
(2008) 07 KAR CK 0071
In the Karnataka High Court
Case No : Writ Petition No. 9464 of 2008

Southern Motors

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 16-07-2008

Acts Referred:

Karnataka Value Added Tax Act, 2003 — Section 30, 30 (1)
Karnataka Value Added Tax Rules, 2005 — Rule 3 (2) (c), 31 (1)

Citation : (2008) ILR (Kar) 4349 : (2008) 5 KCCR 641 SN : (2008) 18 VST 161

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : G.K.V. Murthy and P.E. Umesh, for the Appellant; K.M. Shivayogiswamy, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Writ petitioner is a dealer under the provisions of the Karnataka Value Added Tax Act, 2003 ("KVAT Act" in short).

2. In respect of the assessment for the year 2006-07, the authorities, it appears noticed that deemed assessment was not proper, that it called for certain correction, particularly in the context of discounts that the assessee had claimed from April 2006 upto March 2007, and accordingly a comprehensive notice covering a proposal for re-assessment u/s 39(1) of the KVAT Act, 2003 and Notice u/s 5(4) of the Karnataka Tax on Entry of Goods Act, 1979 ("KTEG Act" in short) was issued to the assessee which was dated 30.5.2008, copy produced at Annexure-A to the Writ Petition and the assessee was called upon to respond to the proposal within seven days from the date of receipt of the notice. The assessee instead, it appears had written a letter on 5.6.2008 seeking for further clarification. The assessing authority issued endorsement dated 7.6.2008 clarifying the aspects under the provisions of the "KVAT" and "KTEG" Acts and again impressed upon the assessee to file objections as had been informed earlier and within seven days from the date of receipt of the endorsement, failing

which, orders will be passed without any further notice etc., A copy of this endorsement dated 7.6.2008 is also produced and marked as Annexure-C.

3. It appears assessee though responded by filing objection with regard to the proposal under the provisions of the KTEG Act, was still seeking time for responding to the notice u/s 39(1) of the "KVAT" Act. The assessing authority having proceeded to pass orders in terms of the notice dated 30.5.2008, both under the "KVAT" and "KTEG" Act and aggrieved by the order in so far as it relates to the liability under the provisions of the "KVAT" Act, the present Writ Petition is filed.

4. The petitioner has questioned the legality of the order mainly on the premise that it is in violation of the principles of natural justice. It is also urged that proviso to Rule 3(2)(C) of the "KVAT" Rules, is a provision which is discriminatory and also ultravires of Section 30(1) of the "KVAT" Act. Rule 3(2) (c) of the "KVAT" Rules 2005 reads that:

3(2)(c): All amounts allowed as discount:

Provided that such discount is allowed in accordance with the regular practice of the dealer or is in accordance with the terms of any contract or agreement entered into in a particular case {and the tax invoice or bill of sale issued in respect of the sales relating to such discount shows the amount allowed as discount"; and

Provided further that the accounts show that the purchaser has paid only the sum originally charged less discount.

4. Sri GK.V. Murthy, learned Counsel appearing on behalf of the petitioner, would very vehemently urge that the Rule virtually takes away the benefit sought to be given u/s 30 of the "KVAT" Act., which is one provided for issue of "Credit and Debit notes" and essentially for the purpose of availing of a discount in the sense excluding the value of the discount from the turnover of an assessee, even though the invoice value might have shown the net price inclusive of the discount etc., The submission is that under the Rule, a dealer is compelled to disclose what discount he is offering at the time of the transaction, whereas under the Act, u/s 30, a time limit of six months is given to the dealer to make up what discount he is offering etc., It is also submitted that even in terms of Rule 31(1) of the "KVAT" Rules, 2005, which prescribes the manner in which a dealer can avail of the benefit u/s 30 in terms of the impugned Rule i.e. proviso to Rule 3(2) (c) is discriminatory.

Section 3 of the "KVAT" Act, 2003 reads as under: Levy of Tax-

(1) The tax shall be levied on every sale of goods in the State by a registered dealer or a dealer liable to be registered, in accordance with the provisions of this Act.

(2) The tax shall also be levied, and paid by every registered dealer or a dealer

liable to be registered, on the sale of taxable goods to him, for use in the course of his business, by a person who is not registered under this Act

Section 30 of the "KVAT" Act reads that:

30. Credit and debit notes -

(1) Where a tax invoice has been issued for any sale of goods and within six months from the date of such sale the amount shown as tax charged in that tax invoice is found to exceed the tax payable in respect of the sale effected, the registered dealer effecting the sale shall issue forthwith to the purchaser a credit note containing particulars as prescribed.

(2) Where a tax invoice has been issued for sale of any goods and the tax payable in respect of the sale exceeds the amount shown as tax charged in such tax invoice, the registered dealer making the sale, shall issue to the purchaser a debit note containing particulars as prescribed.

(3) Any registered dealer who receives or issues credit notes or debit notes shall modify his return for the period in which the credit note or debit note is issued and pay any tax due on such return.

Submission proceeds on a very fallacious ground that the rule particularly proviso to Rule 3(2)(c) of the "KVAT" Rules, is either discriminatory or ultravires of Section 30. In fact, the rule mandates the applicability of the procedure to all assessees. There is no question of discrimination under this rule. As to how the rule may affect different assessees or different dealers is not the criteria for holding that the rule is a discriminatory provision and discriminates from dealer to dealer.

5. In so far as the ultravires assessment is concerned I find that the Rule only stipulates the disclosure of some information and does not either create a new liability or an additional liability or in any way come in the way of assessees claiming the benefit u/s 30 of the Act. This is a procedure for claiming the benefit. Moreover, the benefit envisaged u/s 30 of the Act is only to make a correction within six months from the date of the sale transaction on finding the tax charged/collected is more or less, by issuing a credit note or debit note and in the case goods are returned within the prescribed period, to issue a credit note forthwith and can claim the value to be excluded from the taxable turnover. The value of the sale transaction is as fixed at the time of sale and even in terms of the charging section. There is no scope for fixing the price later. If under the rule, the benefit is made available subject to the condition that the discounted price should have been so indicated in the invoice value of the goods, the condition is neither ultravires Section 30 of the Act nor is discriminatory. I do not find any infirmity in the Rule nor the rule being ultravires under the provisions of Section 30 of the "KVAT Act. I do not find the order being totally in violation of the principles of natural justice though the authority could have given some more time to the petitioner. Be that as it may, it is not a fit case for interference in writ

jurisdiction when the assessee is provided statutory remedies under the Act. It is open to the petitioner to avail statutory remedies available under the provisions of the Act.

Without prejudice, this Writ Petition is dismissed.