(2012) 08 KAR CK 0399

In the Karnataka High Court

Case No : Sales Tax Appeal No. 14 of 2011 (Tax)

S.R. Ravishankar APPELLANT

Vs

The Additional Commissioner of Commercial Taxes and Another RESPONDENT

Date of Decision : 17-08-2012

Acts Referred:

Citation : (2013) 75 KarLJ 109

Hon'ble Judges : K. Sreedhar Rao, J;B. Manohar, J

Bench : Division Bench

Advocate : T.N. Keshavamurthy, for the Appellant; K.M. Shivayogiswamy, Government Advocate, for the Respondent

Judgement

K. Sreedhar Rao, J.—The provisions of Section 15 of the Karnataka Value Added Tax Act, 2003 (hereinafter referred to as the ''KVAT Act, 2003'') was incorporated in the following manner with effect from 1-4-2006:

Rule 15. Request for cancellation by legal heirs.--(1) Where a registered dealer carrying on business as on individual enters into a partnership, he shall report the fact to the Registered Authority, together with a final return in [Form VAT 100], within fifteen days of his entering into such partnership, requesting cancellation of his registration, and make an application for a new registration of the partnership under Rules 4 and 6.

(2) Where a registered dealer is a partnership, any change including dissolution, shall be reported to be registered authority, within fifteen days of such change, and in the case of dissolution, a request made for cancellation of the registration together with a final return in [Form VAT 100].

(3) The heirs of a deceased registered dealer shall submit a written request, together with a final return in [Form VAT 100], to cancel the registration within thirty days from the date of death.

In the present case, the assessee had brought the goods from outside the State for executing the works contract. The assessment years in question are 2005-06 and 2006-07. The assessee for the said assessment years made an application for payment of tax on composition. The Assessing Officer granted the request and assessed the tax as per the composition. The Joint Commissioner of Commercial Taxes in suo motu revision found that the Assessing Officer was wrong in granting the request for composition. The assessment orders were set aside and the matter was remanded to the Assessing Officer for regular composition. The Additional Commissioner in revision found that the assessee is entitled to composition provided that the goods purchased are not used in executing works contract resulting of transfer of property as envisaged u/s 15(5)(a) of the KVAT Act, 2003. The assessee, aggrieved by the said order has filed this appeal.

2. In view of the provisions of Section 15(5)(a), the assessee shall be entitled to composition for the assessment year 2006-07, however, would not be entitled to composition for the assessment year 2005-06. In that view of the matter, the appeal is partly allowed. The Assessing Authority shall redo the assessment in the terms indicated above.