(2010) 03 KAR CK 0260

In the Karnataka High Court

Case No : S.T.A. No. 6 of 2009

P. Abubakar APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 18-03-2010

Acts Referred:

Citation : (2013) 63 VST 193

Hon'ble Judges : K.L. Manjunath, J;H.S. Kempanna, J

Bench : Division Bench

Advocate : S.S. Naganand, for Just Law and S. Sriranga, for the Appellant; Geetha Menon, Government Advocate, for the Respondent

Judgement

K.L. Manjunath, J.—Though the appeal was admitted, the substantial questions of law arises for consideration of the court were not framed. The learned counsel appearing for the parties request the court to formulate the substantial question of law. Accordingly, we frame the following substantial question of law:

(i) When the appellant is the first seller of iron ore to a registered dealer in Karnataka is required to produce form 32, in order to claim exemption u/s 5(3)(b) of the KST Act ?

2. We have heard the Sri Naganand, learned senior counsel appearing for the appellant and Smt. Geetha Menon, learned Government Advocate for the respondent-Revenue.

3. The assessee is questioning the legality and correctness of the order passed u/s 22A(1) of the Karnataka Sales Tax Act, 1957 dated September 30, 2008 passed by the Additional Commissioner of Commercial Taxes, Bangalore.

4. The facts leading to this case are as hereunder.

5. The assessee is a mine owner extracting iron ore from the mines at Hospet. The appellant filed the return of turnover in form 4, for the assessment year 2004-05 declaring the turnover under the CST Act amounting to Rs.

7,16,72,586.90 declaring the sales made to different persons. Later on, he realised the mistake that the sale made by him was not inter-State sale but it was within the State. Therefore, he filed a revised return showing the details of the ore sold by him to the dealers in the State. The revised return was not accepted by the assessing officer. Being aggrieved by the same, the assessee filed an appeal before the Joint Commissioner of Commercial Taxes. The Joint Commissioner of Commercial Taxes considering the invoices produced by the assessee came to the conclusion that the sale made by the assessee was not an inter-State sale, but it is a sale made to a registered dealer within the State. Accordingly, the appeal came to be allowed.

6. Later on the Additional Commissioner of Commercial Taxes came to the conclusion that the order passed by the Joint Commissioner of Commercial Taxes was prejudicial to the interest of the Revenue. Therefore, by exercising the powers u/s 22A(1) of the Act, reopened the case. A show-cause notice was issued to the assessee. The assessee sent a detailed report. The Additional Commissioner, set aside the order passed by the Joint Commissioner and restored the order passed by the assessing authority only on the ground that in view of rule 26(9)(a) of the KST Rules, in order to claim exemption, the assessee being the first seller was required to produce declaration in form 32. Accordingly, he restored the order passed by the assessing officer by setting aside the order passed by the Joint Commissioner of Commercial Taxes. Being aggrieved by the same, the present appeal is filed.

7. The learned senior counsel Mr. Naganand contends that the Additional Commissioner has confused himself in regard to the declaration to be submitted by a dealer. According to him, form 32 has to be issued by a registered dealer to the first purchaser. If the purchaser claims any exemption of taxes there is no mandatory for the assessee who himself is a first seller to produce form 32 as the first seller is not required to obtain any declaration from the purchaser. According to him, what is required to be proved by the assessee is that it is an intra-State sale made to a registered dealers under the KST Act. If such sale is made, the seller is not liable to pay any tax as it is for the purchaser to pay the purchase tax. He further contends, if the purchaser intends to seek any exemption, in such circumstances, form 32 has to be furnished by him and not by the assessee. He further contends that in view of section 5(3)(b) of the Karnataka Sales Tax Act, the order passed by the Additional Commissioner requires to be set aside since there is no necessity for the assessee to pay the tax if the sale is made to a registered dealer within the State.

8. Per contra, the learned Government Advocate relying upon the rule 26(9)(a) of the Karnataka Sales Tax Rules contends that in order to claim exemption, the first seller is also required to produce form 32. The assessee having failed to furnish form 32, the Commissioner was justified in setting aside the order passed by the Joint Commissioner of Commercial Taxes and in restoring the order passed by the assessing officer.

9. In the backdrop of arguments advanced by the learned counsel for both the parties, what is required to be considered by this court is that if the assessee being a registered dealer having sold iron ore to a registered dealer in Karnataka, he is required to furnish form 32 or not.

10. In order to appreciate the said contention, it would be useful to extract rule 26(9)(a) of the Karnataka Sales Tax Rules, which reads as hereunder:

26. (9)(a) Every dealer in goods taxable at the point of first sale or first purchase in the State, shall, where he is not liable to tax in respect of such goods by reason of his not being the first seller or the first purchaser, furnish to the assessing authority a declaration in form 32 obtained from the registered dealer who sold the goods to him and for this purpose, the seller of such goods shall issue the declaration to the buying dealer.

11. Having read the provision of law, we are of the opinion that the production of form 32, would be applicable only to the person if a purchase tax has to be paid by such purchaser being a registered dealer under the KST Act, provided he is seeking exemption to pay the purchase tax and we are also of the opinion if the seller is required to pay the sales tax at the first sale in such circumstances seller is required to obtain form 32 from the purchaser, provided he is seeking any exemption. But in the instant case, the seller is not liable to pay the purchase tax. The purchase tax is always required to be paid by the purchaser and not by the seller. If the seller is not liable to pay the tax, the question of obtaining form 32 from the purchaser does not arise at all. This distinct has not been considered by the Additional Commissioner of Commercial Taxes.

12. Therefore, we have to answer the substantial question of law in favour of the assessee and against the Revenue. Accordingly, we answer the same.

13. In the circumstances, the appeal is allowed. The order passed by the Additional Commissioner of Commercial Taxes exercising his powers u/s 22A(1) of the Act dated September 30, 2008 is hereby set aside thereby the order passed by the Joint Commissioner of Commercial Taxes is restored. If any amount is paid on account of the order passed by the Additional Commissioner, the assessee is entitled for refund.