(2014) 04 KAR CK 0266

In the Karnataka High Court

Case No : Sales Tax Appeal No. 139 of 2009

Shifa Constructions APPELLANT

Vs

The Additional Commissioner of Commercial Taxes RESPONDENT

Date of Decision : 10-04-2014

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 12-B(4), 22-A(1), 6A(2), 6-B

Citation : (2014) 79 KarLJ 364 : (2014) 74 VST 160

Hon'ble Judges : Dilip B. Bhosale, J;B. Manohar, J

Bench : Division Bench

Advocate : Ashok G.V. for G.K.V. Murthy, Advocate for the Appellant; S. Sujatha, Additional Government Advocate, Advocate for the Respondent

Judgement

Dilip B. Bhosale, J.—This sales tax appeal is directed against the order dated 27-5-2009 passed by the Additional Commissioner of Commercial Taxes (Zone-I), Bangalore (for short, "the Revisional Authority") in exercise of powers of revision u/s 22-A(1) of the Karnataka Sales Tax Act, 1957 (for short, "Act"). By this order, the Revisional Authority set aside the order passed by the Joint Commissioner of Commercial Tax (Appeals-I), Bangalore (for short, "First Appellate Authority"), in KST A.P. Nos. 211, 212, 213/07-08. The First Appellate Authority in the appeal filed by the appellant-assessee set aside the order dated 15-11-2007 passed by the Assistant Commissioner of Commercial Tax (Transition-13), Bangalore, u/s 12-B(4) of the KST Act (for short, "Assessing Authority"). The Assessing Authority prior to the order dated 15-11-2007, passed the assessment order dated 15-3-2006 for the year 2003-2004 determining the gross turnover and taxable turnover at Rs. 71,26,966/- and Rs. 2,12,050/- respectively and levied tax at Rs. 1,15,717/-. The tax was levied at the rate of 1.5% u/s 6-B of the KST Act though it was a case of the assessee that as per the Government notification dated 28-8-2002, the tax payable u/s 6-B of the KST Act on the turnovers relating to sale of iron and steel was specified at Sl. No. 2 of the Fourth Schedule to the said Act of 0.3%.

2. Admittedly, the appellant-assessee had paid Rs. 15,868/- as advance tax before the order of assessment. Similarly, there does not appear to be any dispute that he also paid Rs. 85,000/- on 29-3-2006 i.e. before the date of service of the assessment order. That amount was, however, not taken into consideration by the Assessing Authority. Out of the tax levied of Rs. 1,15,717/-, according to the order of the Assessing Authority, the balance payable was Rs. 99,849/- and since the said amount was more than 15% as contemplated u/s 12-B(4) of the KST Act, he levied 50% of the tax payable by him for the year 2003-2004. In other words, the Assessing Authority levied penalty of Rs. 50,000/-. The order of Assessing Authority was carried in appeal before the First Appellate Authority which after taking into consideration the payment of Rs. 85,000/- by cheque dated 29-3-2006 set aside the order of the Assessing Authority, levying penalty of Rs. 50,000/-. The First Appellate Authority seem to have taken into consideration the fact that the amount of Rs. 85,000/- was paid before the date of service of the assessment order and also the fact that the Assessing Authority did not take into consideration the notification dated 28-8-2002 whereby the tax payable u/s 6-B of the KST Act on the turnovers relating to sale of iron and steel was 0.3%. The Revisional Authority in exercise of the powers u/s 22-A(1) of the KST Act set aside the order of the First Appellate Authority mainly on the ground that Form 32-B of the Karnataka Sales Tax Rules, 1957 prescribed under the provisions of Section 6A(2) was not filed by the assessee. The proviso on which the Revisional Authority relied upon to hold that Form 32-B was not filed by the assessee, as a matter of fact, was omitted by Act No. 5 of 2002 with effect from 1-4-2002. This was overlooked by the Revisional Authority. The relevant period in the instant case is 2003-2004. Keeping this in view and so also the fact, which is not in dispute, that the appellant-assessee had paid Rs. 85,000/- before the service of the order of assessment and having regard to the amount involved we are inclined to allow this appeal. Hence, the appeal is allowed. The order dated 27-5-2009 passed by the Revisional Authority is set aside. No costs.

