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(2013) 11 KAR CK 0379

In the Karnataka High Court

Case No : Sales Tax Revision Petition No. 702 of 2012 connected with Sales Tax Revision Petition No. 703 of 2012

Rangoli Paints APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 25-11-2013

Acts Referred:

Citation : (2014) 79 KarLJ 321

Hon'ble Judges : Ram Mohan Reddy, J;K.N. Keshavanarayana, J

Bench : Division Bench

Judgement

Ram Mohan Reddy, J.

Facts briefly stated are:

1. Petitioner, a partnership firm engaged in the business of manufacturing paints claiming to be eligible for sales tax exemption, as applicable to small scale industrial units, announced by the Government of Karnataka, filed annual return in Form 4 for the assessment year 1997-1998 declaring gross turnover of Rs. 7,55,686/- and exemption of Rs. 6,04,548/-, whence, the Assessing Officer declined the exemption by assessment order dated 27-2-2001 - Annexure-B. Petitioner filed an application u/s 12-D of the Karnataka Sales Tax Act, 1957 (for short, ''the Act'') for cancellation of the assessment which when rejected by order dated 2-5-2001 - Annexure-C, filed an appeal invoking Section 20 of the said Act before the First Appellate Authority. That appeal when dismissed by order dated 28-12-2002 on the premise that the petitioner ought to have preferred an appeal u/s 22 of the Act before the Karnataka Appellate Tribunal (for short, ''KAT'') and not u/s 20 of the Act, was carried in a further appeal before the KAT in STA No. 1129 of 2003, which when dismissed by order dated 30-6-2010 - Annexure-A, was confirmed by order dated 31-1-2012 rejecting the Rectification Application No. 6 of 2011. STRP No. 702 of 2012 is filed calling in question the order dated 31-1-2012 in ST Rectification No. 6 of 2011 of the KAT - Annexure-A, while STRP No. 703 of 2012 is filed against the order dated

30-6-2010 in STA No. 1129 of 2003 - Annexure-A.

2. Heard the learned Counsel for the parties, perused the pleadings and examined the orders impugned.

3. Since common questions of law and that of fact arise for decision making, with the consent of the learned Counsel for the parties the petitions are clubbed together, heard finally and disposed of by this common order.

4. The following questions of law arise for decision making:

1. Petitioner having not questioned the assessment order dated 27-2-2001 of the Assessing Authority in an appeal invoking Section 20 of the Act, but having filed an application u/s 12-D of the Act for cancellation of the assessment order, whether the joint Commissioner of Commercial Taxes (Appeals) was justified in dismissing the appeals calling in question the order u/s 12-D of the Act, as not maintainable?

2. Whether the Karnataka Appellate Tribunal was justified in dismissing STA No. 1129 of 2003 by order dated 30-6-2010, as not maintainable u/s 22 of the Act?

3. Whether the Karnataka Appellate Tribunal was justified in rejecting ST Rectification Application No. 6 of 2011 u/s 22(6-A) of the Act by order dated 31-1-2012?

5. In order to appreciate the contentions advanced in the petitions, it is useful to extract Sections 12-D, 20(1), 22(1) and 22(2) of the Act, which reads thus:

12-D. Cancellation of assessment in certain cases.--(1) Where an assessee within one month from the service of a notice of demand makes an application and satisfies the Assessing Authority that he was prevented by sufficient cause from appearing as required u/s 12, or that he did not receive the notice issued under that section, the Assessing Authority shall cancel the assessment and proceed to make a fresh assessment in accordance with the provisions of Section 12:

Provided that no application under this sub-section shall be entertained by the Assessing Authority if tax admitted in the return of turnover is not paid.

(2) Nothing contained in sub-section (1) shall apply to an assessment which has been made the subject-matter of an appeal u/s 20.

(3) No appeal shall lie u/s 20 against an order passed under this section.

(4) Every order passed under this section shall, subject to the provisions of Sections 22, 23, 24 and 25-A, be final.

....

20. Appeals.--(1) Any person objecting to an order affecting him passed under the provisions of this Act by.--

(i) a Commercial Tax Officer, may appeal to the Deputy Commissioner; and

(ii) an Assistant Commissioner of Commercial Taxes or a Deputy Commissioner, may appeal to the Joint Commissioner:

Provided that any appeal preferred against the orders of the Commercial Tax Officer and pending before the date of commencement of this Act shall stand transferred to the Deputy Commissioner.

....

22. Appeal to the Appellate Tribunal.--(1) Any officer empowered by the State Government in this behalf or any other person objecting to an order passed u/s 12-D or an order passed by the Deputy Commissioner or the Joint Commissioner u/s 20 or Section 21 may appeal to the Appellate Tribunal within a period of sixty days from the date on which the order was communicated to him.

(2) The Appellate Tribunal may admit an appeal preferred after the period of sixty days referred to in sub-section (1) but within a further period of one hundred and eighty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within that period.

6. Petitioner having suffered an order dated 27-2-2001 Annexure-B of the Assessing Authority assessing the turnover at Rs. 7,55,686/- for the assessment year 1997-1998 and declining the claim for exemption of Rs. 6,04,548/-, filed an application invoking Section 12-D of the Act, to cancel the assessment on the premise that the petitioner was prevented by sufficient cause from appearing in the assessment proceedings and desired to establish that the exemption notification issued by the State Government, though upto the year 1995-1996, nevertheless, was extended further. The Assessing Authority extended reasonable opportunity of hearing to both the partner of the petitioner and his learned Counsel on several dates of hearing as recorded in the order Annexure-B. Petitioner when unable to place before the authority the notification extending the period of operation of the exemption by the State Government for the assessment year commencing from 1-4-1997 to 31-3-1998, the Assessing Authority noticed that the exemption granted was upto the year 1995-1996, and that the petitioner did not place all the books of accounts for due verification while the sales tax exemption in an expansion programme under the notification dated 28-8-1993 commencing from 6-10-1994 was limited to Rs. 1,60,000/- which was utilised by the assessee from the assessment years 1990-1991 to 1995-1996, rejected the application by order dated 2-5-2001.

7. Sub-section (3) of Section 12-D of the Act mandates that no appeal lies u/s 20 of the Act against the order passed under the said section. In other words, there is a bar to file an appeal invoking Section 20 of the Act calling in question an order passed u/s 12-D of the Act. In that view of the matter, petitioner could not have preferred an appeal against the order dated 2-5-2001 invoking Section 20 of the Act. Thus, the appeal preferred by the petitioner invoking Section 20 of the Act before the Joint Commissioner of Commercial Taxes, Belgaum (Appeals), was justifiably rejected as not maintainable by order dated 28-12-2002. The first

question is answered in the affirmative.

8. Sub-section (1) of Section 22 of the Act provides for an appeal to the Appellate Tribunal by any person objecting to an order passed u/s 12-D of the Act or order passed by the Deputy Commissioner or the Joint Commissioner u/s 20 or Section 21 of the Act, within a period of 60 days from the date on which the order was communicated to him. Sub-section (2) invests a jurisdiction in the Appellate Tribunal to admit an appeal preferred after the period of sixty days referred to in sub-section (1), but within the further period of 180 days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within that period.

9. Admittedly, petitioner did not question the order dated 2-5-2001 Annexure-C rejecting the application u/s 12-D of the Act within the time stipulated in sub-sections (1) and (2) of Section 22 of the Act before the Karnataka Appellate Tribunal. Hence, STA No. 1129 of 2003 filed by the petitioner calling in question the order dated 2-5-2001, Annexure-C passed u/s 12-D of the Act and the order dated 28-12-2002 filed u/s 20 of the Act before the Joint Commissioner of Commercial Taxes (Appeals) was not maintainable in an appeal invoking Section 22 of the Act before the Karnataka Appellate Tribunal. Although the Karnataka Appellate Tribunal did not perceive the appeal in the aforesaid light, nevertheless observed that the appeal filed u/s 20 of the Act, was justifiably rejected as not maintainable by the Joint Commissioner for appeals. No exception can be taken to the order dated 30-6-2010 dismissing STA No. 1129 of 2003 by the Karnataka Appellate Tribunal. Question No. 2 is answered in the affirmative. Regard being had to the fact that STA No. 1129 of 2003 was not maintainable, it is needless to state that the Rectification Application No. 6 of 2011 invoking Section 22(6-A) of the Act was not maintainable and justifiably rejected by order dated 31-1-2012 of the Karnataka Appellate Tribunal. Question No. 3 is answered in the affirmative.

In the result, these petitions devoid of merit, are accordingly rejected.

