

(2006) 07 KAR CK 0045
In the Karnataka High Court
Case No : Writ Appeal No. 82 of 2006 (T-KST)

State of Karnataka

APPELLANT

Vs

Kirloskar Ferrous Industries Limited, Koppal

RESPONDENT

Date of Decision : 20-07-2006

Acts Referred:

Constitution of India, 1950 — Article 14
Karnataka Sales Tax Act, 1957 — Section 5A(1)
Karnataka Sales Tax Rules, 1957 — Rule 38A

Citation : (2006) 61 KarLJ 204

Hon'ble Judges : C. R. Kumaraswamy, J;V. Gopala Gowda, J

Judgement

V. Gopala Gowda, J.-Heard on I.A. No. I of 2006. For the reasons stated in I.A. No. I of 2006, the delay of 53 days caused in filing the appeal is condoned. Accordingly, I.A. No. I of 2006 is allowed.

2. We have heard Sri P.G.C. Chengappa, learned Additional Government Advocate appearing for the appellant and Sri G. Sarangan, learned Senior Counsel appearing for the respondents, on merits of the appeal at the stage of preliminary hearing itself and disposed of the same by this order.

3. This appeal is filed by the State questioning the correctness of the order passed by the learned Single Judge regarding the interpretation of amended provision of Section 5-A(1), clauses (a) and (b) of the Karnataka Sales Tax Act, 1957 (herein called as "KST") with reference to proviso to sub-section (1), which was amended by Act No. 5 of 2001 and came into force with effect from 1-4-2001 to 31-3-2002 regarding reimbursement of tax on industrial inputs. The correctness of the order passed by the learned Single Judge with regard to the interpretation of amended Section 5-A of the Act to extend the statutory benefits to the purchaser/dealer from the registered seller that means, the tax payable by a registered dealer in respect of the sale of any industrial input liable to tax under the Act to another registered dealer for use by the latter as a component part or raw material or packing material of any other goods which he intends to manufacture inside the State for sale or in respect of sale of consumables liable

to tax under the Act to another registered dealer for use in such manufacture, shall be at the rate of four per cent or the rate specified in Section 5 whichever is lower, on the taxable turnover relating to such sale. The goods mentioned in Third Schedule are treated as inputs for the purpose of any goods which the dealer intends to manufacture inside the State for sale. In the absence of non-production of either the bill or cash memo that is issued by the seller showing separately the amount collected by way of tax is not correct as it would take away the statutory benefit extended. The purchaser/dealer directly paying tax himself to the State Government in compliance with the statutory provisions of the Act, then, in that event, he is disentitled for that benefit for non-production of bill or memo or receipt is a clear case of discrimination under Article 14 of the Constitution of India. The argument advanced in this regard is rightly accepted by the learned Single Judge after elaborately referring to the various rival legal contentions urged by the learned Counsel for the parties in the writ petition considering the decision of the Apex Court and also this Court after interpretation of the relevant provisions.

4. The learned Additional Government Advocate Mr. P.G.C. Chengappa, had sought to set aside the findings and the reasons recorded on the interpretation made by the learned Single Judge in the impugned order with reference to the aforesaid statutory provisions contending that the statutory provisions are very clear about the entitlement of the statutory benefits that would be claimed by the purchaser/dealer who has applied for waiving of tax under sub-section (2) of Section 5-A of the Act. The interpretation of the amended provision which was sought to be made by the learned Single Judge defeats the object and intendment of conferring statutory benefits upon the purchaser/dealer. Therefore, the impugned order is liable to be set aside as the same is contrary to the scheme and object of the benefit extended to the purchaser/dealer by way of amendment to the above provision of Section 5-A of the KST Act.

5. Sri G. Sarangan, learned Senior Counsel on behalf of respondent has justified the correctness of the findings and reasons recorded by the learned Single Judge in the impugned order by placing strong reliance on the decisions of this Court which are referred to in the order and also Article 14 of the Constitution of India. By a careful reading of the statutory provision of Section 5-A(1), clauses (a) and (b) and sub-section (2) makes it abundantly clear that when the purchaser/dealer purchases the goods mentioned in the Third Schedule pays sales tax to the Department to use the goods as inputs in the State and from that he manufactures other goods in the State, then, in that event, he is entitled to claim reimbursement of sales tax paid by him at the rate specified in clauses (a) and (b) of sub-section (1) of Section 5-A of the KST Act in respect of the goods enumerated in the above schedule. The object is very clear that the purchaser/dealer pays tax on the raw materials purchased either from the registered seller directly or to the State, the object makes it abundantly clear that he is entitled to get reimbursement of the sales tax paid on the raw material purchased by him for the purpose of manufacture of other goods and sell the same. The

interpretation of the above provision made by the learned Single Judge, keeping in view the object, intendment and purpose of the amended provisions of the Act. Such statutory benefits provided to the registered purchaser cannot be taken away by interpreting the amended statutory provision of clauses, which is unworkable and impracticable in the facts and circumstances of the case. The learned Single Judge has examined this important aspect of the matter after giving his attention to the principles of interpretation of the statutory provisions of the Act and also in accordance with the Constitution of India.

6. After hearing the learned Counsel for the parties, we have carefully applied our mind to the findings and reasons recorded by the learned Single Judge in the impugned order with regard to the interpretation put on the amended provision of Section 5-A(1), clauses (a) and (b) and sub-section (2) to the Act. The decisions rendered by the learned Single Judge is in conformity with the concept of Article 14 of the Constitution of India and the interpretation of Article 14 made by the Apex Court in various decisions which are referred to in the impugned order. After a careful reading of the impugned order passed by the learned Single Judge, we are in respectful agreement with the interpretation of the amended provisions of the KST Act made by the learned Single Judge and granting the relief to the aggrieved purchaser. Therefore, we do not intend to interfere with the same as the learned Single Judge has assigned valid and cogent reasons in support of his decision in the case and therefore he has perfectly justified in law in placing correct interpretation of the provisions of the Act and extending the benefit to the purchaser/dealer claiming reimbursement of the sales tax paid on the purchase of raw material from the registered dealer either directly to the registered seller or to the State Government. The object of the above amended provision of the KST Act is made to see that the purchaser of the raw material mentioned in Third Schedule gets reimbursement of sales tax paid at the percentage enumerated at clauses (a) and (b) of sub-section (1) of Section 5-A of the Act.

7. We are in respectful agreement with the reasoning of the learned Single Judge assigned in the impugned order. Therefore, we do not find any good reason whatsoever to interfere with the order passed by the learned Single Judge. The appeal must fail. Accordingly, this appeal is dismissed.