(2011) 10 KAR CK 0001

In the Karnataka High Court

Case No : Writ Petition No''s. 37209 and 37306 to 37311 of 2011 (T-RES)

Pfizer Limited APPELLANT

Vs

State of Karnataka and Others RESPONDENT

Date of Decision : 13-10-2011

Acts Referred:

Citation : (2013) 76 KarLJ 58

Hon'ble Judges : Mohan Shantanagoudar, J

Bench : Single Bench

Advocate : G. Rabinathan and Sri M. Thirumalesh, for the Appellant; T.K. Vedamurthy, High Court Government Pleader, for the Respondent

Judgement

Mohan Shantanagoudar, J.—The impugned orders at Annexures-H, J and K, dated 2-9-2011, 2-9-2011 and 12-9-2011 respectively passed by the third respondent are based on the defective ''F'' Form filed by the petitioner. Rule 12(5) of the Central Sales Tax (Registration and Turnover) Rules, 1957, mandates that ''F'' Form should be filed separately in respect of transaction effected during the period of one calendar month. In the matter on hand, the petitioner has filed certain of ''F'' Forms for certain of block periods. Learned Government Advocate submits that the petitioner has filed four ''F'' Forms for the entire assessment year. It seems, the petitioner made an application during the pendency of the matter before the third respondent praying for return of defective Forms. The same was not granted by the third respondent. Thereafter, the impugned orders came to be passed.

2. The impugned orders thus reveal that the certain ''F'' Forms filed by the petitioner are defective. One of the Forms relating to January 2005 to January 2005 (One Calendar Month) was found to be tampered with and has been changed as ?January 2006 to January 2006" instead of "January 2005 to January 2005". In this context, it is relevant to note the observations of the Apex Court in the case of State of H.P. and Others Vs. Gujarat Ambuja Cement Ltd. and Another, which read thus:

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40. It was urged on behalf of the appellant-State that declaration forms under the Central Act were not filed within the time and/or were defective. That does not in reality amount to non-compliance of a statutory provision. The respondent 1-Company was claiming exemption and, therefore, had not filed the declaration forms. Some of the forms which were filed were treated to be defective. Undisputedly, before the Revisional Authority a prayer was made for grant of opportunity to rectify the defects, if any. That was turned down. It is to be noted that under Rule 12(7) of the Central Sales Tax (Registration and Turnover) Rules, 1957 (in short, ''the Registration Rules''), the declaration form can be filed at a subsequent point of time and not necessarily along with returns. On an application being made before the Assessing Officer the exemption can be granted. The object of the Rule is to ensure that the assessee is not denied a benefit, which is available to it under law on a technical plea. The Assessing Officer is empowered to grant time. That means that the provisions requiring filing of declaration forms along with the return is a directory provision and not a mandatory provision. In a given case even the declaration forms can be filed before the Appellate Authority as an appeal is continuation of the assessment proceedings. In a given case, if the Appellate Authority is satisfied that assessee was prevented by reasonable and sufficient cause which disenabled him to file the forms in time, it can be accepted. It can also be accepted as additional evidence in support of the claim for deduction. In the instant case, respondent 1-Company made a specific request before the Revisional Authority which was turned down. Therefore, the question of any non-compliance with the relevant statutes does not arise. It was noted by this Court in Sahney Steel and Press Works Limited and Another Vs. Commercial Tax Officer and Others, that even in a given case, an assessee can be given an opportunity to collect declaration forms and furnish them to the Assessing Authority if the challenge of the assessee to taxability of a particular transaction is turned down.

From the above, it is prima facie clear that the Apex Court was in favour of grant of permission for curing the defects in Form ''F'' in certain circumstances. In the matter on hand, as aforementioned, the petitioner had prayed for return of ''F'' Forms for getting them cured or for filing fresh Forms as per law. Having regard to the totality of the facts and circumstances of the case, in my considered opinion, interest of justice will be met if the defective forms filed by the petitioner are returned to the petitioner, with liberty to the petitioner to file fresh ''F'' Forms, in accordance with law. However, the ''F'' Form filed by the petitioner which is found to be tampered, need not be returned. By the said process, no prejudice or injustice will be caused to either of the parties. Accordingly, the following order is made:

The impugned orders at Annexures-H, J and K, dated 2-9-2011, 2-9-2011 and 12-9-2011 respectively, stand set aside.

The third respondent is directed to return the defective ''F'' Forms to the petitioner except Form relating to January 2005 to January 2005 (tampered as

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January 2006 to January 2006) within one week from the date of receipt of this order. The petitioner shall file fresh ''F'' Forms as per law, within four months thereafter. Within the said span of four months, the petitioner shall furnish indemnity bond indemnifying tax arrears in respect of four months to the satisfaction of the prescribed authority. After filing of the fresh ''F'' Forms by the petitioner, the Prescribed Authority shall proceed in accordance with law.

Accordingly, writ petitions are disposed of.

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