(2009) 06 KAR CK 0025

In the Karnataka High Court

Case No : S.T.R.P. No. 4 of 2009

MM. Agencies Private Ltd. APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 08-06-2009

Acts Referred:

Citation : (2011) 41 VST 507

Hon'ble Judges : V. Gopalagowda, J;Ravi Malimath, J

Bench : Division Bench

Advocate : M. N. Shankare Gowda, for the Appellant;

Final Decision : Dismissed

Judgement

V. Gopalagowda, J.—The unsuccessful assessee was before the Appellate Tribunal by filing an appeal, which is registered in S. T. A. No. 979 of 2003, in which appeal order dated January 19,'' 2006 was passed by placing reliance upon the judgment of the Supreme Court in case of Gannon Dun-kerley and Co. v. State of Rajasthan [1993] 88 STC 204 and found fault with the revisional authority in not allowing deduction towards labour charges claim of Rs. 3,96,826.72. Therefore, that portion of the order of the assessing officer is set aside and on that specific aspect, the matter is remitted to the assessing authority by the Tribunal for examination of the claim of the petitioner with reference to the records with a view to find out as to whether the claim of deduction of the petitioner towards labour charges amounting to Rs. 9,22,611.46 is correct and is in accordance with law and thereafter, to re-compute the total taxable turnover for the purpose of fastening tax on the turnover of the petitioner and thereafter issue the revised demand notice to it. Aggrieved by the order passed in the review petition -- ST Rew 3 of 2006 was filed before the Tribunal to review the order passed in the said appeal and the same was disposed of on July 22, 2008 by rejecting the review petition holding that apart from the claim regarding deduction of labour charges, in respect of the other charges entitled for deduction by the petitioner in executing civil contract work are not considered by the revisional authority and therefore the order passed by the Tribunal suffers from error apparent on the face of the record, hence the question of law framed in these petitions would arise for our consideration. The rectification petition filed by the petitioner u/s 25A of the Karnataka Sales Tax Act, 1957 hereinafter called as the KST Act is not properly considered and passed order by the Tribunal. Therefore, the present revision petition is filed by the petitioner framing certain questions of law and requested this court to answer the same in its favour as the same would arise for consideration of this court.

2. We have considered the questions of law. The substantial questions of law Nos. 2 and 3 read thus :

(2) On the facts and in the circumstances of the case whether the honourable Tribunal and revisional authority are right in disallowing the deductions claimed by the petitioner as a works contractor in view of rule 6(4) (m) of the KST Rules and the law laid down by the honourable Supreme Court in the case of Gannon Dunkerley [1993] 88 STC 204 ?

(3) On the facts and in the circumstances of the case whether the honourable Tribunal is right in not considering the claim of the petitioner with respect to the various deductions entitled by the petitioner under rule 6(4)(m) and the law laid down by the honourable Supreme Court in the case of Gannon Dunkerley [1993] 88 STC 204 in spite of grounds raised in the main appeal and rectification application filed before the Tribunal ?

3. We have perused the finding and reasons recorded by the revisional authority and the First Appellate Tribunal in the order passed by them. After careful analysis of the finding and reasons recorded by them, we are of the view that the above questions of law framed by the petitioner do not arise for consideration as the impugned judgment and review order is based on facts and law and therefore we answer the same against the petitioner for the following reasons.

4. The Appellate Tribunal has granted the reliefs to the petitioner after noticing the fact that not giving deductions of Rs. 3,96,826.72 paid by him towards labour charges in which as per the decision of the Supreme Court referred to supra, the assessing authority has to examine the claim of the petitioner including the claim of Rs. 9,22,611.46 said to have paid towards the labour charges. The revisional authority on the basis of the records in the review petition while answering other claims and the claims made by the petitioner is examined in the review petition with a view to find out whether there is any error apparent on the face of the record in the appeal proceedings initiated by the assessee. With reference to the said contention, a categorical finding of fact is recorded by the Tribunal by answering the issue No. 1 stating that the petitioner should have put forth its claim along with evidence and if such claim was not considered either by the revisional authority or the Appellate Tribunal of question of rectification of their order did arise. In the petitioner''s case the Tribunal has clearly discussed the claim in respect of which deduction was claimed in the light

of the decision of the honourable Supreme Court in the case of Gannon Dunkerley and Co. [1993] 88 STC 204. Therefore, the Tribunal has held that it has not committed an error in passing the order in S. T. A. No. 979 of 2003, which warrants rectification of the order. Therefore, we hold that no sufficient ground is made out by the petitioner to interfere either with the review order or judgment passed in the appeal. The Tribunal has examined the other claims, which are made in the review application and held that there is no claim made by the petitioner either before the revisional authority or before the first appellate authority. Therefore, we find no merit in this case to answer the questions of law Nos. 2 and 3 framed by the petitioner in this petition. Hence, the petition is devoid of merit and the same is dismissed, but no costs.