(2006) 08 KAR CK 0051

In the Karnataka High Court

Case No : Sales Tax Revision Petition No. 72 of 2005

State of Karnataka APPELLANT

Vs

Kaveri Ultra Polymers Limited, Bangalore RESPONDENT

Date of Decision : 16-08-2006

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 8A

Citation : (2006) 61 KarLJ 293

Hon'ble Judges : N. Ananda, J;R. Gururajan, J

Judgement

R. Gururajan, J.-State of Karnataka is before us aggrieved by the order of the Tribunal dated 6-7-2004 passed in STA No. 1419 of 2003.

2. Respondent is a dealer covered by the Karnataka Sales Tax Act, 1957 (for short, ''the Act''). Respondent is engaged in manufacture and sale of polymer liners. For the assessment year 1998-99, assessment was concluded by the order dated 23-3-2001. Benefit of exemption was granted to the assessee in terms of notification dated 14-2-1995. Thereafter, the revising authority, purporting to exercise powers under Section 21(2) of the Act, issued notice in the matter of revising the order of the Assessing Authority on the ground that the said order is prejudicial to the interest of the Revenue. Proceedings were held. Thereafter, the revising authority passed adverse order. Assessee moved the Tribunal. Tribunal has chosen to accept the order of the Assessing Authority by way of reversal of the order passed by the Revising Authority. It is in these circumstances, revenue is before us.

3. Heard Smt. Sujatha, learned Counsel appearing for the Revenue. She would refer to us the Notification dated 14-2-1995.

4. The following substantial questions of law are raised by the Revenue:

(1) In the facts and circumstances of the case, whether the Tribunal is justified in holding that the goods viz., polymer liners and impact pads supplied by the respondent to (JVSL) Jindal Vijayanagar Steel Limited, are plant and machinery/

equipment?

(2) In the facts and circumstances of the case, whether the Tribunal is right in extending the benefit of exemption Notification dated 14-2-1995 to the respondent?

5. Heard Smt. Sujatha, learned Additional Government Advocate appearing for the Revenue. She would refer to us a Notification dated 14-2-1995 to contend that part of plant and machinery cannot be equated as ''plant and machinery'' for the purpose of exemption in terms of the order of the Tribunal. She would say that the Tribunal has committed a serious error in accepting the order of the Assessing Authority in the circumstances. She wants interference.

6.Per contra, Sri Huilgol, learned Counsel for the respondent, with all vehemence would say that the order of the Tribunal requires confirmation by us. He would say that in terms of the notification the material supplied by his client would require exemption. He would rely on a judgment of the Supreme Court in Scientific Engineering House (Private) Limited v Commissioner of Income-tax, Andhra Pradesh, AIR 1986 SC 338, for the purpose of consideration of polymer and rubber liners forming part of the plant itself. Smt. Sujatha, learned Additional Government Advocate, in reply would refer to us a judgment in State of Bihar and Others v Steel City Beverages Limited and Another, 1999(47) Kar. L.J. 124 (SC).

7. After hearing, we have carefully seen the material on record.

8. Admitted facts would reveal that the Assessing Authority has chosen to provide the benefits in terms of his order in the case on hand. The Revising Authority noticing the same has chosen to issue notice and thereafter he has passed an order against the assessee. In its order, the Revising Authority would say that the exemption is not available to the respondent in terms of the exemption notification. When the same was challenged before the Tribunal, the Tribunal has chosen to say that the supply of polymer and rubber liners also would qualify for exemption in terms of the notification dated 14-2-1995.

9. The Government in terms of the power conferred under Section 8-A of the Karnataka Sales Tax Act, 1957 has chosen to issue a notification dated 14-2-1995 reading as under:

"No. FD 165 CSL 94(III), Bangalore, dated 14-2-1995, Karnataka Gazette, dated 14th February, 1995.

In exercise of the powers conferred by Section 8-A of the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957), the Government of Karnataka hereby exempts with immediate effect, the tax payable under Section 5 of the said Act by a registered dealer in Karnataka, on the sale of plant and machinery/ equipment only if each individual purchase invoices is more than rupees one crore in value, to a new integrated steel plant of not less than 1.25 Million Tonnes per annum capacity for manufacture of "iron and steel" for a period of fourteen years subject to the conditions that the selling dealer produces a declaration obtained from them....".

A dealer, therefore, has to satisfy the following three conditions to claim exemption of tax under the said notification:

(a) The goods sold should be of more than rupees one crore value in each individual invoice;

(b) It should be a registered dealer under the KST Act, 1937 and the goods should be either plant and machinery or equipment;

(c) A certificate to be obtained by the purchase.

10. A reading of the said Notification would further show that the Government in its wisdom has chosen to provide tax exemption on the sale of plant and machinery/equipment in terms notification. What is supplied by the respondent is only polymer and rubber liners to the machinery. Same has been considered to be ''plant and machinery'' for the purpose of the Notification by the Tribunal. In the light of the material available on record, we are of the view that the Tribunal has committed a serious error in providing exemption even to ''polymer and rubber liners'' on the basis that they are machinery itself. The Government in its legislative wisdom has chosen to provide exemption only to plant and machinery/ equipment, and it is not open to anybody including the Tribunal to provide exemption benefit even to the part of the machinery, as has been done in the case on hand. Polymer and rubber liners cannot be equated to ''plant and machinery'' as has been done by the Tribunal in the case on hand. Exemption notification has to be acted upon strictly in terms of the notification and cannot be expanded as has been done in the case on hand. When the Legislators in their wisdom have chosen to provide exemption only to plant and machinery/ equipment, it is not open to widen the exemption by way of providing relief even to polymer and rubber liners as has been done in the case on hand. The finding of the Tribunal, in our view, runs counter to the Notification, and therefore, we deem it is proper to accept the argument of Smt. Sujatha, learned Additional Government Advocate in the matter.

11. As mentioned earlier, Sri Huilgol, learned Counsel for the respondent relies on a judgment of the Supreme Court in Scientific Engineering House (Private) Limited''s case, to contend that even the supplies made by his client would qualify as plant and machinery. In the light of the argument of the learned Counsel, we have carefully perused the order of the Supreme Court referred to above. A reading of the said judgment would show that it is not a judgment with reference to exemption notification. It was rendered in the context of the provisions of the Income-tax Act, 1961, as we see from the facts of that case. In fact, the Supreme Court itself notices the definition of ''plant'' in the said judgment, and after noticing the same, it would say that the said definition is very wide in terms of its finding. It is in those circumstances the Supreme Court has chosen to accept the case of the assessee in that case. That judgment

cannot be made applicable to the exemption case. In the circumstances, we are of the view that the said judgment of the Supreme Court in Scientific Engineering House (Private) Limited''s case, is not available to the assessee. In fact the Supreme Court in the subsequent judgment in the case of Steel City Beverages Limited, has chosen to notice similar contention. After noticing the same, the Supreme Court in the said judgment would say in paragraph 5 reading as under:

"5. Therefore, what we have to consider is whether under the Bihar Sales Tax Supplementary (Deferment of Tax) Rules, 1990, "plant" would include bottles and crates employed by an industrial unit manufacturing soft drinks and beverages for carrying on its business. The word "plant" has a very wide meaning and a variety of articles, objects or things have been held to be plant. Dictionaries have defined plant as land, building, fixtures, machinery, implements and tools, and apparatus used in carrying on a mechanical operation or an industrial process. This Court in Commissioner of Income-tax, Andhra Pradesh v Taj Mahal Hotel, (1971)82 ITR 44 (SC) and Scientific Engineering House (Private) Limited v Commissioner of Income-tax, (1986)157 ITR 86 (SC), referred to with approval the observation of Lindley L.J. in Yarmouth v France, (1887)19 QB 647 that in its ordinary sense plant includes whatever apparatus is used by a businessman for carrying on his business, not his stock-in-trade which he buys or makes for sale, but all goods and chattels, fixed or movable, live or dead, which he keeps for permanent employment in his business. In that case, this Court further held that the test to decide whether a particular thing is plant would be: "Does the article fulfill the function of a plant in the assessee''s trading activity? Is it a tool of his trade with which he carries on his business? If the answer is in the affirmative, it will be a plant". Learned Counsel for the respondents, heavily relying upon this decision, submitted that the High Court was right in interpreting the word "plant" in the Deferment Rules as including bottles and crates also as they are used by the company for carrying on its business. We cannot agree with this contention as we are of the view that the High Court was wrong in interpreting the word "plant" in Rule 2(v) so widely. It failed to consider whether the object and scheme of the Deferment Rules permit such a wide interpretation. The High Court also failed to appreciate that the decisions of this Court in the cases of Taj Mahal Hotel and Scientific Engineering House, were under the Income-tax Act and the observations made and the test indicated therein were in the context of the wide definition of the word "plant" given in that Act and, therefore, not of universal application. Obviously, if plant is defined differently under a different provision or if the context so requires, it may have to be given a different and a narrower meaning. The Deferment Rules do not define plant and, therefore, what should have been considered by the High Court was what meaning should be given to it in the context of the Deferment Rules".

The Supreme Court in the very same judgment in paragraph 7 has also chosen to hold as under:

"7. As disclosed by the industrial policy and the Deferment Rules, the State agrees to suffer temporary loss of Revenue by not requiring immediate payment of sales tax on sales of goods produced or manufactured by an industrial unit if it makes new fixed capital investment in the State. What the State desires and what the Deferment Rules require for getting the benefit thereunder, is not capital investment but fixed capital investment. Rule 2(v) defines "fixed capital investment" to mean investment in land, building, plant and machinery. Thus, the nature of investment contemplated by the Deferment Rules is investment in fixed assets which are ordinarily considered essential for production or manufacture of goods and have some degree of permanency. The second proviso to Rule 3 make this position further clear. It states that "deferment shall be limited to 90 per cent of the fixed capital investment in fixed capital assets". To explain how in business accounting "fixed capital" and "fixed assets" are understood, Mr. Singh, learned Counsel for the State, drew our attention to the book titled "Advanced Accounting" by Jamshed R. Batliboi. Therein, it is stated that "fixed capital of a business consists of its fixed assets" and "fixed assets are those which are acquired and intended to be retained permanently for the purpose of carrying on a business, such as land, buildings, plant and machinery, etc. Therefore, the context in which the word "plant" is used in Rule 2(v) indicates that it is not used in its wider sense and does not include within its meaning land, building and machinery. It also appears that the rule-making authority did not intend "plant" to mean what is not a fixed asset. For all these reasons, we are of the view that by "plant" what is intended by the rule-making authority is that apparatus which is used by the industry for carrying on its industrial process of manufacture. In respect of an industry manufacturing soft drinks and beverages, it can be said that plant would mean that apparatus which is used for manufacturing soft drinks or beverages and not articles like crates and bottles used for storing the manufactured product".

The subsequent judgment of the Supreme Court supports the view taken by us in the matter of denial of exemption to ''polymer and rubber liners''.

12. In the circumstances, we deem it proper to accept this revision. Order of the Tribunal is set aside. Questions of law as raised by the petitioner are answered in favour of the State and against the assessee. Ordered accordingly. No costs.

