
(2013) 04 KAR CK 0024

In the Karnataka High Court

Case No : Writ Appeal Nos. 5769 to 5785 of 2012 (T-RES)

Southern Motors

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 03-04-2013

Acts Referred:

Citation : (2014) 79 KarLJ 533

Hon'ble Judges : N. Kumar, J;B. Manohar, J

Bench : Division Bench

Judgement

N. Kumar, J.—The appellant has filed these writ appeals challenging the order passed by the learned Single Judge dated 20-7-2012 who has held that in terms of the proviso to Rule 3(2)(c) of the Karnataka Value Added Tax Rules, 2005 (for short, hereinafter referred to as "the Rules"), until and unless the discounts are shown in the tax invoice, the assessee is not entitled to any relief and therefore, he declined to interfere with the rectification orders passed by the Assessing Officer in accordance with Rule 3(2)(c) of the Rules. The appellant-assessee is a dealer in motor vehicles and registered under the provisions of Karnataka Value Added Tax Act, 2003 (for short, hereinafter referred to as "the Act"). It is his case that in view of the stiff competition in the market, the assessee has been following the policy of offering discounts to its customers on the motor vehicles sold by it. But, due to the policy of manufacturers of the vehicles that their motor vehicles should be sold at the same prices to all the purchasers and also as per the practice in the trade, the assessee do not show the discount in its tax invoices but issues credit notes towards the same separately, so that the net amount payable by the purchaser is what is agreed upon with him at the time of sale i.e. invoice price less discount.

2. Section 30 of the Act, which was deleted from 1-4-2012, provides for issuance of credit notes for discount which results in automatic reduction in the amount stated in the tax invoice and which in turn would result in lower amount of turnover and lower amount of tax. However, as per the proviso to Rule 3(2)(c),

for claiming deduction for discount from the total turnover, discount has to be shown in the tax invoice. In the case of *State of Karnataka v. Reliance Industries Limited*, Bangalore 2010 (68) Kar. L.J. 337 (HC) (DB), a Division Bench of this Court has held that there is no conflict between Rule 3(2)(c), on one hand, as per which discount has to be mentioned in the tax invoice and Section 30 and Rule 31, on the other hand, which provide for issuance of credit note for discount which results in automatic deduction in the amount stated in the tax invoice and which in turn would result in lower amount of turnover and lower amount of tax. Relying upon the said judgment, the assessee claimed for deduction of discount given by issuing credit notes. By following the decision of this Court in the case of *State of Karnataka v. Reliance Industries Limited*, Bangalore 2010 (68) Kar. L.J. 602 (HC) (DB), the same was allowed by the Assessing Authority for the tax periods 2007-2008 and 2008-2009.

3. The 3rd respondent subsequently, vide order dated 21-5-2012 u/s 41(1) of the Act has rectified the said reassessment orders by disallowing the discount given by way of credit notes by relying on the later decision rendered by another Division Bench of this Court in the case of *State of Karnataka Vs. Kitchen Appliances India Limited*, wherein it is held that no deduction on discount can be claimed if it is not shown in the tax invoice in view of the proviso under Rule 3(2) (c) of the Rules. Aggrieved by the said rectification order, the assessee preferred writ petitions before this Court. The learned Single Judge dismissed the said writ petitions upholding the rectification order. It is against this order, the present writ appeals are filed.

4. Learned Counsel appearing for the assessee-Sri G.K.V. Murthy assailing the impugned order contends that there is no conflict between the provisions of Section 30 of the Act and Rule 31 of the Rules. In terms of Rule 3(2)(c), the discount is to be mentioned in the sale invoice. Then only, the amount mentioned as discounts would be deducted from the total turnover. However, by virtue of Section 30 of the Act, any amount returned to the customers in respect of which credit note is issued subsequent to the sale also is to be excluded in determining the total turnover and therefore, the assessee is entitled to the benefit of deduction in tax on such credit note also. In fact, this Court, in the aforesaid *Reliance Industries* case has categorically held that when once by issue of credit note, the turnover gets reduced, the assessee is entitled to the benefit of tax on such reduced turnover. Subsequent to the aforesaid two judgments of this Court, another Division Bench of this Court in the case of (2014) 71 VST 522 (Kant) in STA No. 71 of 2010 decided on 6th September, 2012 has held that the ratio laid down in the case of *Reliance Industries* squarely applies and therefore, he submits that the judgment rendered by the Division Bench in *Kitchen Appliances* case on which, the rectification orders are passed by the authorities needs to be quashed.

5. Per contra, the learned Government Advocate supporting the impugned order contended that a reading of Section 30 of the Act shows that it does not deal

with the turnover at all. It only provides for issuance of credit note in respect of the excess amount claimed. Rule 3(2)(c) specifically provides that, in determination of turnover, if a discount is to be reduced, the said discount should become a part of tax invoice or bill of sale otherwise the same cannot be taken into consideration in determination of turnover for the purpose of levying tax under the Act. The assessee herein had preferred a writ petition challenging the validity of Rule 3(2)(c) of the Rules being ultra vires of Section 30(1) of the Act. The ground of attack was that the rule virtually takes away the benefit sought to be given u/s 30 of the Act. It only provides for issuance of "credit and debit notes" and essentially for the purpose of availing discount from the turnover of an assessee, even though the invoices value might have shown the net price inclusive of discounts, etc. Further it was contended that a dealer is compelled to disclose what discount he is offering at the time of 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. Therefore, the proviso to Rule 3(2)(c) is discriminatory. Repelling the said contention, this Court in the case of Southern Motors Vs. State of Karnataka, held as under:

"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 assessee 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 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 ultra vires Section 30 of the Act nor is discriminatory. Therefore, challenging the constitutional validity of the said Rule is negated".

6. Aggrieved by the said order, the assessee preferred an appeal before the Division Bench of this Court. In appeal, the issue regarding the constitutional validity was not pressed. Therefore, the order of the learned Single Judge upholding the validity of the said Rule has attained finality. After losing the battle before this Court, it was contended before the authorities that in view of the judgment of this Court in the case of Reliance Industries and even though the amount of discount is not mentioned in the sale invoice, the assessee is entitled to the benefit of reduction in the total turnover, which contention has been negated. Therefore, the question that arise for consideration in these appeals is as under:

"Whether the assessee-dealer can claim deductions and the amounts allowed as discounts in determining the taxable turnover without the said discount being

shown in the invoice?"

7. Section 30 of the Act on which reliance is placed reads as under:

"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".

Rule 31 of the Rules deals with the particulars of the credit and debit notes which reads as under:

"31. Particulars of credit and debit notes.--Where a registered dealer has given a tax invoice in respect of a sale of goods and thereafter the goods or any part thereof are returned to the seller if the sale is cancelled or for any other reason, or the value of the sale is altered, whether due to a discount or otherwise, he shall, subject to the provisions of Section 30, give to the buying dealer a credit or debit note containing the following details, namely.--

- (1) the nature of the document issued;
- (2) a consecutive serial number;
- (3) the date of the issue of the document;
- (4) the name, address and registration number of the selling dealer;
- (5) the name and address of the buyer, together with buyer's registration number, if registered;
- (6) the number and date of the relevant tax invoice;
- (7) the value of the goods and the amount of the tax credited or debited to the buyer; and
- (8) signature of the selling dealer or his agent.

Rule 3 of the Rules deals with the determination of the turnover. Sub-rule (2) of Rule 3 deals with the determination of taxable turnover after allowing the deductions mentioned therein, which reads as under:

"3.(2) The taxable turnover shall be determined by allowing the following

deductions from the total turnover:--

(a) The aggregate of the sale prices received and receivable by the dealer in respect of sales of any goods in the course of inter-State trade or commerce and export out of the territory of India and sales in the course of import into the territory of India.

(b) The value of all goods transferred or dispatched outside the State otherwise than by way of sale.

(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 charges less discount.

(d) All amounts allowed to purchasers in respect of goods returned by them to the dealer:

Provided that the goods are returned within a period of six months from the date of delivery of the goods and the accounts show the date on which the goods were returned, the date on which the refund was made and the amount of such refund together with the details of credit notes issued as specified under sub-section (1) of the Section 30.

(e) All amounts received from the seller in respect of goods returned to them by the dealer, when the goods are taxable under sub-section (2) of Section 3:

Provided that the goods are returned within period of six months from the date of delivery of the goods and the accounts show the date on which the goods were returned and the date on which the refund was made and the amount of such refund.

(f) All amounts for which goods exempt u/s 5 are sold.

(g) All amounts realized by sale by a dealer of his business as a whole.

(h) All amounts collected by way of tax under the Act;

(i) The turnover in respect of which the dealer's agent has paid tax, and the dealer has furnished a certificate in Form VAT 140.

(i-1) All amounts paid or payable to sub-contractors as the consideration for execution of works contract whether wholly or partly:

Provided that, no such deduction shall be allowed unless the dealer claiming deduction produces document in proof that the sub-contractor is a registered

dealer liable to pay tax under the Act and that the turnover of such amounts is included in the return filed by such sub-contractor:

Provided further that no such deduction shall be made where deduction of input tax is claimed in respect of tax paid to any sub-contractor.

(j) All amounts separately collected in tax invoices as commission under the provisions of the Agricultural Produce Marketing (Regulations) Act, 1966, by a commission agent:

Provided that the tax is not separately charged for and collected in the tax invoices on such commission.

(k) All amounts received or receivable by way of interest on the unpaid amount payable in respect of goods delivered on hire purchase or on any system of payment by instalments, where such interest is specified and charged for by the dealer separately without including such amounts in the price of the goods delivered and does not exceed twenty per cent per annum on the amount remaining unpaid".

8. Section 30 deals with a case where a tax invoice has been issued for any sale of goods and within six months of 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 the particulars as prescribed. Therefore, Section 30(1) deals with the excess tax charged and the same is realised within six months from the date of such sale invoice, the registered dealer shall issue forthwith to the purchaser a credit note. After issuance of such credit note, he shall declare them in his return to be furnished for the tax period in which the credit note is received and then claim for reduction in tax. Therefore, there is no reference to the value of the goods in Section 30 and there is no reference to any discount being given by the registered dealer to the purchaser. Section 30 exclusively deals with the payment of excess tax and issue of a credit note refunding the excess tax collected and then declaring the same in the returns to be filed by the dealer and then claiming reduction in tax which is to be refunded.

9. How the credit note and debit note is to be issued is provided under Rule 31 of the Rules. Again, the particulars which are to be set out in such a credit note is provided in clause (7). All that is mentioned is the value of the goods and the amount of tax credited and debited to the buyer is to be set out in the invoice. If Rule 31 is read with Section 30 in the case of charging of excess tax, in the credit note what is to be mentioned is the value of goods and the excess tax credited and if credit note is given reducing the tax amount, declare them in the returns to be furnished to the Tax Authorities claiming reduction in tax on such total turnover. As rightly pointed out in the Reliance Industries case, there is no conflict between Section 30 of the Act as well as Rule 31 of the Rules. Neither Section 30 nor Rule 31 deals with the determination of turnover.

10. Section 3 of the Act is the charging section which provides that 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. Section 4 provides that every dealer who is or is required to be registered shall be liable to pay tax, on his taxable turnover. Taxable turnover is defined u/s 2(34) of the Act to mean that the turnover on which a dealer shall be liable to pay tax as determined after making such deductions from his total turnover and in such manner as may be prescribed. The total turnover is defined u/s 2(35) of the Act to mean the aggregate turnover in all goods of a dealer at all places of business in the State. The word "turnover" is also defined u/s 2(36) of the Act to mean the aggregate amount for which goods are sold or distributed or delivered or otherwise disposed of in any of the ways referred to in clause (29) by a dealer. Rule 3 deals with the determination of turnover. The total turnover of a dealer, for the purposes of the Act, shall be aggregate of what is mentioned in the said Rule. Sub-rule (2) of Rule 3 deals with the determination of taxable turnover. The taxable turnover shall be determined by allowing the deductions mentioned in sub-rule (2). Once such deduction permissible is, all amounts are allowed as discounts. The proviso to clause (c) of sub-rule (2) makes it clear that such discounts 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 discounts shows the amount allowed as discount. It is clear from the said proviso that a dealer may have the particular practice or he may enter into a contract or agreement with the purchaser providing for such discounts. But such practice or contract or agreement should be in existence before issuing of tax invoice. If, in any of modes, the dealer is giving discounts to the purchaser, the said discount should be reflected in the invoice under which the sale is effected. Only if the discount is reflected in the sale invoice or bill of sale, the said amount is allowed as discount and would be reduced from total turnover to determine or to arrive at the taxable turnover. Clause (d) deals with the all amounts allowed to purchasers in respect of goods returned by them to the dealer. The purchaser is eligible for the said benefit, only when the goods are to be returned within six months from the date of purchase and a credit note is issued to him. It is understandable, the condition precedent for return of goods is, there should be valid sale and the purchaser has to pay the value of goods + tax and within six months, if he finds that the goods are defective and if there is an agreement for return of the said goods, he has to return the goods and then the dealer can raise a credit note returning the money which he had received at the time of sale. Therefore, the Legislature consciously has not insisted the amount which represents the value of the returned goods to be mentioned in the sale invoice. It looks absurd. But, when it came to the question of discounts, expressly they have provided for its legal requirement. Reason is obvious. The discount is given before sale to attract the customers and it acts as an incentive. They may also enter into a contract if it is a case of bulk sale. Therefore, if the dealer wants to have the benefit of reduction of the value representing discounts

from the total turnover in the sale invoice, he can mention the gross value of the property sold + tax and discounts given and then declare the same in the returns to be filed by him on that basis, to arrive at the taxable turnover. If the said discount is not reflected in the sale invoice, the same cannot be deducted from the total turnover in arriving at the taxable turnover. The language employed in sub-rule (2) is emphatic namely the taxable turnover shall be determined by allowing the deductions and the proviso to clause (c) of sub-rule (2) of Rule 3 makes it mandatory that the said discount should be reflected in the sale invoice otherwise the dealer-assessee is not entitled to deduct the amount of discount from the total turnover.

11. In the case of Reliance Industries Limited, all that has been held is that "the issuance of credit notes would automatically mean that the amounts as mentioned in the invoices would be reduced which would result in reduction in the over all turnover relating to the goods sold for the particular month". Then the Court has observed that "the Tribunal has not taken into consideration various details with regard to variation in the total turnover on account of credit notes issued. The Tribunal merely proceeds on the basis that there is a conflict between Rule 3(2)(c) and Rule 31 of the Rules. In that context, it was held that Rule 3(2)(c) of the Rules pertains to the discounts that can be allowed in terms of the regular practice whereas, Rule 31 is with regard to particulars of credit and debit notes which has to be furnished by the registered dealers as and when credit notes are issued to the purchasers, it would automatically result in variation in the amounts as stated in the invoices issued. In fact, there is no conflict between the aforesaid Rules".

12. In the said judgment, it is not held that even without the discount being not mentioned in the invoice, the amount of discount could be deducted out of the total turnover to arrive at the taxable turnover on which the tax is payable. All that has been said is that when a credit note is issued, automatically the invoice amount gets reduced. Therefore, the said judgment do not lay down any law. Whereas, in the case of Kitchen Appliances India Limited, after referring to the aforesaid observations in the Reliance Industries case, this Court interpreted Rule 3(2)(c) and in particular the proviso and thereafter it held that the tax invoice issued in respect of the sales must disclose the amount of discount that is being offered. It is an admitted fact in that case that no such discount has been shown in the tax invoice and the discount offered is subsequent to the raising of the tax invoice. On facts, they had opined that in terms of the proviso to Rule 3(2)(c), until and unless the discounts are shown in the tax invoice, the assessee is not entitled to any relief. Further, they held that even though the dealer may have a right to revise the sale price of their goods in accordance with the contract or otherwise, in terms of the proviso to Rule 3(2)(c), the same would have to be shown at the time of raising the tax invoice. The discount on a product cannot be offered after a sale has taken place. A discount is offered at the time of sale. Once the sale takes place, the question of offering a discount thereafter does not arise. Therefore, the said judgment lays down the law correctly. However, in

subsequent judgment in the case of Pratham Motors Private Limited, a Division Bench of this Court referred to both these decisions as well as the judgment of this Court Southern Motors case and observed as under:

"The ratio laid down by this Court in Southern Motors case does not prohibit the issuance of credit note subsequent to the sale bill. It is held that such modification in the sale bill is permitted if it is done within six months from the date of sale transaction. In Kitchen Appliances case, the issue was whether Rule 3(2)(c) and Rule 31 of the Rules are inconsistent and are in-conflict with each other. The issue whether the credit note could be issued separately after issuance of sale bill was not under the consideration in the said case. The ratio laid down by this Court in the case of Reliance Industries squarely applies to the facts of this case. Accordingly, we answer the question of law against the revenue".

13. As is clear from the aforesaid observations in the said judgment, no law is laid down. Therefore, from the aforesaid discussion it is clear that a harmonious reading of Section 30, Rules 31 and 3(2)(c) makes it clear that if a dealer/ assessee has claimed the tax in excess of what is payable under the Act, he can issue a credit note for the excess amount claimed from the purchaser within six months from the date of sale invoice. After issuance of such credit note, he should promptly declare them in his returns to be furnished for the tax period in which the credit note is received and claim reduction in tax. How the said credit note should be issued and what are the details which the credit note should contain is what is stipulated in Rule 31. However, Rule 3 deals with the determination of the turnover. Sub-rule (2) deals with the deductions from the total turnover to arrive at the taxable turnover. If a dealer has given discount and wants to claim deductions from the total turnover to arrive at the taxable turnover, the condition precedent is all amounts allowed as discounts should be shown in the tax invoice or bill of sale, as discounts allowed and then only the said amount could be deducted from the taxable turnover. However, if the discount given is not shown in the tax invoice or bill of sale, then the dealer is not entitled to deduction of the said amount from the total turnover. The language employed in the aforesaid three provisions is clear, unambiguous and there is no scope for any interpretation. There is no conflict and there is no ambiguity. Therefore, by misconstruing the judgment in Reliance Industries case the authorities had granted the benefit of reduction in tax. When the legal position was made clear by this Court in the case of Kitchen Appliances India Limited, the Assessing Authority promptly initiated proceedings for rectification of the order and after hearing the assessee had rightly rectified the said order. The said rectification order is in conformity with the statutory provisions and in accordance with law.

14. It was contended by the learned Counsel for the assessee that once the credit note is issued, the said discount falls outside the turnover and therefore, there is no question of applying Rule 3(2)(c) would arise. We do not find any substance in the said contention. Once the sale invoice is issued and the sale

price is collected along with tax, the aggregate of such sale constitutes the total turnover and the tax is payable on taxable turnover. To arrive at the taxable turnover what are the deductions that are legitimately be made is provided under Rule 3(2) of the Rules. One such permissible deduction is that the amount paid by way of discount provided that the discount is reflected in the sale invoice. Accordingly by issuing a credit note after receiving the amounts, of course, before filing the returns it cannot be said that the amount of discounts goes outside the purview of the turnover. Therefore, the learned Single Judge was justified in not entertaining the writ petition against the said order. In that view of the matter, we find no merit in these writ appeals. Accordingly, these appeals are dismissed.