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**(2008) 06 KAR CK 0020**  
**In the Karnataka High Court**  
**Case No : S.T.R.P. No. 30 of 2008**

M.D. Book Centre

APPELLANT

Vs

State of Karnataka

RESPONDENT

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**Date of Decision :** 12-06-2008

**Acts Referred:**

Karnataka Sales Tax Act, 1957 — Section 12 (4), 6 A

**Citation :** (2009) 26 VST 448

**Hon'ble Judges :** V. Gopala Gowda, J; Ravi Malimath, J

**Bench :** Division Bench

**Advocate :** B.P. Gandhi, for the Appellant;

**Final Decision :** Dismissed

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## **Judgement**

V. Gopala Gowda, J.—The petition questioning correctness of the order passed by the Karnataka Appellate Tribunal dated December 13, 2007, in S.T.P. No. 1000 of 2005 had been filed praying to allow the revision petition and to set aside the order of the first appellate authority and the assessing authority and to re-verify the books of account and to pass orders on merits.

2. The ground of attack before the Appellate Tribunal was that the first appellate authority has erroneously passed the order ignoring the statement of objections filed on September 5, 2002 and September 16, 2002. Further, the Tribunal was required to frame the questions finally arising out of the appeal filed by the assessee, which has not been done despite the legal grounds urged in the appeal. Therefore, the matter requires further consideration. Hence, this revision petition.

3. The ground of attack is that the Tribunal while allowing the appeal has made certain observations on merits of the case which will affect the case of the petitioner. Therefore, the order of remand has no effect. After examining the matter, keeping in view the objections filed by the assessee to the show-cause notice, the Tribunal has committed an error in not noticing the relevant fact of classification of total turnover with regard to second sale of goods which comes

to Rs. 5,58,043 and the finding recorded by the assessing authority with regard to Rs. 9,40,000 on the basis of the report of the intelligence authority without examining the objection statement filed by the assessee to the show-cause notice has rendered the impugned judgment of the Karnataka Appellate Tribunal bad in law.

4. With reference to the abovesaid submissions of the learned Counsel for the petitioner Sri B.P. Gandhi, we have carefully examined the impugned judgment passed by the Tribunal with a view to find out as to whether the impugned order warrants interference by this Court. The Tribunal after referring to the legal grounds urged before it has framed the following question and answered the same in favour of the assessee:

Whether the orders of the lower authorities are sustainable in law?

5. The above question has been answered by referring to the question of facts and the rival legal contentions in the impugned judgment at paragraphs 6(a) to 6(d) and also to the legal contentions with regard to the reduction of penalty levied u/s 12(4) of the Karnataka Sales Tax Act, 1957 by the first appellate authority. At paragraph 7 it has recorded its reasons and held that if the petitioner is unable to establish that the unaccounted purchases are from local registered dealers, then the assessing authority would be justified in taxing the corresponding suppressed sales as first sales at the hands of the petitioner as the burden of proof to prove the sale is second sale cast upon the petitioner u/s 6A of the Act needs to be complied with. In view of this, the orders of the assessing authority and the first appellate authority are set aside and the appellate authority was directed to re-verify the books of account and pass appropriate orders. Further, an opportunity is given to the assessee to produce the books of account and purchase bills corresponding to those purchases which are reported as unaccounted by the intelligence authority in its report. Therefore, the appeal was allowed by the Karnataka Appellate Tribunal on the ground that the orders of the assessing-authority and the appellate authority are not based on proper appreciation and the objection statement filed by the assessee should be supported by the documentary evidence. Therefore, the Tribunal has rightly set aside the orders of the assessing authority and the first appellate authority and further directed the assessee to discharge its burden as provided u/s 6A of the Act to justify its claim made in the statement of objections. Therefore, the assessing authority is required to consider the objection statement. The objection statement of the assessee must be supported by the books of account regarding the purchase bills corresponding to those purchases which are reported in the intelligence report, with regard to the second sales and also the sales as stated in the intelligence report.

6. With the above observations, this revision petition is dismissed.