

**(2015) 04 KAR CK 0048**  
**In the Karnataka High Court**  
**Case No : Writ Appeals 805-840/2015 (T-Res)**

Solidus Hi Tech Products Pvt. Ltd.

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

**Date of Decision :** 01-04-2015

**Acts Referred:**

Karnataka Sales Tax Act, 1957 — Section 22A

Karnataka Value Added Tax Act, 2003 — Section 39(1), 63, 63A

**Citation :** (2015) 2 AKR 789 : (2015) 51 GST 408 : (2015) ILR (Kar) 4663 :  
(2015) 83 VST 345

**Hon'ble Judges :** S. Sujatha, J.;Vineet Saran, J.

**Bench :** Division Bench

**Advocate :** G. Sarangan, Senior Advocate and G. Rabinathan, for the Appellant;  
K.M. Shivayogiswamy, A.G.A., Advocates for the Respondent

## Judgement

Vineet Saran, J.—The appellant is the company dealing in the business of manufacture of press components, sheet metal enclosures, telecommunication equipments, bus bar, heavy electrical products, automotive components and heat sinks. The dispute in the present appeals relate to the tax period for the years 2006-07, 2007-08 and 2008-09 in which the tax paid by the assessee appellant was at the rate of 4% on the sales of parts of UPS. On the basis of the return filed by the appellant for the aforesaid period, the assessment was deemed to have been accepted, however, the matter was reopened for reassessment under S. 39(1) of the Karnataka Value Added Tax Act, 2003 (KVAT Act for short) and by order dated 5.4.2010, the Deputy Commissioner of Commercial Taxes, Bangalore did not find any discrepancy in respect of input tax or output tax and a finding was recorded that the tax paid by the appellant at 4% on the sales of parts of UPS was in order. Then on 28.11.2013, information was sent to the Joint Commissioner of Commercial Taxes by the Superintendent of Central Excise on the basis of which, notice under S. 63A of the KVAT Act was issued to the appellant on 16.12.2013. By order dated 12.11.2014 passed by the respondent, the Joint Commissioner of Commercial Taxes/Revisional Authority, after setting

aside the assessment order, proceeded to pass reassessment order under S. 63A of the KVAT Act. Challenging the said order, the appellant filed WPs 5031-33/2015 and 5955-87/2015 which have been dismissed by the learned Single Judge by judgment and order dated 13.12.2015 on the ground of availability of alternate remedy to the petitioner/appellant of filing an appeal before the Tribunal under S. 63 of the KVAT Act. Aggrieved by the same, these writ appeals are filed.

2. We have heard Sri Sarangan, Sr. Advocate appearing along with Sri Rabinathan, learned counsel for the appellant as well as Sri K M Shivayogiswamy, learned counsel for the respondents and perused the record. With consent of the learned counsel for the parties, these appeals have been heard and are being disposed of at the admission stage.

3. The submission of the learned counsel for the appellant is that the order impugned before the writ court was wholly without jurisdiction to the extent that after having cancelled or setting aside the assessment orders, the Revisional Authority could not have proceeded to pass a fresh assessment order and the only option left under S. 63A of the KVAT Act for the Revisional Authority was to remand the matter to the Assessing Officer for fresh assessment. It is thus contended that to the extent of passing a fresh assessment order, the impugned order passed by the Revisional Authority was wholly without jurisdiction and as such, the availability of alternate remedy would not be a ground on which the writ petition should have been dismissed. Learned counsel for the appellant does not dispute the facts as have been considered by the Revisional Authority to the extent of cancellation or setting aside of the assessment orders. It is only the later part by which the appellant is aggrieved.

4. In view of the aforesaid, the only question to be considered by this Court is as to whether the Revisional Authority had jurisdiction to pass the order of reassessment after the assessment orders had been set aside in revision.

5. S. 63A of the KVAT Act provides for revisional powers for the Joint Commissioner. The relevant sub-section (1) of S. 63A is reproduced below:

**S. 63A: Revisional Powers of Joint Commissioner**

(1) The Joint Commissioner may on his own motion call for and examine the record or any order passed or proceeding recorded under this Act and if he considers that any order passed therein by any officer, who is not above the rank of a Deputy Commissioner, is erroneous in so far as it is prejudicial to the interest of the revenue, he may, if necessary, stay the operation of such order for such period as he deems fit and after giving the person concerned an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or canceling the assessment and directing a fresh assessment.

6. It is contended by the learned counsel for the appellant that once the assessment order was cancelled by the Revisional Authority, it was not left with any other option but to direct for fresh assessment which could only be done by the Assessing Officer and not the Revisional Authority. In the later part of sub-section (1) of S. 63A of the KVAT Act, earlier the provision was for canceling the assessment order or directing for a fresh assessment. But, by amendment which came into effect from 1.4.2013, the word "or" was substituted by the word "and" and the Section reads as "cancelling the assessment and directing a fresh assessment". It is thus contended that even before the amendment and more so after the amendment of 2013, the Revisional Authority could not have proceeded to pass the order of reassessment once the assessment order had been set aside. In support of his submission, learned counsel for the appellant has relied on the Division Bench decision of this Court rendered in the case of Shankar Construction Co. Vs. Additional Commissioner of Commercial Taxes, Belgaum Zone, wherein while considering the provisions of S. 22A of the Karnataka Sales Tax Act which are pari materia to S. 63A of the KVAT Act, 2003, it was held that once the order of the Assessing Officer was set aside, it would be impermissible for the Revisional Authority to re-do the assessment/fresh assessment.

7. On the other hand, learned counsel for the respondents has submitted that the powers of the Revisional Authority under S. 63A of the Act are very wide and as such, the Revisional Authority could have passed a fresh assessment order after canceling or setting aside the assessment order. It is contended that the said section provides that the Revisional Authority may pass such order as the circumstances of the case may justify, including the order of enhancing or modifying the assessment or canceling the assessment and directing fresh assessment. Much emphasis has been laid on the word "including" which, according to the learned counsel for the respondents, is only illustrative and not exhaustive. It is thus contended that merely because the Revisional Authority has power for directing a fresh assessment, it would not take away the power of the Revisional Authority in passing the fresh assessment order itself, if the circumstances of the case justify the same. It is submitted that in the present case, the facts justified passing of a fresh assessment order by the Revisional Authority.

8. Having heard the learned counsel for the parties and considering the facts and circumstances of the case, we are of the view that considering the language and the provisions of S. 63A of the KVAT Act, once the order of cancellation of the assessment order had been passed by the Revisional Authority, it could not proceed to pass a fresh assessment order but could only direct the Assessing Officer to pass a fresh assessment order.

9. S. 22A of the Karnataka Sales Tax Act which was under consideration before the Division Bench of this Court in the case of Shankar Constructions Company (supra), is identical to the provisions of S. 63A of the KVAT Act as it existed prior to the amendment of 2013 and the word used in the last sentence was "or" and

not "and", which has been substituted in the KVAT Act, by amendment of 2013. The same would be significant as it would make it further clear that the option to reassess was not there with the Revisional Authority. However, even while considering that after canceling the assessment order "or" directing a fresh assessment (as was there in S. 22A of the Karnataka Sales Tax Act), the Division Bench held that passing of a fresh assessment order by the Revisional Authority was wholly impermissible. The 10 relevant paragraph 8 of the said judgment in the case of Shankar Constructions Company (supra) is reproduced below:

Dealing with the importance of S. 22A, we have recounted in some detail the areas of dispute between the counsel before us and the subtleties of the arguments canvassed by them. We do consider that the point of law raised is one of importance because it touches the all important question as to whether the revisional authority is invested with unfettered omnipotent powers or whether there is a definite limitation to the exercise of that power and if so what. While we have no hesitation in accepting the greater part of the submissions canvassed by the learned Government Advocate that the revisional authority does have wide powers exercisable in cases where the decision has been prejudicial to the interest of the revenue and in exercise of those powers modifications are permissible, and furthermore that if the authority is of the view that the assessment is required to be redone that such a direction can still be issued to the assessing officer, we need to at the same time uphold the argument canvassed by the appellant's learned counsel Sri S Narayana that it is wholly impermissible for the revisional authority to step into the shoes of the assessing officer and to redo the assessment or pass a fresh assessment order. In the first instance, it is necessary to highlight the fact that the statutory powers are necessarily circumscribed by the wording of S. 22A and this section unequivocally indicates that if reassessment is necessary that the revisional authority can only direct reassessment. We do not need to re-emphasise the fact that the Legislature obviously and in our opinion very correctly intended that everything short of a reassessment is permissible in the circumstances indicated by us but where a reassessment is necessary and the case will have to be remanded to the assessing authority. There is ample justification for upholding the submissions canvassed by Sri S Narayana because it is quite elementary that when a fresh assessment is done, there could always be grounds on which one of the parties is aggrieved and the law prescribes a corrective remedy by way of appeal, revision, etc. If the revisional authority which is a highly placed authority of the department, is to exercise the powers of doing a fresh assessment, then the right of appeal, revision etc., is totally annihilated and this could never be the intention of the Legislature. It is therefore abundantly clear to us that the objection canvassed before us by the appellant's learned counsel is well-founded and that the same is liable to be upheld. 10. We see no reason to disagree with the view expressed by the Division Bench in the aforesaid case. With the coming into force of the amendment made with effect from 1.4.2013 in the KVAT Act whereby the word "or" has been substituted by "and", after which it is now

provided under the Act to the effect that the Revisional Authority can cancel the assessment order and direct fresh assessment, which would clearly mean that the same has to be read in conjunction and not separately. With this amendment, it is further fortified that after cancelling or setting aside the order of assessment, the Revisional Authority can only direct for a fresh assessment and not proceed to pass an order of reassessment. Thus, we are of the firm opinion that this is a case where the Revisional Authority has clearly exceeded its jurisdiction in proceeding to reassess the case and to that extent, the order passed by the Revisional Authority is wholly unjustified in law and liable to be quashed. We are also of the opinion that since the said portion of the order of Revisional Authority is without jurisdiction, the dismissal of the writ petitions was not warranted on the ground of availability of alternate remedy. It is well settled law that the writ petition can be filed and entertained against an order which is without jurisdiction and availability of alternate remedy would not bar entertaining such a petition.

11. As such, we allow these appeals and set aside the revisional order to the extent of the Revisional Authority proceeding to pass the reassessment order after having cancelled/set aside the order of assessment passed by the Assessing Officer. The earlier part of the order which relates to the reasons for cancellation or setting aside the assessment order is affirmed and is not being interfered with. It is only the later part of the order whereby the Revisional Authority has proceeded to pass a fresh reassessment order, which is being set aside.

12. Appeals stand allowed to the extent as indicated above.