(2010) 10 KAR CK 0122

In the Karnataka High Court

Case No : Writ Petition No''s. 33313 and 33324 of 2010

Navayuga Engineering Company Ltd. APPELLANT

Vs

The State of Karnataka RESPONDENT

Date of Decision : 26-10-2010

Acts Referred:
Karnataka Value Added Tax Act, 2003 — Section 7, 9 A (7)

Citation : (2010) 10 KAR CK 0122

Hon'ble Judges : Ashok B. Hinchigeri, J

Bench : Single Bench

Advocate : A. Shankar, for the Appellant; K.M. Shivayogiswamy, HCGP, for the Respondent

Final Decision : Allowed

Judgement

Ashok B. Hinchigeri, J.—The Petitioner has raised the challenge to the reassessment order, dated 29,9.2010 (Annexure-K) passed by the Respondent No. 2 and the consequential demand notice, dated 29.9.2010 (Annexure-L).

2. Sri A. Shankar, the learned Counsel for the Petitioner complains of the violation of principles of natural justice. He submits that despite the specific request made by the Petitioner for an opportunity of hearing, the same has not been acceded to by the Respondent No. 2. He has relied on this Court''s decision in the case of Bata India Limited Vs. Deputy Commissioner of Commercial Taxes and Another, . The relevant paragraph of the said judgment is extracted hereinbelow:

4. After careful perusal of the reassessment orders passed by the first Respondent it emerges that the first Respondent has proceeded to pass the said orders without giving sufficient opportunity to the Petitioner to put forth his case. As a matter of fact, the Petitioner has categorically stated in the objections that, personal hearing may be given to him to substantiate his case. But the first Respondent has not considered the said request made by the Petitioner in the

objections dated March 17, 2006. In view of non-considering the objections filed by the Petitioner and not conducting the proper enquiry in strict compliance with the mandatory provisions of the Act and Rules, as rightly pointed out by learned Counsel appearing for the Petitioner that, if the first Respondent has afforded an opportunity to the Petitioner, he might have placed the judgment of the Division Bench of this Court as referred above and substantiated his case regarding the liability of payment of tax and also in view of gross violation of principles of natural justice, I am of the considered view that, at any stretch of imagination, the impugned orders passed by the first Respondent cannot be sustained and they are liable to be set aside.

3. The next grievance of Sri Shankar is that the amounts demanded in the final reassessment order exceeds the amounts demanded in the proposition notice. He also brings to my notice this Court''s decision in the case of Nagarjuna Construction Co. ABH Limited, Bangalore v. State of Karnataka and Ors. reported in 2010 (69) Kar.L.J. 97, wherein the considered view taken is that, as regards iron and steel products used in the execution of the works contracts, the levy of tax shall be at 4% only on the value thereof. Based on the said decision, Sri Shankar would contend that the tax imposed at the rate of 12.5% on the iron and steel by the assessing authority is absolutely without the authority of law. He submits that the second Respondent assessing authority has totally ignored this Court''s decision in the case of Nagarjuna Construction (supra).

4. Sri Shankar also submits that the impugned order is marked by total non-application of mind. The computation itself is not objective. The second Respondent has taken the figure on the higher side from whatever source, which he found it convenient to take. The methodology employed for calculating the turnover runs contrary to the statutory provisions. As the determination of the in-put tax deduction is totally vitiated, he prays for the quashing of the impugned order.

5. The last grievance ventilated on behalf of the Petitioner is that the delay in the remittance of the TDS amounts. The Petitioner is fastened with the interest for the delayed period. This runs contrary to the statutory provisions contained u/s 9A(7) of the Karnataka Value Added Tax Act, 2003 (''VAT Act'' for short), which is extracted herein below:

9A. Deduction of tax at source (in case of works contract). -(7) If default is committed in the payment of tax deducted beyond ten days after the expiry of the period specified under Sub-section (5), the authority making deductions under Sub-section (1) shall pay, by way of interest, a sum equal to the interest specified under Sub-section (1) of Section 37 during the period in which such default in continued.

6. Sri K.M. Shivayogiswamy, the learned High Court Government Pleader appearing for the Respondents submits that the Petitioner has not declared the purchase turnover at all. The Government Pleader has raised a threshold bar to

the maintainability of the petitions. He submits that the Petitioner''s grievance, if any, has to be raised only by way of filing an appeal.

7. The first submission urged on behalf of the Petitioner does not commend itself to me. The statute does not provide for the giving of opportunity of hearing. The decision relied upon by the Petitioner''s side also may not come to its rescue, as no ratio is laid down to the effect that the reassessment order has to be quashed if the personal hearing is not afforded. Section 39(1)(b) of the VAT Act only speaks of the opportunity of showing cause against the proposed reassessment. When the statute provides only for the giving of opportunity of showing cause, the opportunity of personal hearing cannot be imported or read into the statute.

8. The grievance over the imposition of the tax at the rate of 12.5% on the purchase of iron and steel merits serious consideration. This Court has taken the following considered view after examining the gamut of case-law.

Therefore, steel and steel products used as raw material by the Petitioners are incorporated into their civil works or other works contracts in the same form except that the same may be fashioned to suit the requirement, before the same merge into the works which is thereafter identified as immovable property. At the time of incorporation, steel and steel products do not lose their nature or form and therefore cannot be subjected to tax, as the said goods are already subjected to tax as declared goods under the CST Act.

The reliance sought to be placed on the decision of this Court in the case of B.V. Subba Reddy, by the revenue, which has been followed in later decisions, also cannot be pressed into service - for the same was rendered in the backdrop of there being no dispute that iron and steel that had been purchased by the Petitioner therein and had been used in the construction of a bridge and had not been used in the same form. Secondly, the said decision was with reference to the provisions of the KST Act, which did not contain any provision akin to Section 7 of the KVAT Act.

9. The Assessing Authority is not justified in glossing over the afore-extracted judicial pronouncement. Therefore, that part of the impugned order which imposes the tax at the rate of 12.5% on iron and steel is liable to be quashed and accordingly it is quashed.

10. Yet another grievance of the Petitioner regarding the imposition of the interest on the belated remittance of the TDS amounts is also required to be considered. The plain reading of provisions contained in Section 9A(7) of the VAT Act, which are extracted hereinabove, make it clear that the authority effecting the TDS is obliged to pay the interest. The Petitioner cannot be fastened with the liability to pay the interest for the delayed remittance by an authority making the TDS, Therefore, that part of the order which imposes the interest on the Petitioner for the delayed remittance of the tax amounts deducted at source is also not sustainable and therefore it is quashed.

11. The other grievances of the Petitioner like methodology employed, determination of the in-put tax, etc., are to be agitated by only filing an appeal before the Appellate Authority. Without expressing any opinion on other grievances and reserving the liberty to the Petitioner to avail of the appeal remedy, these petitions are rejected.

12. In the result, these petitions are allowed in part, that is to the extent indicated hereinabove. Those parts of the impugned order, which pertains to the imposition of tax at 12.5% on iron and steel and imposition of the interest on the Petitioner for the delayed remittance of the TDS amounts are quashed. No order as to costs.

13. At this juncture Sri Shankar requests that two weeks'' time be given to the Petitioner''s side to file the appeal before the competent authority and that the Respondent be directed not to precipitate the crisis in the meanwhile. Acceding to his prayer, two weeks'' time is granted to file the appeal in respect of the other grievances of the Petitioner. This Court also deems it just to direct the Respondent not to resort to the coercive recovery measures for a period of two weeks.

