**(2016) 02 KAR CK 0197**

**In the Karnataka High Court**

**Case No :** STA Nos. 118/2013, 2-16/2014, 116/2013, 17-28/2014, 117/2013, 31-45/2014, 119/2013 and 29-30/2014

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| Rich Graviss Products (P) Limited | APPELLANT |
| Vs | |
| The State of Karnataka | RESPONDENT |

**Date of Decision :** 17-02-2016

**Acts Referred:**
Central Sales Tax Act, 1956 — Section 9[2]
Karnataka Value Added Tax Act, 2003 — Section 39[1], Section 62[6]

**Citation :** (2016) 02 KAR CK 0197

**Hon'ble Judges :** Jayant M. Patel and S. Sujatha, JJ.

**Bench :** Division Bench

**Advocate :** R.V. Prasad, Advocate, for the Appellant; T.K. Vedamurthy, Advocate, for the Respondent

**Final Decision :** Allowed

# Judgement

Jayant M. Patel, J.—1. The appeals are admitted and with the consent of learned Advocate appearing for both sides, the appeals are finally heard.

2. As in all these appeals, common questions arise for consideration, they are being considered simultaneously.

3. All the appeals are directed against the Order dated 29.05.2013 passed by the Additional Commissioner of Commercial Taxes, Zone-3, Bangalore [hereinafter referred to as ''Commissioner'' for the sake of convenience], whereby it has been held that the Order of the Assessing Officer for the assessment of the respective years of 2008-09, 2009-10, 2010-11 and 2011-12 are maintained.

4. The short facts of the case appears to be that the Assistant Commissioner of Commercial Taxes [Enforcement-6] passed the order for re-assessment under Section 39[1] of the Karnataka Value Added Tax Act, 2003 [hereinafter referred to as ''KVAT Act'', for the sake of convenience] and under Section 9[2] of the Central Sales Tax Act, 1956 [hereinafter referred to as ''CST Act'', for the sake of

 

convenience] for the respective assessment period. On 26.12.2012 the Order was passed under Section 62[6] of the KVAT Act by the Joint Commissioner of Commercial Taxes [Appeals]-6 and under Section 9[2] of the CST Act, allowing the appeals filed by the Assessee wholly under the KVAT Act and partly allowed the appeals under the CST Act.

5. The matter was taken up in suo motu revision by the Commissioner and vide Order dated 29.05.2013, the Order dated 26.12.2012 passed by the First Appellate Authority is set aside and the reassessment made is restored. It is under these circumstances, the present appeals before this Court.

6. We have heard Mr. R.V. Prasad, learned Counsel for the Appellant and Mr. T.K. Vedamurthy, learned Government Pleader appearing for the respondent-Revenue.

7. A perusal of the Order passed by the Assessing Authority, First Appellate Authority as well as the Revisional Authority shows that practically every Authority has gone by the clarification issued vide CCR No. 184/09-10 Dated 27.05.2010 whereby for different products different rates were prescribed. It is on account of the said clarification, the re-assessment was made and ultimately confirmed by the Revisional Authority. The perusal of the Order passed by all the Authorities shows that one of the vital aspects of the applicability of the aforesaid clarification to the respective assessment in question whether prospective or retrospective has not been considered. At this stage, we may refer to the decision of the Apex Court in the case of ''SUCHITRA COMPONENTS LIMITED Vs. COMMISSIONER OF CENTRAL EXCISE, GUNTUR'' reported in [, (2006) 12 SCC 452] wherein at paragraph-2, it was observed by the Apex Court as under:

"We have heard Mr. A.R. Madhav Rao, learned counsel for the appellant and Mr. K. Radhakrishna, learned Senior Counsel for the respondent. We have perused the orders passed by the lower Authorities and also of the Tribunal. The point raised by the learned counsel for the appellant is covered by the recent judgment of this Court in Civil Appeal No. 4488 of 2005, Commissioner of Central Excise, Bangalore versus M/s. Mysore Electricals Industries Ltd., reported in , 2006 (204) E.L.T. 517. In the said Judgment, this Court held that a beneficial circular has to be applied retrospectively while oppressive circular has to be applied prospectively. Thus, when the circular is against the assessee, they have right to claim enforcement of the same prospectively."

8. If the facts of the present case are considered read with the clarification issued on 10.05.2010, the question of applicability of the aforesaid clarification whether prospective or retrospective was one of the vital aspects which was required to be considered. If the above referred clarification is considered as prospectively, the assessment for the period prior thereto may not have any legs to stand, but if applied retrospectively, may further be required to be examined. In the same manner, even if the applicability of the aforesaid circular is considered as having prospective effect, the other relevant consequential aspect may need to be further examined by the Assessing Authority.

 

9. If the matter is considered in the light of the aforesaid observation, we find that when one of the most vital aspect has not been considered, the consideration of the decision of all the lower authorities could be said to be vitiated. We do not propose to make any conclusive observation since considering the facts and circumstances of the case, it would be appropriate to remand the matter to the Assessing Authority. We may record that the reasons behind remanding the matter to the Assessing Authority instead of Revisional Authority is that all the lower Authority from the stage of the Assessing Authority till the Revisional Authority, have not examined the aforesaid aspect of applicability and the prospective effect or retrospective effect of the clarification and hence such being the peculiar circumstances, we find that remanding of the matter to the Assessing Authority would be more appropriate instead to the Revisional Authority.

10. Mr. T.K. Vedamurthy, learned Government Pleader appearing for the Revenue submitted that the matter is delayed sufficiently and therefore in the event this Court is inclined to remand the matter to the Assessing Authority, a direction may be issued to the Assessing Authority to conclude the assessment within time bound programme, otherwise, there are chances that the matter may be delayed.

11. Learned Counsel for the Appellant has not objected to any direction if issued to decide the matter within time bound programme.

12. Even otherwise also, we find that as the matter pertains from the assessment of the year 2008-09 onwards, it would be just and proper to issue time bound direction to the Assessing Authority.

13. Learned Government Pleader for the Respondent-Revenue also contended that both parties should be at liberty to raise all contentions before the Assessing Authority or all questions should be kept open and the remand by this Court may not be construed that on any aspects including that of the questions of law, conclusive observations are made by this Court.

14. We find that the said apprehension is ill founded because when vital aspects of the applicability of the clarification whether retrospectively or prospectively is not considered and the same is found to be sufficient by this Court for exercise of the discretion to remand the matter, the same as such it cannot be read that the Court has made any conclusive observation. Still, however, suffice it to observe that all rights and contentions of the parties before the Assessing Authority shall remain open.

15. In view of the aforesaid observation and discussion, the impugned Order passed by the Assessing Authority and subsequent orders arising therefrom including that of the Revisional Authority are quashed and set aside with a further direction that the matters shall stand restored to the Assessing Authority for examining the matter in the light of the observations made by this Court in the present Judgment and in accordance with law.

 

16. The Assessing Authority shall give opportunity to the parties to the proceedings and after hearing, shall pass appropriate orders as early as possible, preferably within a period of two months from the date of receipt of certified copy of the Judgment of this Court.

17. The appeals are allowed to the aforesaid extent. Considering the facts and circumstances, no order as to costs.

 