(2013) 07 KAR CK 0052

In the Karnataka High Court

Case No : Writ Petition Nos. 16825 to 16849 of 2011

Radel Electronics (P.) Ltd. APPELLANT

Vs

Commissioner of Commercial Taxes RESPONDENT

Date of Decision : 30-07-2013

Acts Referred:

Citation : (2014) 44 GST 461

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Judgement

Ram Mohan Reddy, J.—Since common questions of law and that of fact arise for decision making, with the consent of the learned Counsel for the parties, petitions are clubbed together, finally heard and disposed of by this order. Petitioner an assessee, manufactures Indian musical instruments like Veena , Tambura, Shruti box and Tabala, which looks like traditional Veena in appearance and is smaller in size and quite handy to carry and the parts could be disabled and assembled. The Veena and Tambura have electrical gadgets like mike, amplifier and speaker for better voice quality and ability. On the basis of a clarification issued by the Commissioner of Commercial Taxes under the Karnataka Value Added Tax Act, 2003, (for short, ''the K.V.A.T.'' Act), it was opined that the aforesaid musical instruments attract tax as ''electronic goods'' u/s 4(1)(b)(ii) of the Act i.e., unscheduled goods while the petitioner claimed rate of tax as applicable to the instruments u/s 4(1)(d)(ii) of the Act i.e., entry No. 50 of the Third Schedule to the K.V.A.T. Act. Hence, W.P. No. 16825/2011 for necessary declaration.

2. In W.P. Nos. 16826-16849/2011, petitioner though filed appeals against the orders of re-assessment charging the musical instrument to tax u/s 4(1)(b)(iii) of the K.V.A.T. Act and unable to make a deposit of 5096 of the demand, as a precondition to the filing of the Appeal, preferred writ petitions.

3. Learned Senior Counsel for the petitioner submits that identical question under the Karnataka Sales Tax Act, 1957, having arisen, when answered in

favour of the assessee, by a Division Bench of this Court in State of Karnataka v. Radel Electronic (P.) Ltd. S.T.R.P. No. 109 of 2011, dated 02.11.2012, was carried by the State in Special Leave to Appeal (Civil) No. 20222/2013 which was dismissed by order dated 16.07.2013, confirming the order in S.T.R.P. No. 109/2011. Learned Senior Counsel hastens to add that applying the very same observations in S.T.R.P. No. 109/2011, petitioner is entitled to the benefit of a declaration that the musical instruments in question are covered by section 4(1)(u)(ii) of the K.V.A.T. Act, for the purpose of tax.

4. The submissions of the learned senior Counsel are not opposed by the learned Government Advocate for the respondent-revenue. In that view of the matter, these petitions are accordingly disposed of. The clarification issued by the Commissioner of Commercial Taxes stands quashed insofar as the petitioner is concerned and a direction is issued to the assessing authorities to assess tax on the musical instruments manufactured by the petitioner u/s 4(1)(a)(n) read with Entry 50 of the Third Schedule to the K.V.A.T. Act. The order of the assessing authority is quashed. As a consequence, the appeal preferred by the petitioner is disposed of. In the event, respondent-revenue has collected tax in excess of what the petitioner is liable to pay, is directed to be refunded within 30 days from today.

