(2014) 02 KAR CK 0196

In the Karnataka High Court

Case No : Sales Tax Appeal No. 137 of 2009

Shifa Constructions APPELLANT

Vs

The Additional Commissioner of Commercial Taxes (Zone-1), Bangalore RESPONDENT

Date of Decision : 05-02-2014

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 12-B(4), 22-A(1), 24(1)

Citation : (2014) 78 KarLJ 312 : (2014) 70 VST 241

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

Bench : Division Bench

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

Judgement

Dilip B. Bhosale, J.—Heard the learned Counsel appearing for the parties. By consent, this appeal is taken up for final disposal at the stage of admission. This sales tax appeal u/s 24(1) of the Karnataka Sales Tax Act, 1957 (for short, ''the Act'') is directed against the order dated 27-5-2009 passed by the Additional Commissioner of Commercial Tax (Zone-I), Bangalore in the revision u/s 22-A(1) of the Act, whereby the Revisional Authority allowed the revision and set aside the order passed by the Appellate Authority. The Appellate Authority had set aside the order levying penalty of Rs. 40,500/- u/s 12-B(4) of the Act. The Assessing Authority vide its order dated 15-11-2007 had levied the penalty holding that the difference between the tax paid in advance and payable by the appellant was more than 15%. The Appellate Authority, on the other hand held that the appellant was eligible for the benefit of Kara Samadhana Scheme.

2. The appellant is engaged in execution of works contracts. The tax payable, as assessed, was Rs. 2,02,231/- for the assessment year 2001-2002. After adjusting the amount of Rs. 1,21,652/- paid during the said year, the balance due from the appellant was Rs. 80,579/-. The appellant claims that he paid the

said amount by cheque bearing No. 964462, dated 21-3-2005 and penalty of Rs. 12,087/- by another cheque bearing No. 967152, dated 25-5-2005. In the covering letter dated 25-5-2005 with which the said cheques were tendered and received by the Department, the appellant had stated that the penalty amount was paid under Kara Samadhana Scheme.

3. This claim, as aforementioned, made by the appellant was rejected by the Appellate Authority holding that the appellant could not and did not produce on record any proof of making application for seeking any benefit under Kara Samadhana Scheme nor could he produce any proof of the payment on or before the cut-off date i.e., 30-5-2005 under the said scheme. We have perused the order of the Revisional Authority and other materials placed before us. It is clear from the facts that the amounts, that were due, were paid by two cheques, as aforementioned with the covering letter dated 25-5-2005 i.e., before the cut-off date fixed under the scheme. It is not the case of the respondents that they did not receive the cheques and the cheques were not encashed. Having regard to the dates of the cheque and the date of covering letter, in our opinion, the Revisional Authority ought to have accepted the claim of the appellant that he made application for the benefit under the scheme. Merely because the application did not find place in the record or the appellant could not and did not produce an acknowledgement of having made the application, on record, would not mean that he did not make the payment on or before the cut-off date. The record clearly reveals that the payments were made before the cut-off date and the amounts were also realised. In the circumstances, the order passed by the Commissioner deserves to be set aside being perverse. Ordered accordingly. No order as to costs.