(2009) 12 KAR CK 0119

In the Karnataka High Court

Case No : S.T.R.P. No. 73 of 2007

State of Karnataka APPELLANT

Vs

KAP Steel Limited RESPONDENT

Date of Decision : 15-12-2009

Acts Referred:

Citation : (2011) 38 VST 150

Hon'ble Judges : K.L. Manjunath, J;Aravind Kumar, J

Bench : Division Bench

Advocate : Geetha Menon, for the Appellant; M. Thirumalesh, for the Respondent

Final Decision : Allowed

Judgement

K.L. Manjunath, J.—The Revenue has come up in this revision challenging the legality and correctness of the order passed by the Karnataka Appellate Tribunal, Bangalore, dated October 26, 2006 in S. T. A. Nos. 619-24/2001 raising the following substantial questions of law :

1. Whether the order passed by the Tribunal dated October 26, 2006 is in conformity with the order passed by this court in S. T. A. No. 121 of 2004 dated June 29, 2006 and W. P. Nos. 25452-57 of 1995 dated March 17, 1999 ?

2. Whether the Tribunal was justified in interpreting the order passed by this court in S.T.R.P. No. 121 of 2004 dated June 29, 2006 (State of Karnataka v. Kap Steel Limited) as only a precise remand to verify the jurisdiction of the revising authority and not on the merits of the case ?

2. This case has a chequered career. For the purpose of the disposal of this revision, we are of the view that there is no necessity for us to set out facts in detail and the history of the case. According to us, it would be suffice to say that what transpired after the orders are passed in S.T.R.P. No. 121 of 2004 dated June 29, 2006 (State of Karnataka v. Kap Steel Limited) in order to answer the questions of law raised in this petition. The assessee being aggrieved by the

orders passed by the suo motu revision petitioner, had filed an appeal before the Tribunal in S. T. A. Nos. 619-24 of 2001. The grounds urged therein were not only in regard to the jurisdiction exercising the revisional power by the authority and also on questioning the merits of the order passed in the revision petition. The appeal came to be allowed by the Tribunal by its order dated May 16, 2003. Against which the Revenue had come up in revision petition before this court in S.T.R.P. No. 121 of 2004. A Division Bench of this court on June 29, 2006 (State of Karnataka v. Kap Steel Limited) and this court considering the arguments advanced by both the parties allowed the revision petition of the Revenue and remanded the matter to the Tribunal without answering the questions of law to reconsider the question of jurisdiction only without reconsidering the matter on merits. This order is called in question in this revision petition.

3. The only point to be considered by us in this revision petition is whether the order passed by this court on an earlier occasion on June 29, 2006 (State of Karnataka v. Kap Steel Limited S.T.R.P. No. 121 of 2004) was an order of remand to the Tribunal only to consider the question of jurisdiction of the revisional authority and was also required to consider the entire case of the parties afresh.

4. We have perused the order passed by this court. In paras 7 and 9 this court without considering the merits of the matter has allowed the revision petition and remanded the matter to the Tribunal to consider all points. In para 7 it is held that they were not willing to go into the merits of the matter in the absence of actual finding with regard to jurisdiction of the revisional authority. Therefore, their Lordships have felt that the Tribunal was required to answer not only the question of jurisdiction but also to consider the case of the parties on the merits. In the circumstances, entire order of the Tribunal dated May 16, 2003 was set aside and the matter was remanded. In this background, we are of the view that the order of the Tribunal in the present case is without understanding the order of remand passed by this court in S.T.R.P. No. 121 of 2004 dated June 29, 2006 (State of Karnataka v. Kap Steel Limited). Due to wrong interpretation of the order of remand the Tribunal has considered the only question of jurisdiction without considering the case of the parties on merits. Only on this short ground we have to answer the questions of law in favour of the Revenue and the order passed by the Tribunal has to be set aside and the matter is required to be reconsidered by the Tribunal on merits and in accordance with law.

5. Accordingly, the petition is allowed, Order of the Tribunal dated May 16, 2003 is hereby set aside and the matter is remanded to the Tribunal to reconsider the case on the merits and in accordance with law.