**(2004) 03 KAR CK 0048**

**In the Karnataka High Court**

**Case No :** Writ Petition No''s. 9880 to 9885 of 2004

Mysore Coffee Curing Works Ltd. APPELLANT

Vs

State of Karnataka and Others RESPONDENT

**Date of Decision :** 10-03-2004

**Acts Referred:**
Karnataka Sales Tax Act, 1957 — Section 25 A, 8 A

**Citation :** (2006) 146 STC 653

**Hon'ble Judges :** D.V. Shylendra Kumar, J

**Bench :** Single Bench

**Advocate :** R.B. Krishna Murthy and Kumar, for the Appellant; Niloufer Akbar, High Court Government Pleader, for the Respondent

**Final Decision :** Dismissed

## Judgement

D.V. Shylendra Kumar, J.—Petitioner in these petitions is a dealer under the provisions of the Karnataka Sales Tax Act, 1957 ("the Act", for short). In respect of the periods 1995-96, 1996-97, 1997-98, 1998-99, 1999-2000 and 2000-01. Petitioner had claimed certain concessions from the sales tax liability for these years based on a Government Order bearing No. CI 240 SPC 93 dated July 12, 1993 outlining the new industrial policy of the Government of Karnataka for the period from 1993 to 1998. The claim of the petitioner was on the premise that it carries on certain manufacturing activities and as such can avail of the concessions sought to be given by the Government as had been indicated in this Government Order dated July 12, 1993.

2. The assessing authority had rejected such claim of the petitioner and had concluded assessments for these years without extending such benefit to the petitioner.

3. Petitioner had filed rectification applications u/s 25-A of the Act for the years 1995-96, 1996-97 and 1997-98 claiming that the rejection of the concession to the petitioner was erroneous and that he should have been granted concession

as claimed.

4. However, the assessing authority rejected these rectification applications also particularly as the claim as put forth by the petitioner was found to be inconsistent with the provisions of an exemption Notification dated August 28, 1993 bearing No. FD 171 CSL 93(I) (copy at annexure C to the writ petitions) which had been issued in this regard u/s 8-A of the Act indicating the precise nature of exemption given to the new industrial units located in the areas mentioned in the zones identified for extending such benefits and the assessing officer, as also for the reason that the assessee was not carrying on any manufacturing activity and was of the view that the petitioner was not entitled to such concession and rejected the claim of the petitioner.

5. The petitioner had preferred W.P. Nos. 6602, 7068 and 7069 of 2000 as against these orders rejecting the rectification applications. It transpires, during the pendency of the petitions before this Court, the Supreme Court had occasion to examine the meaning of the word "manufacture" and it was sought to be contended on behalf of the petitioner that such interpretation given by the Supreme Court was to the advantage of the petitioner and the petitioner would like to press into service the same before the assessing authority. Though the petitioner had approached this Court mainly seeking relief in the context of the exemption notification dated August 28, 1993 (supra) this aspect of the matter was not examined by this Court and the matter was relegated to the assessing authority to consider the application/s of the petitioner in the light of the interpretation given by the Supreme Court to the word "manufacture" in the case of M/s. Aspinwall and Co. Ltd Vs. The Commissioner of Income Tax, Ernakulam, .

6. The assessing authority having issued certain proposition notices subsequent to the order passed by this Court on March 21, 2003 in W.P. No. 6602 of 2000 and connected cases and these notices- not only included three years in respect of which petitioner had approached this Court earlier but also two subsequent years ending for the year March 31, 1999 and March 31, 2001, the petitioner promptly approached this Court again by filing W.P. Nos. 27468-72 of 2003 complaining that the assessing authority was acting beyond the directions issued by the court in the earlier round of writ petitions.

7. This Court again as per order dated November 19, 2003 passed in these writ petitions directed the authority to proceed in the matter keeping in view the earlier directions that had been issued by this Court. It is thereafter the authorities have issued further notices as at annexures Jl to J6 with which petitioner is again aggrieved and has approached this Court for the relief of quashing these notices on the premise that the notices have been issued without proper application of mind, etc. It is also the grievance of the petitioner that such notices are not in consonance with the earlier directions that had been issued by this Court.

8. Sri. Krishna, learned Counsel for petitioner has put forth several contentions.

 

It is the submission of the learned Counsel that the respondent-assessing authority cannot travel beyond the issue of the entitlement of concession to the petitioner in the context of the controversy of "manufacture"; that the respondent cannot now seek to deny the concession on the premise that the notification issued u/s 8-A of the Act by the Government does not seek to extend any concession in respect of the transactions in the nature of "purchase" by the petitioner as this was not an issue earlier and further that the assessing authority being not in a position to give effective relief to the petitioner beyond what is contemplated in a notification issued u/s 8-A of the Act and as it is the case of the petitioner that this notification should be understood in the background of the earlier Government notification dated July 12, 1993 outlining the industrial policy of the Government, petitioner cannot be compelled to go before the authority for such relief and therefore the petitioner has approached this Court again for suitable relief.

9. Learned Counsel also submits that the issue of interpretation of the exemption notification u/s 8-A of the Act and as to whether it should be read down or so understood only to be in consonance with the earlier notification of the Government outlining the industrial policy of the Government, is the subject-matter of a few other writ petitions now pending before this Court and as such even pending decision on that, there is no need or necessity for the petitioner to go back to the assessing authority.

10. What is challenged in these writ petitions is essentially the show cause notices issued by the assessing authorities in the present round. Though learned Counsel for the petitioner would argue that the validity or otherwise of an exemption notification issued u/s 8-A of the Act is not a matter which can be urged before the assessing authority who is bound by the provisions of the Act and the Rules, I am not inclined to examine this question for more than one reason.

11. In so far as the petitioner''s liability is concerned, it is determined under the assessment orders. A concession is claimed based on a specific exemption granted under the Act and in accordance with the provisions of the Act. Exemption or a concession can be strictly in conformity with the exemption and not more than what is provided under the exemption notification itself. Though learned Counsel for the petitioner would urge that based on the decision of the Supreme Court rendered in the case of State of Bihar and Others Vs. M/s. Suprabhat Steel Limited and Others, , the petitioner can either challenge the legality of the exemption notification dated August 28, 1993, or in the alternative, can urge before this Court to read down this notification so as to exclude the words "goods manufactured and sold by" occurring in this notification, the submission on the part of the petitioner cannot be accepted. It is not as though the petitioner has become aware of the nature of exemption that he can claim only now. In fact, the petitioner had been denied such exemption as and when assessment orders were passed for the six years in question. Petitioner

 

had not questioned the same for the first three years in question and for the latter three years, learned Counsel for petitioner has submitted that the issue is at large before the various statutory authorities and at different levels, even before this Court also. If this is the situation, there is no occasion for this Court to go into such question yet, again in these writ petitions and at this stage.

12. If there is a decision rendered by this Court interpreting the provisions of the notification dated August 28, 1993 issued by the Government in exercise of its power u/s 8-A of the Act, it is always open to the petitioner to press into service such interpretation before any authority functioning under the Act so long as the matters are kept alive before such authority for rendition of a decision.

13. Though, Sri Krishna, learned Counsel for the petitioner would urge a few more aspects to say that the assessing authority cannot be allowed to act in a particular manner, particularly to enlarge the scope of the controversy by the present round of show- cause notices, it is always open to the petitioner to urge all such grounds before the authority and to focus attention on the real issue and request the authority to pass appropriate orders on the same. It is not necessary for this Court to either keep interfering with the functioning of the lower authorities time and again particularly even at the stage of issue of show cause notices or can this Court determine the issues in the absence of full facts, particularly when there are disputed facts. However, what is of significance and should be borne in mind is that when this Court exercises judicial review of administrative or quasi-judicial action and finds a particular order to be bad in law and directs the concerned authority to reconsider the matter, the scope of such reconsideration can never be understood to be beyond the scope of the jurisdiction prescribed by the statute under which the authority functions. In the instant case, petitioner had filed a rectification application u/s 25-A of the Karnataka Sales Tax Act, 1957 seeking the assessing officer to rectify the assessment orders in respect of some of the assessment years. These applications having been rejected by the assessing officer, petitioner had approached this Court seeking judicial review under writ jurisdiction. When this Court, on finding the order to be bad for any reason, quashes the same and directs the authority to reconsider the matter, the scope of such reconsideration by the authority can again be only within the limits of a rectification order u/s 25-A of the Karnataka Sales Tax Act, in the exercise of which jurisdiction the authority had erred and has to now reconsider the matter in the very jurisdiction, i.e., rectification and cannot travel beyond the scope of a rectification application, as it is this jurisdiction of the assessing officer which the assessee has invoked in the first instance. Neither the assessee can seek to canvass questions beyond this jurisdiction at the time of such reconsideration nor is it open to the assessing officer to assume jurisdiction beyond the scope of a rectification application.

14. In this view of the matter, I am of the opinion that it is appropriate that the petitioner files his reply/objections, whatever he may want to urge, in response to these show cause notices under annexures Jl to J6 before the concerned

 

authority and seek appropriate orders from the very authority. Petitioner is given six weeks'' time from today for filing such objections before the concerned authority and if there is any development of law in the meanwhile on the aspect of interpretation or the scope of the notification dated August 28, 1993 it is always open to the petitioner to urge such position also before the authority and seek for suitable orders. The authority will have to consider the same in the light of the observation made above.

15. Accordingly these writ petitions are rejected reserving liberty to the petitioner to file his objections/reply before the authorities concerned within a period of six weeks from today and the authorities to pass appropriate orders on the same in accordance with law.