(2013) 12 KAR CK 0382

In the Karnataka High Court

Case No : S.T.R.P. Nos. 201 and 202 of 2010

Naveen Enterprises APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 02-12-2013

Acts Referred:

Citation : (2014) 44 GST 375 : (2014) 78 KarLJ 495

Hon'ble Judges : Dilip B. Bhosale, J;B. Manohar, J

Bench : Division Bench

Judgement

Dilip B. Bhosale, J.—These Sales Tax Revision Petitions u/s. 23(1) of the Karnataka Sales Tax Act (for short ''the Act'') have been preferred against the judgment and order dated 31.03.2010 in S.T.A. Nos. 1309-1310/2002 passed by the Karnataka Appellate Tribunal at Bangalore (for short ''the Tribunal''). By this judgment the Tribunal partly allowed the appeals for the assessment years 1992-93 and 1993-94. Those appeals were directed against the orders dated 03.06.2002 passed by the Joint Commissioner of Commercial Tax (Appeals), Davanagere Division, Davanagere (for short ''Appellate Authority'') dismissing the appeals filed by the appellant. The said appeals were filed against the orders, both dated 29.03.2001, passed u/s. 12(1) of the Act read with Rule 18(3) of the Karnataka Sales Tax Rules, 1957 (for short ''the Rules''). The Assessment Officer vide order dated 29.03.2001 had concluded the assessment by confirming the proposals made in the proposition notice dated 8.03.2001. The operative portion of the orders of the Assessment Officer read thus:

The appeals were admitted by this Court on 20.01.2012. At that stage no question of law as contemplated by Section 23 of the Act was framed. In view thereof, learned counsel appearing for the petitioner invited our attention to the questions of law formulated in the petition. He, however, pressed only the first question in the memorandum of petition, which reads thus:

(d) Whether on the facts and circumstances of the case, the original assessments passed u/s 12(3) for the years 1992-93 and 1993-94, on the non-existing firm namely, Naveen Enterprises, Bellary, by the Assessing Authority are within the time limitation prescribed under Sub-section (5) of Section 12 of the Karnataka Sales Tax Act, 1957 as stood applicable to the assessment years 1992-93 and 1993-94?

He submitted that the petitioner firm was not in existence in 1992-93 and 1993-94 and therefore the original assessment order passed u/s. 12(3) of the Act itself is bad in law. In other words, he submitted that the order of assessment was passed in respect of a non existing firm. He then submitted that mere was also a delay in passing the assessment order. The assessment order, he submitted, ought to have been passed within the time prescribed under sub-section (5) of Section 12 of the Act. Similar contentions were raised before the Tribunal. The Tribunal dealt with the said question in paragraph No. 10, which reads thus:

10. The appellant''s counsel has Vehemently pleaded that Sri Krishnamurthy has not obtained RC prior to 01.04.1994 and assessments made prior to this date is on non-existing firms, hence the same should be set aside whereas the Intelligence Authorities have discovered and seized Bank transactions of Vysya Bank, Bellary, which were present in the premises of appellant which proves that the appellant has effected transactions of sales prior to the date of 01.04.1994. The appellant has transactional business during 1992-93 and 1993-94 also which exceeds the registration limit prescribed u/s 10(1) of the KST Act. Therefore the appellant is liable for the registration and assessment. It is seen that the FAA has confirmed the assessment orders in its entirety including turnovers, tax and penalty. But the appellant''s counsel has disputed that there is no material to enhance the turnovers by Rs. 10 lakhs towards omission for both the years. This contention of the counsel has some merits for the reason that the Inspecting Authority has seized all the exhibits and has processed the same and qualified the supporters for both the years, over and above this turnover. The AA has not discovered any other extraneous material for make an addition of Rs. 10 lakhs each. As verified from the records apart from the turnover reported by the Inspecting Officer, there is no other material for further estimation of a huge turnover of Rs. 10 lakhs. The AA has very carelessly added a sum of Rs. 10 lakhs as suppression towards further omission which cannot be sustained. Accepting the contention of the appellant''s counsel the addition of Rs. 10 lakhs towards addition of further omission which is not based on any material evidence cannot be sustained and the same is ordered to be deleted from GTO and TTO. It is also seen that the AA has levied 12(4) penalty of Rs. 2,00,000/- for the assessment year 1992-93 and Rs. 80,000/- for the assessment year 1993-94. As the appellant has intentionally suppressed the turnover which would not have come to light, but for inspection the levy of penalty in this case is in order. However, quantification of penalty needs to be modified in view of deletion of Rs. 10 lakhs from both the GTO & TTO for both the years. Taking the above aspect into consideration the 12(4) penalty is also modified and predetermined at Rs. 1,60,000/- for the assessment year 1992-93 and Rs. 50,000/- for the

assessment year 1993-94. The AA is directed to reduce the turnover of Rs. 10 lakhs from GTO and TTO and to recalculate the tax and to issue Revised Demand Notice accordingly.

2. Learned counsel appearing for the petitioner in support of his contention invited our attention to Annexure-B which is a certificate of registration under Rule 9(5) of the Rules. This certificate under the Rules, in our opinion, is of no avail to the petitioner to contend that the petitioner-firm was not in existence in 1992-93 and 1993-94. The petitioner has not produced any material on record to show that the petitioner firm was not in existence in 1992-93 and 1993-94. In other words, the petitioner firm did not produce its registration certificate as firm. Learned counsel for the petitioner even across the Bar could not produce any material to show that when the petitioner firm was actually registered under the provisions of the Partnership Act. He also made a feeble attempt stating that it was a proprietary concern and not partnership firm. These submissions also do not find any support from the record. For the first time such contention was raised by the petitioner. Even on the question of limitation, learned counsel for the petitioner could not and did not point out any material in support of his contention based on the provisions contained in sub-section (5) of Section 12 of the Act. In our opinion, no question of law is involved in these cases nor could learned counsel appearing for the petitioner raise any question of law worth considering in the instant revision petitions filed u/s. 23(1) of the Act. Hence we do not find any merit in the appeal. Accordingly, the petitions are dismissed.

