(2013) 04 KAR CK 0113

In the Karnataka High Court

Case No : Writ Appeal No. 2484 of 2013 (T-RES)

Pfizer Limited — APPELLANT

Vs

State of Karnataka and Others — RESPONDENT

Date of Decision : 01-04-2013

Acts Referred:

Central Sales Tax Act, 1956 — Section 9(2)
Karnataka Value Added Tax Act, 2003 — Section 39(1)

Citation : (2013) 76 KarLJ 54 : (2014) 68 VST 231

Hon'ble Judges : N. Kumar, J;B. Manohar, J

Bench : Division Bench

Advocate : M. Thirumalesh for Sri Harish V.S. and Sri B.R. Renukaprasad for M/s. DNS Law House, for the Appellant; S. Sujatha, Additional Government Advocate, for the Respondent

Judgement

N. Kumar, J.—This writ appeal is filed against the order dated 27-2-2013 Pfizer Limited Vs. State of Karnataka and Others, passed by the learned Single Judge, who has declined to interfere with the writ petition on the ground that the appellant/petitioner has an alternative and efficacious remedy by way of a statutory appeal against the assessment order dated 17-1-2013 passed u/s 9(2) of the Central Sales Tax Act, 1956 read with Section 39(1) of the Karnataka Value Added Tax Act, 2003. This case has chequered history. This is the third round of litigation before this Court. After setting aside the previous order and remanding the matter to the 3rd respondent for fresh consideration, he issued a proposition notice dated 8-1-2013, which was served on the appellant on 10-1-2013 calling upon him to reply to the notice within seven days. The 3rd respondent raised issued that if ''F'' Forms filed by dealer in respect of inter-State stock transfer found to be defective, the values are tampered in handwritten and changed the value, which is defective. He also proposed to reject set of four ''F Forms filed long back on the ground that they bore corrections, overwriting and accordingly defective and not valid. The appellant filed reply on 17-1-2013 submitting that the due corrections in the values of ''F Forms, obtained from

Maharashtra Sales Tax Department and submitted to Karnataka Commercial Tax Department are done under stamp and signature of Sales Tax Inspector of Central Repository Cell at Mazgaon Sales Tax Office of Maharashtra Sales Tax Department. Such corrections were sought from Maharashtra Sales Tax Department only after it was observed that values printed on ''F'' Forms and issued by Central Repository Cell do not match with actual stock transfers received Pfizer -- Karnataka. Therefore, it was requested that four ''F Forms should not be held to be invalid. On 18-1-2013 an authenticity reply was filed stating that the ''F'' Forms had not been tampered and the corrections have been attested. If required the same could be cross-checked by writing to the Competent Authority in the State of Maharashtra. The authority without making any cross-checks from the State of Maharashtra for verifying the authenticity of the four ''F'' Forms passed the order dated 17-1-2013 holding that the four ''F Forms are defective and invalid and raised a huge demand of tax, interest and penalty. Aggrieved by the same, the appellant preferred a writ petition before this Court, As stated earlier, the learned Single Judge declined to entertain the writ petition on the ground of availability of alternative and efficacious remedy by way of statutory appeal. Against these two orders, the appellant is before this Court.

2. The respondents are duly served.

3. We have heard the learned Counsel for the parties. The ''F'' Forms, which are held to be invalid are produced before this Court. We have perused them. In the impugned order, the Assessing Authority at page 7 of the order has clearly set out the alterations. Admittedly, the authorities did not write to their counter part, Maharashtra to verify whether the alterations are genuine or not, which they were obliged to do as per the practice for considerable time, which also reiterated in the meeting held on 15-1-2013 by the Commissioner of Commercial Taxes, Karnataka, Bangalore. That apart, a bare perusal of F'' Forms and its Annexures show that the Authorities of Maharashtra had committed a bona fide mistake that had not added the total amount, which is mentioned in few pages in all these four forms. Once it is brought to the notice being convinced about the mistakes they have committed, which is rectified by making necessary corrections. The authority which was under obligation to communicate to its counter part to verify the corrections, has neither written a letter nor applied its mind to the ''F'' Forms and blindly rejected the said forms as invalid. This is a common occurrence in the department. Therefore, the Commissioner has categorically in the meeting pointed out the mistakes, which they have verified for corrections in the (F'' Forms. It is also emphasised on imaginary grounds that such forms should not be rejected and demand notice should not be issued, which in the end results in repayment of tax collected. In fact, it is categorically stated such action on the part of the authorities to be viewed seriously. The impugned order dated 17-1-2013 is clear that the authorities are over emphasised to collect the tax as possible before the end of financial year and have passed these orders and ex facie orders are illegal. In fact, now the

assessee has also obtained a certificate from the Maharashtra Sales Tax Authority stating that the corrections in the values of F'' Forms, are done by the authorities of sales tax and they are genuine. The learned Single Judge was not justified in looking into the ex facie orders of illegality, It is pointed out from the records that the assessee is a law abiding and paid the tax. Therefore, it is the duty of this Court to interfere with both the order of the learned Single Judge as well as the order of the Assessing Authority and grant relief to the assessee, which has promptly paid the tax in accordance with law. Hence, we pass the following:

ORDER

(a) The appeal is allowed.

(b) The order passed by the learned Single Judge and the order passed by the Assessing Authority are hereby set aside.

(c) The matter is now remanded back to the Assessing Authority. The assessee shall produce the certificate, which he has now obtained from the Maharashtra Sales Tax to show that the said corrections are valid and genuine. If the authority is not satisfied the same, they are at liberty to communicate the counter part, Maharashtra Sales Tax and after verification, pass appropriate order.

Though we are inclined to impose some cost on the Assessing Authority for passing such order without application of mind and also ignoring the direction issued by the Official Superior, the learned Additional Government Advocate submitted that such things will not recur and the Authority to be more careful while passing such order and obeying the direction issued by the Official Superior. Therefore, we do not want to impose cost, but we issue some direction to the Commissioner for Commercial Taxes to see that his subordinates will respect his order, failing which, it is for him to take appropriate action against those erring officers.

The Registry is directed to forward a copy of this order to the Commissioner for Commercial Taxes.