
(2018) 03 KAR CK 0011

In the Karnataka High Court

Case No : Writ Petition Nos.35993-35996 of 2017

**M/s. Raichur Power Corporation Ltd @APPELLANT@Hash State of
Karnataka & Ors**

Date of Decision : 06-03-2018

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Karnataka Tax on Entry of Goods Act, 1979 — Section 72

Citation : (2018) 03 KAR CK 0011

Hon'ble Judges : S. SUJATHA, J

Bench : Single Bench

Final Decision : allowed

Judgement

1. Heard the learned counsel appearing for the parties.
2. These writ petitions are directed against the order of the Respondent No.3 dated 27.06.2017, whereby the applications filed by the petitioner under Karasamadhana Scheme, 2017 [scheme for short] for waiver of interest equivalent to 90% of interest arrears under the Karnataka Tax on Entry of Goods Act, 1979 [Act, for short], has been rejected.
3. The Government of Karnataka issued Government Order dated 31.03.2017 announcing the scheme. The scheme provides for waiver of arrears of interest relating to the years commencing from 1.4.2005 to 31.03.2016 which remained unpaid upto 15.03.2017 to the extent of 90%. Eligibility to waiver is subject to the condition that dealer claiming waiver should have cleared the full arrears of tax and pay 10% of the interest arrears on or before 31.05.2017, withdraw the appeal, if any, filed against the order in which interest was levied and application should be made through website.
4. It is the claim of the petitioner that the requirement of the scheme was complied with except submitting the application through the website. The

same was submitted manually since the system has not accepted 30% of the amount deposited before the Appellate Authority towards the arrears of

tax. However, the Respondent No.3 rejected the application on the ground that the application submitted by the petitioner was not accompanied by

10% of the arrears of tax; the application was submitted manually.

5. It is pointed out by learned counsel appearing for the petitioner that this Court while considering the identical issue in Writ Petition No.33176/2017

and connected matters [DD â?"14.11.2017] in the case of â?"M/S. WS RETAIL SERVICES PRIVATE LIMITED v. THE STATE OF

KARNATAKA AND OTHERSâ??. has held that the â?"adjustment of payment or depositsâ?" made by the revenue department can be

considered to be â?"colourless depositâ?" unless and until the Appellate Authorities or the courts determine the issues finally and subject to such

decisions only, the â?"adjustmentsâ?" of â?"paymentsâ?" or â?"depositsâ?" can be made. The amount deposited before the Appellate Authority

can be construed as â?"colourless depositâ?" and cannot be adjusted under any specific head of the â?"total demandâ?" comprising of tax, interest

and penalty and the full effect and play of the scheme can be given to the assessee on a beneficial and purposive interpretation of the provisions of the

said scheme.

6. It is apparent that the petitioner has deposited 30% of the arrears of interest before the Appellate Authority and the same is not disputed by the

revenue.

7. It is the case of the revenue that in addition to the said amount deposited before the Appellate Authority, it was required for the assessee to pay

arrears of interest of 10% along with the application seeking the benefit of the scheme. This approach of the Department is ill founded. The deposit

which is made before the Appellate Authority to an extent of 30% has remained in deposit and the same is to be characterized as â?"colourless

depositâ?" as observed by this Court in WS RETAIL SERVICESâ?'s case supra. If that being the position, objection raised by the revenue is

wholly unsustainable and deserves to be set aside.

8. Similarly, yet another reason for denying the benefit of the scheme, in as much as, filing the application manually, is also not acceptable as the

system or website was designed only to accept 10% of the arrears of interest

along with the application. If any adjustments has to be made towards the payment of the interest in deposit made before the Appellate Authority, it is, nay impossible for the petitioner to submit the application through the website. The hyper technical approach of the revenue in rejecting the claim of the petitioner is unjustifiable.

9. It is significant to note that for the assessment year 2014-15 while concluding the assessment, the Assessing Officer on computation of the interest under section 72 of the Act, computed the balance tax payable including the interest component. Considering the same, demand notice in Form No.9 has been issued towards arrears of total tax amount of Rs.7,89,35,755/- which obviously includes the interest of Rs.2,98,08,087/-. Rejection of the application of the assessee on the ground that no arrears of interest was demanded by the Authorities is untenable. Hence, the Respondent No.3-Authority ought to have considered the demand notice along with the assessment order. In the circumstances, entitlement of the petitioner for the scheme cannot be denied on this count.

10. For the reasons aforesaid, writ petitions are allowed. The impugned order herein is set aside. The Respondent No.3-Authority shall accept the applications submitted by the petitioner claiming the benefit of the scheme and the benefits shall be extended subject to the satisfaction of the entire taxes paid by the petitioner.

In view of disposal of the main writ petitions, all the pending applications are consigned to file