application being filed.

Registry to return certified copy of impugned order to the learned counsel for petitioner if sought for and on same being substituted with a photo copy of said order duly attested by learned Advocate.

Ordered accordingly.