

(2010) 10 KAR CK 0016
In the Karnataka High Court
Case No : S.T.A. No. 105 of 2009

Poetic Interiors

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 01-10-2010

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 12 (4), 22 A (1)
Karnataka Sales Tax Rules, 1957 — Rule 6 (4), 6 (4) (m)

Citation : (2011) 39 VST 366

Hon'ble Judges : Manjula Chellur, J;K. Govindarajulu, J

Bench : Division Bench

Advocate : Kamath and Katnath, Aravind Kamath and J. Beno, for the Appellant;
S. Sujatha, A.G.A., for the Respondent

Final Decision : Allowed

Judgement

Manjula Chellur J.

1. Heard the learned Counsel for the Appellant and Government Advocate representing Revenue.

2. The Appellant is a proprietorship concern engaged in the business of interior decoration work on contract basis. The Appellant had reported a gross and taxable turnover of Rs. 1,60,25,743.55 (rupees one crore sixty lakhs twenty five thousand seven hundred forty three and fifty five paise only) and (-) Rs. 17,74,009.59 (rupees seventeen lakhs seventy four thousand nine and fifty nine paise), respectively for the assessment year 2001-02.

3. According to the Respondents the Deputy Commissioner of Commercial Taxes (Intelligence) II South Zone, Bangalore, inspected the premises of the Appellant on November 22, 2002 and certain books of account and other documents pertaining to the business of the Appellant were verified for the assessment years between 1998-99 to 2002-03, After inspecting the business premises of the Appellant, the assessing authority took up the final assessment proceedings

for the year 2001-02 and issued a pre-assess-ment notice on January 15, 2005 proposing to disallow the deductions claimed by the Appellant under rule 6(4) (m) of the KST Rules, 1957 on the ground that the goods were not used in the same form. In the notice there was a proposal to disallow the claim of the Assessee insofar as deduction on the works contract done by him outside the State of Karnataka.

4. The Appellant filed a reply to the proposition notice and after considering the same the assessing authority confirmed its opinion as per the proposition notice. Aggrieved by the same, the appeal is filed contending that the assessing officer had not allowed sufficient time to the Assessee and though the claim of deductions were admissible they were not allowed, hence there was a total erroneous procedure adopted by the assessing authority in subjecting the contract work carried out by the Assessee outside the State as well.

5. The first appellate authority after perusal of the records and based on the submissions made by the Appellant as well as the Respondents, opined that execution of works on contract basis so far as the interior decoration business of the Assessee, it was reflected on the file of the Assistant Commissioner of Commercial Taxes, 29th Circle, Bangalore with effect from January 18, 2001 itself as declared by him in the monthly returns as well as the annual returns regularly along with payment of tax to the said authorities as per the assessment records and the Appellant-Assessee had obtained the registration certificate only after inspection conducted by the intelligence authority. The gross turnover noticed by the intelligence authorities as well as turnover voluntarily reported by the Assessee before the jurisdictional assessing authority in the monthly reports and so also in the revised returns filed by the Assessee was substantially same without any variation. Therefore, the appellate authority was satisfied that there was no concealment of any transaction by the Appellant-Assessee and all the transactions were reflected in the books of account and the same deserves to be accepted.

6. Coming to the controversy raised before the appellate authority, the appellate authority on consideration of records was satisfied that certain goods purchased by the Assessee like plywood, glass and other hardware items were brought directly to the work site and so far as other items like chairs, air-conditioners, etc., are concerned, were brought directly from the traders who sold the said items as finished products. According to the appellate authority there was no change in the form of the goods purchased by the Appellant-Assessee and what items were purchased by the Appellant-Assessee were used in the same form as per Explanation III to rule 6(4) of the KST Rules, 1957. As the entire purchases of local registered dealer goods were directly used, there was erroneous disallowance of 25 per cent of such goods by the assessing authority and held that entire registered dealer purchases ought to have been allowed as deduction. So far as the inter-State purchases, the Appellant-Assessee had purchased them under bills and after verification it was satisfied that all the goods were

purchased outside the State for executing the work within the respective State outside Karnataka. As the Appellant-Assessee did not have branches of its business in those States, there was no question of causing entry of such goods into the State of Karnataka as all those goods were used in the respective States. With these observations, the first appellate authority found that the jurisdictional assessing authority was not justified in passing the order u/s 12(4) of the KST Act imposing penalty and therefore, held it was unsustainable and the appeal was allowed directing the assessing authority to re-compute the turnover in the light of the observations of the appellate authority.

7. The Additional Commissioner of Commercial Taxes, Zone 1 invoking powers u/s 22A(1) of the KST Act, 1957 initiated suo motu proceedings and issued notice to the present Appellant-Assessee after narrating the entire facts including the important portions of the observations made by the first appellate authority and restored the order of assessment with penalty in accordance with observations made by him. As a matter of fact except repeating the observations of the assessing authority no independent reasons were given by the revisional authority. Aggrieved by this order of the revisional authority, the present appeal is filed. Following questions of law arises for consideration:

(a) Whether, in facts and circumstances of the case, especially when the first appellate authority has examined all the documents in respect of the local RD purchases of materials for use in the interior decoration works and given the finding that the materials have been used in the same form, can the order of the second Respondent revising/setting aside the first appellate order and restore the assessment order sustainable in law ?

(b) Considering the documents produced in respect of purchase of materials in other States for execution of works in those States and not brought the materials to this State as is visible from the finding of the first appellate authority, whether the order of the second Respondent sustainable in law ?

(c) When there is voluntary disclosure of the turnover in the monthly return and there is no change in the same during assessment, is it legal to impose penalty u/s 12(4) of the KST Act ?

8. The learned Counsel for the Appellant contends that there was no concealment of any turnover as the registered dealer's purchases were reflected in the monthly turnover and all the goods which were purchased for the purpose of business were used in the same form without changing the original form, the revisional authority was not justified in setting aside the order of the first appellate authority. He also contends that in respect of contract between the Appellant and the person who took the services of the Appellant outside Karnataka, the assessing authority and the revisional authorities were not justified in not placing reliance on those documents and in the absence of any material disclosing that the purchases made outside the State being brought into the local area for his business in the local area, there was no justification for the

assessing authority and the revisional authority to include those amounts in the turnover of the Appellant-Assessee.

9. As against these, the learned Government Advocate submits, though the business of the Appellant-Assessee was in existence right from 1998, only in the year 2001 when there was inspection by intelligence wing of the Department, the actual nature of the business and the amounts involved in the business came to light.

10. From the arguments across the Bar, it was brought to the notice of the court that though same proceedings were initiated for the assessment year 1998-99, it is already disposed of, by the Tribunal in favour of the Assessee. However, we are not concerned with the said proceedings as it pertains to different assessment year and it is not a subject of controversy before us. So far as the present issue is concerned, we note that the turnover disclosed by the Appellant-Assessee in his monthly reports as well as revised returns and also the turnover estimated by the intelligence wing of the Department is substantially the same. If at all the purchase bills outside the State of Karnataka are part of the record, unless there is material to show that those goods were brought into local area, opinion of the first appellate authority that for the contract works executed by the Appellant-Assessee outside Karnataka, such goods must have been used, which is evident from the contract agreement between the parties is just and proper. Similarly, unless there is material to show that the goods purchased by the Appellant were used resulting in a different form, the Appellant-Assessee was entitled for deduction of the cost of the material as per the Explanation III to rule 6(4) of the KST Rules of 1957.

For the reasons above, we are of the opinion that the revisional authority was incorrect in setting aside the orders of the first appellate authority. Accordingly, the appeal is allowed confirming the orders of the first appellate authority-Joint Commissioner of Commercial Taxes.