
(2016) 02 KAR CK 0188

In the Karnataka High Court

Case No : Writ Petition Nos. 24493 and 41250-41272 of 2015 (T-KST)

Pratham Motors Private Limited

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 16-02-2016

Acts Referred:

Karnataka Value Added Tax Act, 2003 — Section 30, Section 30(3), Section 39(2)

Citation : (2016) 02 KAR CK 0188

Hon'ble Judges : Anand Byrareddy, J.

Bench : Single Bench

Advocate : Rabinathan G., Advocate, for the Appellant; S.V. Giri Kumar, Additional Government Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Anand Byrareddy, J.—1. Heard the learned counsel for the petitioner and the learned Additional Government Advocate appearing for respondents No. 1 to 4.

2. The petitioner claims that it is a dealer in cars and is entitled to deduction of discounts allowed to customers in the sale price of cars after the cars were sold by issuing credit notes as authorized by Rule 31 of Karnataka Value Added Tax Rules, 2005 (Hereinafter referred to as the "KVAT Rules", for brevity) read with Section 30 of Karnataka Value Added Tax Act, 2003 (Hereinafter referred to as the "KVAT Act, for brevity), during the tax periods in 2006-2007 and 2007-2008.

According to the petitioner, the decision of this court in M/s. Pratham Motors Private Limited v. Additional Commissioner of Commercial Taxes and others, , 2012(74) Kar. LJ 97, applies to the facts of the present case on all fours and therefore, the second reassessment order passed by the fourth respondent under Section 39(2) of KVAT Act for the years 2006-2007 and 2007-2008 disallowing the claims to deduction and the appellate order passed by the third respondent, in the appeals which were clubbed together and filed against the order passed by the fourth respondent, are liable to be set aside.

3. The learned Counsel for the petitioner draws attention to the relevant provisions of law, which would be pertinent to consider the case of the petitioner, namely, Rules 31 and 3(2)(c) of the KVAT Rules and Section 30 of the KVAT Act. The provisions read as follows:--

"31. Particulars of credit and debit notes. - Where a registered dealer has given a tax invoice in respect of a sale of goods and thereafter the goods or any part thereof are returned to the seller if the sale is cancelled or for any other reason, or the value of the sale is altered, whether due to a discount or otherwise, he shall, subject to the provisions of Section 30, give to the buying dealer a credit or debit note containing the following details, namely.--

- (1) the nature of the document issued;
- (2) a consecutive serial number;
- (3) the date of the issue of the document;
- (4) the name, address and registration number of the selling dealer;
- (5) the name and address of the buyer, together with buyer's registration number, if registered;
- (6) the number and date of the relevant tax invoice;
- (7) the value of the goods and the amount of the tax credited or debited to the buyer; and
- (8) signature of the selling dealer or his agent."

Clause (c) of sub-rule (2) of Rule 3 reads as follows:

"3. Determination of turnover. -

- (1) xxx
- (2) The taxable turnover shall be determined by allowing the following deductions from the total turnover.--
 - (a) xxx
 - (b) xxx
 - (c) All amounts allowed as discount:

Provided that such discount is allowed in accordance with the regular practice of the dealer or is in accordance with the terms of any contract or agreement entered into in a particular case and the tax invoice or bill of sale issued in respect of the sales relating to such discount shows the amount allowed as discount; and

Provided further that the accounts show that the purchaser has paid only the sum originally charged less discount."

Section 30 of the KVAT Act reads as follows:--

"30. Credit and Debit Notes.--(1) Where a tax invoice has been issued for any sale of goods and within six months from the date of such sale the amount shown as tax charged in that tax invoice is found to exceed the tax payable in respect of the sale effected or is not payable on account of goods sold being returned within the prescribed period, the registered dealer effecting the sale shall issue forthwith to the purchaser a credit note containing particulars as prescribed.

(2) Where a tax invoice has been issued for sale of any goods and the tax payable in respect of the sale exceeds the amount shown as tax charged in such tax invoice, the registered dealer making the sale, shall issue to the purchaser a debit note containing particulars as prescribed.

(3) Any registered dealer who receives or issues, credit notes or debit notes shall declare them in his return to be furnished for the tax period in which the credit note is received or debit note is issued and claim reduction in tax or pay tax due thereon.

(4) Any document issued by the registered dealer as required under any other law containing particulars of credit note or debit note as prescribed shall be deemed to be a credit or debit note for the purpose of this section."

4. The learned Counsel for the petitioner places reliance on decisions of this court, which have dealt with the cases similar to that of the petitioner and in which provisions have been interpreted.

State of Karnataka v. M/s. Reliance Industries Limited, Bangalore , 2010 (68) Kar.LJ 337 -

A Division Bench of this court has passed an order in a revision petition filed by the State of Karnataka challenging the order passed by the Karnataka Appellate Tribunal in the case of M/s. Reliance Industries Limited, Bangalore v. State of Karnataka, pertaining to the tax periods April 2006 to September, 2006. M/s. Reliance Industries Limited had issued credit notes to its purchasers offering discounts in the sale prices at which the goods were sold and claimed deduction in terms of Rule 31 of the KVAT Rules. The Tribunal allowed the claim in the second appeals filed by M/s. Reliance Industries Limited. The State contested the order passed by the Tribunal in the revision petition contending that there was no compliance with the prescription in Rule 3(2)(c) of the Rules on the part of M/s. Reliance Industries Limited to have allowed the discounts on the tax invoices themselves. This Court, inter alia, held that there is in fact no conflict between Rule 3(2)(c) and Rule 31 of the Rules. It was held that when sale invoices were issued that would be the total turnover of the dealer and when credit notes were subsequently issued, it would automatically result in lower amount of turnover, which would result in lower amount of sales tax payable.

Paragraph 8 of the Order passed by this Court is reproduced below:

"8. Having heard the learned counsel for the parties and on perusal of the material on record, it is not in dispute that in terms of the incentive scheme respondent has given to its various purchasers credit notes with the purpose of encouraging them to sell greater quantities of its products and also with regard to prompt repayment. The issuance of the credit notes would automatically mean that the amounts as mentioned in the invoices would be reduced which would result in reduction in the over all turn over relating to the goods sold for the particular month. However, we find that the Tribunal has not taken into consideration various details with regard to variation in the total turnover on account of the credit notes issued. The Tribunal merely proceeds on the basis that there is a conflict between rule 3(2)(c) and rule 31 of the Rules. In fact, it is necessary to note that rule 3(2) (c) of the rules pertains to the discounts that can be allowed in terms of the regular practice whereas rule 31 is with regard to particulars of credit and debit notes which has to be furnished by the registered dealers as and when the credit notes are issued to the purchasers which would automatically result in variation in the amounts as stated in the invoices issued. There is in fact no conflict between the aforesaid Rules. In fact, when sale invoices are given by the respondent that would be total turnover of the respondent - assessee but when credit notes are subsequently issued by the assessee, it would automatically result in lower amount of turnover which would result in a lower quantum of sales tax. This aspect has not been taken into consideration by the Assessing Authority as well as the First Appellate Authority."

State of Karnataka v. M/s. MIRC Electronics Limited, 2010(68) Kar.LJ 655-

This is a case filed by the State Government against the order passed by the Karnataka Appellate Tribunal, which was disposed of at the admission stage with the consent of the parties. This court had framed the following two substantial questions of law and disposed of the revision petition:

"1. Whether the dealer who has given post sale discounts to its dealers not in the "tax invoice" but by way of "credit notes" at a later point of time and reducing his tax liability subsequently would qualify for deduction under Rule 3(2)(c) of the Karnataka Value Added tax Rules, 2005 and the first proviso thereof?

2. Whether the Tribunal is justified in allowing deduction from the total turnover on the amount of post sale discounts on the strength of credit notes which are not reflected in the tax invoice?"

This court found that the questions of law raised were already answered by a co-ordinate Bench of this Court in the case of State of Karnataka v. Reliance Industries Limited, Bangalore, which is referred to above. Following the same, the petition was disposed of directing the Assessing Officer to recompute the assessment in terms of the observations made by this Court in Reliance Industries, supra.

M/s. Pratham Motors Private Limited v. Additional Commissioner of Commercial Taxes, Zone II, Bangalore, , 2012 (74)Kar.LJ97

This was a case of the very petitioner herein. The petitioner herein had given certain discounts to the customers. The discounts were not shown on the tax invoices. Separate credit notes were issued to the customers subsequent to the issue of sale invoices. The assessee had claimed deduction towards the discounts thus offered to customers. The assessing officer had held that the discounts shown did not form part of the sale invoices and therefore no deduction could be allowed towards such discounts. The Joint Commissioner of Commercial Taxes (Appeals) had set aside the order of the Assessing Officer. The Additional Commissioner of Commercial Taxes, in revision, set aside the order of the Joint Commissioner of Commercial Taxes (Appeals) and confirmed the order passed by the assessing officer.

On an appeal against the revision order, this Court had framed the following issue for consideration:--

"Whether it is permissible for the assessee to show the discount given by a separate credit note subsequently and claim deduction even though the said discount is not shown in the tax invoice or sale bill?"

This Court referred to the earlier judgment in *State of Karnataka v. M/s. Reliance Industries Limited*, Bangalore 2010 (68) Kar. LJ 337, wherein it was held that Rule 31 was with regard to particulars of credit and debit notes which were to be furnished by registered dealers. As and when the credit notes were issued to the purchasers, it would automatically result in variation in the amounts stated in the tax invoices. When the sale invoices were issued, that would be the total turnover of the assessee and when credit notes were subsequently issued, it would automatically result in lower amount of turnover, which would result in a lower quantum of sales tax.

M/s. S.B. Audio and Video, Gulbarga v. Additional Commissioner of Commercial Taxes, Zone 1, Bangalore - an unreported judgment dated 2.11.2015 in STA No. 701 of 2013 -

One of the questions of law framed in this decision is reproduced below:--

"Whether it is permissible for the assessee to show the discount given by a separate credit note subsequently and claim deduction even though the said discount is not shown in the tax invoice or sale bill?"

Interpreting Rule 31 of the KVAT Rules, this Court held that a dealer was entitled to give further discount even after the sale has been completed provided the discounts are customary practice in the trade or otherwise known as trade discount and that the onus of proving the said fact was on the assessee and he ought to demonstrate that the discount given was in accordance with the provisions of the Act and Rules.

Relevant portion of the judgment is reproduced hereunder:--

"21. The Rules specify.....and Rule 31 stipulates the particulars that ought to

be revealed in a debit and credit note. Thus we conclude that the dealer is entitled to give further discounts even after the sale has been completed provided the discounts are the customary practice in the trade or otherwise known as trade discounts. It has to be demonstrated by the assessee that the further discounts, apart from the discounts in the tax invoice or sale bill already given, is pursuant to the terms and conditions of an agreement or contract between the seller and the registered dealer. For E.g. a contract may be entered into for providing further discounts in the event if the dealer achieved a particular target or exceeds a particular target. Thus to concise the same this Court is of the opinion that a discount is allowable under the tax invoice or sale bill. A further discount is also permissible by way of credit note and debit note subject to the condition it is demonstrated that the discounts are trade discounts or pursuant to a contract or agreement entered into between the seller and the dealer. The onus of proving the said fact is on the assessee and he ought to demonstrate that the discount given by him is in accordance with the provisions of the Act and Rules. Thus the second substantial question of law is answered accordingly."

M/s. IFB Industries Limited, Mahadevpura, Bangalore v. Commercial Tax Officer (Audit)- , 2014(80) Kar. LJ 292 - Order dated 31.7.2014 passed by a learned Single Judge of this court. -

A learned Single Judge of this court has held that once the Order passed by the Karnataka Appellate Tribunal was not challenged and therefore attained finality, the Order becomes binding on the authority and refusal to give effect to the Order amounts to breach of judicial discipline. It was also held that even if the Tribunal's order was erroneous, when it has not been set aside by the higher forum, it is binding on the parties.

5. The learned Counsel for the petitioner would contend that the State has not filed any special leave petition before the Supreme Court disputing the correctness of the law laid down in the above cited judgments rendered in the context of Rule 31 of KVAT Rules read with Section 30(3) of KVAT Act. There has also been no recommendation for placing the judgments before a Full Bench. Thus, the judgments are final and conclusive as regards the applicability of Rule 31 and interpretation to be given to the scope and effect of the same, whereby the registered dealers are allowed to provide discounts to purchasers by issuing credit notes and to claim the credit notes in respect of the reduction in sale price and reduction in the corresponding amount of tax directly on the monthly returns filed in the months in which the credit notes are issued or received.

It is pointed out that Section 30 of the KVAT Act was omitted only with effect from 1.4.2012 by the Karnataka Act No. 17 of 2012 and it does not therefore affect the claims of the petitioner which pertain to the tax periods 2006-07 and 2007-08. That even though Section 30 was omitted with effect from 1.4.2012, Rule 31 of the KVAT Rules authorising registered dealers to issue credit notes for allowing discounts to purchasers is continued on the Rule book even as on date.

It is contended that a plain reading of sub-rule (2) of Rule 3 of the KVAT Rules, it is evident that it pertains to the determination of taxable turnover by allowing the deductions specified in clauses (a) to (m) from the total turnovers. The discounts allowed in the sale prices is one such deduction authorized by clause (c) of sub-rule (2) of Rule 3. In order to be eligible for deduction from the total turnover, one of the conditions prescribed in the proviso to clause (c) is that the tax invoice or the bill of sale issued in respect of the sales relating to such discount shows the amount allowed as discount, in other words, the amount allowed as discount should be shown on the tax invoice or bill of sale.

Rule 3(2) (c) does not in any way affect or prevail over Rule 31 authorising registered dealers, after the sales were effected, to allow discounts in the sale prices by issuing credit notes to the purchases.

It is further contended that there are other judgments with reference to rule 3(2) (c) of KVAT Rules. It may be observed that the judgments state the obvious that as per clause (c) of sub-rule (2) of Rule 3, unless the discounts are shown on the tax invoices or bills of sale, the amounts allowed as discounts are not eligible for deduction from the total turnovers. It was in this context of the provisions of Rule 3(2)(c) that this Court had held that the discounts allowed post-sales by issuing credit notes were not eligible for deduction from the total turnovers. It is not however to be construed that Rule 3(2)(c) prevails over Rule 31 or that Rule 31 could not be availed by registered dealers to issue credit notes, after the sales were effected, to allow discounts in the sale prices and to claim the credit notes in the returns filed for the months in which the credit notes are issued or received.

The learned counsel would therefore contend that the judgments do not in any way affect the entitlement of registered dealers under Rule 31 to allow discounts in the sale prices post-sales by issuing credit notes to the purchasing dealers and to claim the credit notes directly on the returns filed in the months in which the credit notes were issued or received in terms of sub-section (3) of Section 30 of the Act.

It is contended that insofar as the decision in *M/s. Southern Motors, Bangalore v. State of Karnataka*, , (2008) 18 VST 161, is concerned, the Order upholds constitutional validity of Rule 3(2)(c) and it is not on the entitlement or otherwise of registered dealers to issue credit notes, post-sales, and allow discounts to the purchasing dealers in terms of Rule 31.

Insofar as the decision in *State of Karnataka v. M/s. Kitchen Appliances India Limited, Bangalore*, , 2011 (71) Kar. L.J. 234, is concerned, it is to be noticed that it was clarified in the judgment in the case of *M/s. Pratham Motors Private Limited*, 2012(74) Kar.LJ 97, that in *M/s. Kitchen Appliances India Limited's* case the issue was whether Rule 3(2)(c) and Rule 31 of the Rules are inconsistent and are in conflict with each other. The issue whether credit notes could be issued separately after issuance of sale bills was not under consideration. Attention is

drawn to Paragraph 7 of the judgment in M/s. Pratham Motors Private Limited's case, supra, which is reproduced below:

"7. The ratio laid down by this Court in Southern Motors case does not prohibit the issuance of credit note subsequent to the sale bill. It is held that such modification in the sale bill is permitted if it is done within six months from the date of sale transaction. In Kitchen Appliances case, the issue was whether Rule 3(2)(c) and Rule 31 of the Rules are inconsistent and are in-conflict with each other. The issue whether the credit note could be issued separately after issuance of sale bill was not under the consideration in the said case..."

It is contended that though a learned Single Judge of this court in the case of M/s. Southern Motors, Bangalore v. State of Karnataka in W.P. No. 21777-21793/2012 (T-RES) had passed an order in a petition challenging the rectification orders passed by the third respondent therein - Assistant Commissioner of Commercial Taxes (Audit), to disallow claims to discounts on the ground that tax invoices or the sale bills did not show the discounts offered, a division bench of this court in the case of M/s. Southern Motors, Bangalore v. State of Karnataka and others, , 2014 (79) Kar.LJ 533 has held that if the discounts allowed to purchasers were to be allowed as deductions from the total turnover, then it could be only under Rule 3(2)(c) and the condition prescribed therein should be satisfied for the discounts to have been shown on the tax invoices or sale bills.

In the course of the judgment, the division bench has referred to Section 30 and to Rule 31 in paragraphs 9 and 10 of the judgment and expressed the view that Section 30 or Rule 31 do not deal with the determination of turnover. If a credit note is given under Rule 31 reducing the tax amount, then it is for the dealer to declare the credit note in the return furnished to the tax authority and claim reduction in tax on such total turnover. Thus, the said decision is to the effect that the registered dealers issuing credit notes for discounts are authorized to claim deduction of the discounts from total turnover declared in the monthly returns filed and the disentitlement is only in regard to claiming the deduction in the computation of taxable turnovers in terms of sub-rule (2) of Rule 3 of the Rules. Attention is drawn to the relevant portion of the judgment, which is reproduced herebelow:

"10. How the credit note and debit note is to be issued is provided under Rule 31 of the Rules. Again, the particulars which are to be set out in such a credit note is provide in clause (7). All that is mentioned is the value of the goods and the amount of tax credited and debited to the buyer is to be set out in the invoice. If Rule 31 is read with Section 30 in the case of charging of excess tax, in the credit note what is to be mentioned is the value of goods and the excess tax credited and if credit note is given reducing the tax amount, declare them in the returns to be furnished to the Tax Authorities claiming reduction in tax on such total turnover. As rightly pointed out in the Reliance Industries case, there is no conflict between Section 30 of the Act as well as Rule 31 of the Rules. Neither

Section 30 nor Rule 31 deals with the determination of turnover."

6. The respondent - State has opposed the petition on the ground that after the judgment in the case of M/s. Southern Motors, Bangalore v. State of Karnataka and others, , 2014(79) Kar.LJ 533, it is only the discounts shown on the tax invoices themselves that are eligible for deduction from the total turnover under Rule 3(2)(c) of the KVAT Rules and not the discounts allowed by issuing credit notes. The learned Additional Government Advocate, therefore, seeks that the petition be dismissed.

7. In the circumstances of the case, on an overview of the case law and having regard to the contentions urged by the learned Counsel, it would have to be held that the petitioner has made out a case.

The petition is allowed in terms as prayed for.