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In the Karnataka High Court

Case No : Sales Tax Appeal No. 34 of 2000

Peeci Industries, Mangalore APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 16-11-2004

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 22A

Citation : (2005) 58 KarLJ 1

Hon'ble Judges : Mrs. Manjula Chellur, J;H. L. Dattu, J

Judgement

H.L. Dattu, J.-The appellant is a partnership firm engaged in the manufacture and sale of hollow blocks. It is registered as a dealer under the provisions of Karnataka Sales Tax Act (the ''Act'' for short). It is also registered as a tiny sector industry and is enjoying the benefits provided in the Government Order No. C.1/140/SPC/93, dated 12-7-1993. For the assessment year ending on 31-3-1997, the appellant has filed its annual returns before the Assessing Authority declaring its total turnover at Rs. 13,51,552/- and the taxable turnover as ''nil''. The claim of the appellant was accepted by the Assessing Authority in this regard, but the purchase turnover of raw materials like jelly, sand etc., was sought to be taxed by invoking the provisions of Section 6 of the Act by issuing a notice in Form 31-A, on the purchase turnover of Rs. 6,08,938/- purchased from unregistered dealers, used in the manufacture of Hollow Blocks, since the assessee has not declared in its returns such purchase turnover nor has paid any tax. Though, this proposal was objected to by the assessee, by filing its objections, the Assessing Authority has after rejecting the explanation offered to the proposal made has proceeded to conclude the assessment by his order dated 8-1-1998, by the confirming the proposal made in the pre-assessment notice dated 26-11-1997.

2. Aggrieved by the said order passed by the Assessing Authority, assessee had filed an appeal before the First Appellate Authority. In the appeal, the assessee had contended that the Assessing Authority was not justified in levying tax on the purchases of raw materials like jelly, sand etc., on a turnover of Rs.

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6,08,939.00 without considering the exemption claimed on the transportation charges incurred which have been separately collected and accounted in the day book, ledger, purchase bills and self-purchase vouchers for U.R.D. purchases and also debit vouchers in respect of transportation charges and the other incidental expenses incurred.

3. The Appellate Authority after verifying the books of accounts, ledgers maintained by the dealer in the regular course of business and after further verification of debit vouchers in respect of transportation charges produced before him at the time of hearing of the appeal, has come to the conclusion that the assessee has paid transportation and the other incidental charges for transporting the raw materials for the manufacture and sale of Hollow Blocks, has concluded that the assessee is eligible for exemption on a turnover of Rs. 2,19,936.00, which amount represents the transportation and other incidental expenses. Accordingly, the Appellate Authority has modified the orders of assessments passed by the Assessing Authority for the assessment year in question in this appeal. The order passed by the Appellate Authority in this regard reads as under.-

"As could be seen from the materials available the appellant has paid transportation, cooly charges separately for which debit note vouchers have been maintained and the entries have been made separately in the books of accounts and hence he is eligible for exemption on such turnover of Rs. 2,19,976.00".

4. The Revisional Authority being of the view that the order passed by the First Appellate Authority is not only erroneous but also prejudicial to the interest of the revenue, has initiated suo motu proceedings under Section 22-A of the Act. In that, the Revisional Authority has observed as under:

"I have observed that the assessee has not bifurcated the above figures before the Assessing Officer but however, adopted a stand that such purchase cost includes transportation also. Therefore, I have to conclude that the Assessing Officer''s conclusion that all the purchases are URD purchases is correct. Hence, a proposition notice is issued to cancel the appellate order of the JCCT (Appeals), Mangalore who has passed an unlawful order which results in loss to the ex-chequer and to restore the Assessing Officer order dated 8-1-1998 and the assessee is also requested to offer any objection to this proposition notice".

5. In the reply to the show-cause notice issued, the assessee had produced before the Revisional Authority the ledger extracts, bills/vouchers for having incurred the transportation costs on purchase of jelly and sand, which are used as raw materials for the manufacture and sale of Hollow Blocks and therefore, the Appellate Authority was justified in granting partial relief to the appellant in the appeal filed against the assessment order for the assessment year in question. The Revisional Authority after considering the objections so filed observes in his order that the assessee has not produced any copy of the agreements for purchase of raw materials like jelly, sand etc., from unregistered

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dealers and further has not produced any bills/vouchers for transportation charges on purchase of jelly and sand and concludes as under.-

"On scrutinizing all the above points it is concluded that there is no valid submissions by the assessee and it is prima facie proved that the above said bifurcation is afterthought and has been made to evade the tax as levied by the Assessing Officer. Therefore, the objections submitted by the assessee has been rejected and Assessing Officers order dated 8-1-1998 has been restored by cancelling the appellate order passed by the JCCT (Appeals), Mangalore".

6. It is now well-settled by catena of decisions of this Court as well as the Supreme Court that the Revisional Authority can initiate proceedings only if the order passed by the subordinate authority is erroneous and prejudicial to the interests of the revenue. A Division Bench of this Court in Mahaboob Ali Mohammed Yakub and Sons v State of Karnataka, (1993)90 STC 276 (Kar.) (DB), has observed as under:

"Section 21 of the Karnataka Sales Tax Act, 1957, empowers the Revisional Authority to call for and examine the records of any order passed or proceedings recorded under the provisions of the Act by a Subordinate Officer. This examination is for the purpose of satisfying himself as to the legality or propriety of such order or as to the regularity of such proceeding. It is for the Revisional Authority to show that the order sought to be revised was illegal or improper or that the proceedings of the Subordinate Officer were irregular, which was prejudicial to the interests of the Revenue. When two views are possible and the Assessing Authority thought to accept a particular view, it cannot be said that the existence of such a view is an illegality or impropriety. In the case of a best judgment assessment made by the Assessing Authority, unless it is shown as arbitrary or capricious, it cannot be termed as illegal or improper. If the Assessing Authority fails to consider any relevant principle or relevant fact certainly the Revisional Authority is entitled to revise the order under Section 21 of the Act".

7. A learned Single Judge of this Court in the case of Maratt Rubber Limited v Commercial Tax Officer, District Circle IV, Bangalore and Others, 1990(1) Kar. L.J. Sh.N. 78, while explaining the scope of Section 22-A of the Act has observed as under:

"The Commissioner is conferred with the powers of revision under Section 22-A of the Karnataka Sales Tax Act. This power is meant to be exercised by the Commissioner if he considers that any order passed under the Act is erroneous and is prejudicial to the interests of the Revenue. It is not merely an erroneous order that can be cancelled, but such order must result in prejudice to the interests of the Revenue. An error to come within the purview of the revisional jurisdiction may be an error of fact, an error of law or an error of jurisdiction. It is only when any or all these facts exist in the order, that the Commissioner can interfere with the same. Not all errors can be revised, but only such orders which

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result in prejudice to the interests of the Revenue. How the prejudice is caused depends upon the facts of each case".

8. A Division Bench of Bombay High Court in the case of Commissioner of Income-tax v Gabriel India Limited, (1993)203 ITR 109 (Bom.) (DB), has observed as under:

"This section does not visualise a case of substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order, unless the decision is held to be erroneous. Cases may be visualised where the Income-tax Officer while making an assessment examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income either by accepting the accounts or by making some estimates himself. The Commissioner, on perusal of the records, may be of the opinion that the estimate made by the officer concerned was on the lower side and left to the Commissioner he would have estimated the income at a higher figure than the one determined by the Income-tax Officer. That would not vest the Commissioner with power to re-examine the accounts and determine the income himself at a higher figure".

9. A perusal of the case-laws cited by the learned Counsel appearing for the appellant would clearly demonstrate that the Revisional Authority is expected to exercise its powers under Section 22-A of the Act, only if the order passed by the subordinate authority is erroneous and prejudicial to the interest of the revenue. Merely because some other opinion can also be taken, the Revisional Authority is not expected to initiate proceedings under Section 22-A of the Act.

10. Keeping in view the well-settled legal position, we have carefully perused the order passed by the First Appellate Authority as well as the Revisional Authority. Before the Revisional Authority, the appellant had claimed that it is not exigible for levy of purchase tax under Section 6 of the Act on the transportation and cooly charges incurred by it for transportation of raw materials for his business activity viz., manufacture of hollow blocks. After being satisfied with the entries made in the ledger extracts and also the vouchers/bills produced by the appellant for having incurred transportation charges and other incidental expenses, which have been separately collected and accounted, the Appellate Authority has granted exemption on the turnover of the transportation and cooly charges incurred by the appellant from payment of purchase tax under Section 6 of the Act. This finding and the conclusion reached by the First Appellate Authority is after verification of the books of accounts maintained by the dealer and also the purchase bills and self-purchase vouchers for U.R.D. purchases of raw materials and also debit vouchers in respect of transportation charges. The order passed by the Appellate Authority was after considering the relevant facts and the materials produced by the assessee at the time of hearing of the appeal. In the facts of the case, in our opinion, the order so made is not contrary to law or upon mistaken view of the law or upon erroneous application of legal principles. Therefore, Revisional Authority could not have initiated its revisional

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jurisdiction to set at nought an order which was not erroneous order. Accordingly, the order passed by the Revisional Authority cannot be sustained. In the result, the following:

ORDER (i) Appeal is allowed.

(ii) The impugned order passed by the Revisional Authority in No. MNG.SMR.8/99-2000/357, dated 22-8-2000 is set aside.

(iii) The impugned order passed by the Appellate Authority in No. KST:AP:53:98-99, dated 22-8-1998 is restored. Ordered accordingly.

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