

**(2016) 06 KAR CK 0204**

**In the Karnataka High Court**

**Case No :** Sales Tax Appeal No. 46 of 2014 and Sales Tax Appeal Nos. 47-57 of 2014 connected with STRP Nos. 239-250 of 2014

M/s. Akshay Eminence Developers Pvt. Ltd.

APPELLANT

Vs

Additional Commissioner of Commercial Taxes, Zone-1

RESPONDENT

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**Date of Decision :** 10-06-2016

**Acts Referred:**

Karnataka Value Added Tax Act, 2003 — Section 63

**Citation :** (2016) ILRKarnataka 5527 : (2016) 3 KCCR 315

**Hon'ble Judges :** Jayant Patel and B. Sreenivase Gowda, JJ.

**Bench :** Division Bench

**Advocate :** Sri T.K. Vedamurthy, Additional Government Advocate, for the Respondents; Sriyuths M. Thirumalesh and G. Rabinathan, Advocates, for the Appellant

**Final Decision :** Disposed Off

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## **Judgement**

Jayant Patel, J. - As all matters are inter-connected, they are being considered simultaneously.

2. The appellant/petitioner shall be addressed as the assessee, whereas the respondents - authorities shall be addressed as Revenue for the sake of convenience.

3. The short case of the appellants appears to be that on 30th July, 2007, the impugned order was passed by the DCCT(Audit) for accepting the monthly return for the period from April, 2005 to August, 2005 and the refund was allowed to the appellant as claimed in the returns. In the same manner for the period from September, 2005 to March, 2006, the returns filed by the appellant - assessee were accepted.

4. The revision proceedings were initiated against the aforesaid acceptance of returns in purported exercise of the power under Section 66A of Karnataka Value Added Tax, 2003 (herein after referred to as the KVAT Act) for the reassessment

of the period from April, 2005 to August, 2005. After verification, vide order dated 26-08-2008, it was found that the assessing authority, namely DCCT (Audit) was wrong in invoking the provisions of Section 39(1) of the Act and for granting refund by merely accepting the returns. Hence, the Joint Commissioner, in exercise of his revisional power reversed the decision of refund, but accepted the returns. He further held that tax payable for July 2005 had not been paid as per the return and directed to raise a demand for the same.

5. The Additional Commissioner of Commercial Taxes initiated the proceedings under Section 64(1) of the Act against the aforesaid order of the Joint Commissioner under Section 63-A(1) of KVAT and issued notice. The assessee though received notice, did not appear before the Additional Commissioner. The Additional Commissioner vide order dated 20-01-2010, set aside the order of the assessing officer for the period from September, 2005 to March, 2006 and also set aside the order of the Joint Commissioner in revisional jurisdiction under Section 63 and further directed the audit authority to issue notice under Section 39(1) and make reassessments for all the tax period. On 30th January, 2010, the Deputy Commissioner (Assessing Authority), issued notices under Section 39(2) of the Act for all the tax periods and called upon the petitioner to produce books of accounts. The Deputy Commissioner instead of passing reassessment order after verification of the books of accounts and the documents, made a demand of tax vide order Dated 28-06-2010 for the tax period April, 2005 to March, 2006. The assessee against the aforesaid demand of tax, preferred appeal before the first appellate authority i.e. the Joint Commissioner (Appeals). The first appellate authority, vide order dated 25-04-2011, partly allowed the appeal by allowing the deduction of consideration received towards sale of undivided share in land in respect of land owner's share of receipts, but not in respect of consideration received for the sale of undivided share in land in flats sold falling to the share of the assessee.

6. The matter was further carried in second appeal before the Tribunal, so far as not granting of relief by the first appellate authority. There was no cross appeal preferred by the Revenue before the Tribunal against the decision of the first appellate authority. However, the Tribunal vide order dated 23-01-2014, not only dismissed the appeal, but also set aside the order of the first appellate authority, whereby certain benefits were partly allowed to the assessee. Under these circumstances, all the STRP as well as all the STAs are before this Court.

7. We may record that STA i.e. Sales Tax Appeal Nos. 46 and 47 to 57/2014 are preferred against the order of the Additional Commissioner dated 20-01-2010 in exercise of the revisional power under Section 64 of KVAT Act, whereby the orders passed by the first revisional authority as well as the assessing authority were set aside and a direction was issued to make the assessment under Section 39 in terms of the discussion made in the order. Whereas, STRP Nos. 239-250/2014 are preferred against the order passed by the Tribunal made on 23rd January, 2014, whereby the appeals preferred by the assessee came to be

dismissed, without going into the merits and the order of the first appellate authority was set aside and further a direction was given to the assessing officer to give effect to the order of the additional commissioner dated 20-01-2010.

8. We have heard Mr. G. Rabinathan, the learned Counsel appearing for the appellant/petitioner-assessee and Mr. T.K. Vedamurthy, the learned Government Advocate appearing for the respondents.

9. As all sales tax revision petitions are arising from the last order of the Karnataka Appellate Tribunal (hereinafter referred to as "the Tribunal" for brevity), we find it appropriate to consider the said group at the first stage.

10. The perusal of the order passed by the Tribunal more particularly from the reasons recorded shows that the Tribunal has not properly considered the following aspects which were crucial while exercising the appellate power:-

"1. All appeals were preferred by the assessee against the order of the first appellate authority and it would mean that they would be restricted to the relief not granted by the first appellate authority in favour of the assessee. So far as reliefs which were already granted by the first appellate authority, naturally, the petitioner could not be said to be aggrieved and if any person who can be said to be aggrieved would be the Department. If, as per the respondent-Department, the first appellate authority had committed any error in granting of the relief partly allowing the appeal of the appellant, it was for the respondent to prefer an appeal, may be an independent appeal or by way of cross-objection against the grant of the relief by the first appellate authority in favour of the petitioner. It was undisputed position that neither there was any appeal preferred by the respondent-Department nor there were any cross-objections against the relief granted by the first appellate authority in favour of the appellant. Under these circumstances, the scope and ambit of the appeal which was at the instance of the petitioner-appellant before the Tribunal could be said to be restricted to the extent of the relief not granted by the first appellate authority and not beyond the same viz., to examine the legality and validity of the order passed by the first appellate authority so far as it related to the relief already granted in favour of the appellant.

2. The jurisdiction of the first appellate authority as such, was not under challenge in the appeal preferred by the appellant but rather it can be said that the error on the part of the first appellate authority in not granting the relief was the only subject matter of the appeals before the Tribunal.

3. The Tribunal lost sight of the important aspect that even after the order of the Additional Commissioner of Commercial Taxes in exercise of the revisional power (which is subject matter of STA Nos. 46/2014 and 47-57/2014), when the assessment was to be made under Section 39(1) of the KVAT Act, it was obligatory on the part of the assessing authority not only to issue notice, but to further consider the submissions and to give opportunity of hearing to the assessee before any final order of assessment is passed. As per the assessee in

the present case, notice under Section 39(1) of the KVAT Act, was issued. The assessee appeared in response thereto and the books of accounts were produced but thereafter without giving any opportunity of hearing, the order came to be passed for the assessment making demand. Therefore, it was required for the Tribunal to examine as to whether any mandatory procedure for the assessment under Section 39(1) of the Act was followed by the assessing authority or not.

4. Apart from the question of following of the mandatory procedure under Section 39(1) of the KVAT Act, the Tribunal also did not consider the aspects that on the point of interpretation of the order passed by the Additional Commissioner in the revisional jurisdiction. If the assessee is not heard, it was to be one sided interpretation of the order and therefore it was more required on the part of the assessing authority to hear the petitioner-appellant before concluding on the interpretation and the effect of the order of the revisional authority i.e., Additional Commissioner."

11. In our considered view, the aforesaid aspects are not properly considered by the Tribunal and the Tribunal has examined the question of jurisdiction of the first appellate authority and has further set aside the order of the first appellate authority including that for the reliefs which were already granted by the first appellate authority in favour of the petitioner-appellant, in spite of the fact that there were no cross-objections or no appeal preferred by the respondent-Department. Not only that, but the Tribunal maintained the proceedings initiated by the Presiding Officer i.e., assessing authority for giving effect to the order passed by the Additional Commissioner dated 20.01.2010. In our view, if the scope of appeal preferred by the petitioner-appellant is considered as limited to the grievance raised by the petitioner-appellant so far as not granting the relief by the first appellate authority, all other observations on the part of the Tribunal can be said as exceeding the jurisdiction. It is true that in exercise of the appellate power under Section 63 of the Act, the Tribunal has the jurisdiction to pass order as it thinks fit. However, such jurisdiction is to be read to the extent of subject matter brought before it and it cannot be read beyond the subject matter of the appeal. Further, even if the Tribunal was of the view that the order passed in favour of the petitioner-appellant by the first appellate authority was without jurisdiction, then also two courses were open to the Tribunal. One was that the Tribunal could put the parties to the notice and thereafter further examine the same which has not at all been done. Further, it was for the respondent-Department to decide as to whether they should prefer an appeal against the order of the first appellate authority so far as granting of the relief in favour of the petitioner-appellant is concerned. When there was no cross-appeal or no cross-objection preferred by the respondent-department against the order of the first appellate authority so far as it related to grant of the reliefs, the reasonable interpretation would mean that the judicial scrutiny of the Tribunal in the appeals was limited as to whether any relief which has not been granted in favour of the appellant by the first appellate authority could be granted or not and not to further examine the jurisdiction as to whether the reliefs which were

already granted by the first appellate authority in favour of the appellant for which there was no grievance to be granted or not.

12. In view of the aforesaid, we find that the Tribunal has clearly exceeded the jurisdiction in setting aside the order by the first appellate authority and further whether to sustain the proceedings of the assessing authority/PA was also not the subject matter of the appeal before the Tribunal but rather the subject matter of the appeal before the Tribunal was as to whether the petitioner-appellant was entitled to any relief or not.

13. Hence, by making further observations in the operative portion, one may say that the Tribunal has exceeded the jurisdiction. In view of the aforesaid observations and discussion, we find that the impugned order passed by the Tribunal deserves to be set aside and the matter is required to be remanded to the Tribunal to examine the matter in light of the scope and ambit of the appeal and also in light of observations made by this Court in the present judgment.

14. Hence, ordered accordingly.

15. The Tribunal is directed to consider and hear the appeals as early as possible preferably within a period of three months from the date of receipt of a copy of the order of this Court.

16. All the petitions are allowed to the aforesaid extent. No order as to costs.

17. Before we further consider the merits of STA Nos. 46 and 47-57/2014, the learned Counsel for the appellant declared before us that in view of the observations made and the directions issued to the Tribunal in STRP Nos. 239-250/2014 referred to herein above, he does not press all the appeals at this stage.

18. Hence, we need not further examine the merits of STA Nos. 46 and 47-57/2014. Accordingly, all the appeals shall stand disposed of as not pressed.