

(2011) 07 KAR CK 0234

In the Karnataka High Court

Case No : STRP No's. 84 of 2009 and 71-76 2010

State of Karnataka

APPELLANT

Vs

Kitchen Appliances India Limited

RESPONDENT

Date of Decision : 15-07-2011

Acts Referred:

Karnataka Value Added Tax Act, 2003 — Section 30

Karnataka Value Added Tax Rules, 2005 — Rule 3 (2) (c)

Citation : (2012) 51 VST 439

Hon'ble Judges : V.G. Sabhahit, J;Ravi Malimath, J

Bench : Division Bench

Advocate : Sujatha, for the Appellant; Sarangan for S.J. Sanghvi and Mayappa, for the Respondent

Judgement

Ravi Malimath, J.—These appeals are by the Revenue being aggrieved by the order of the Tribunal in partly allowing the appeals of the assessee thereby setting aside the order of the assessing authority and the first appellate authority. The assessee is a registered dealer under the Karnataka Value Added Tax Act, 2003 engaged in the manufacturing and trading of domestic appliances, such as, colour television, DVD, audio music systems, air cooler and air conditioners, washing machines, mixers and grinders, micro ovens, water purifiers, kitchen appliances, toaster, iron box, spares, etc. On December 4, 2006, the Deputy Commissioner visited the assessee's premises for auditing the books of accounts. On verification of the books of accounts for the period April, 2006 to October, 2006, it was found that the assessee had issued credit notes to the customers on monthly sales performance basis incentives, subsequent to the issue of tax invoices. In the said credit notes, the assessee had deducted the output tax portion related to the discount and remitted the balance tax to the Department. The Revenue proposed to levy tax on the discount amount given to the dealers on the ground that rule 3(2) (c) of the Karnataka Value Added Tax Rules, 2005 makes it mandatory on the dealer to claim the discount separately on the tax invoice and the tax collected should be on the sale price less discount

and there is no provisions to claim the discounts, which are allowed in future dates as per the trade practices followed. Accordingly, the assessee submitted his reply. Reply to the proposition notice was rejected. The assessing authority confirmed the proposition notice. Aggrieved by the same, the assessee preferred an appeal before the Joint Commissioner of Commercial Taxes (Appeals) 2, Bangalore. The appellate authority dismissed all the seven appeals. Aggrieved by the same, the assessee preferred an appeal before the Karnataka Appellate Tribunal, Bangalore, wherein by the impugned order, the appeals were partly allowed and the impugned levy of tax was directed to be deleted along with interest. Aggrieved by the same, the present appeals are filed by the State.

2. Smt. Sujatha, the learned Government Advocate, contends that the impugned order is bad in law and liable to be set aside. She contends that the tax as demanded in terms of rule 3(2)(c) is just and proper and therefore, the finding of the Tribunal is erroneous. She contends that the Tribunal lost sight of the fact that the provisions of rule 3(2)(c) were held to be constitutionally valid. However, the Tribunal has misdirected itself in assuming jurisdiction to decide the applicability and the validity of the rule 3(2)(c) notwithstanding the clear finding recorded by the honourable High Court. She further contends that the discount as pleaded by the assessee is not a discount.

3. On the other hand, Sri Sarangan, the learned senior counsel appearing on behalf of the respondent's counsel, defends the impugned order. He contends that there is no error committed by the Tribunal that calls for any interference. He submits that even though the constitutional validity of rule 3(2)(c) was upheld by the learned single judge, when the same was challenged in the writ appeal, the matter was remanded for fresh consideration and hence, it cannot be said that the validity of rule 3(2)(c) has been upheld. He contends that rule 3(2)(c) is ultra vires the Constitution of India. That the Tribunal having appreciated the facts and circumstances of the case has rightly held in favour of the assessee by deleting the tax demanded. That the records would disclose that the credit notes have been issued in terms of section 30 of the KVAT Act. He accordingly pleads that there is no error committed by the Tribunal that calls for any interference and hence, the appeal is liable to be dismissed.

4. Heard counsels.

5. The appeal was admitted to consider the following substantial questions of law :

(i) Whether the Karnataka Appellate Tribunal is justified in ordering to allow exemption towards deduction much against to the provisions of the Act or Rules ?

(ii) Whether the Karnataka Appellate Tribunal is justified in transgressing the provisions of the Act or Rules made thereunder and accord benefit to the respondent-company much against to their own limited powers as submitted above ?

(iii) Whether the order dated April 24, 2009 passed in STA No. 985 to 991 of 2008 is contrary to law and facts ?

6. The validity of rule 3(2) (c) was sought to be challenged in writ petition No. 9464 of 2008 in the case of Southern Motors Vs. State of Karnataka, which was dismissed. At paras 8 and 9, it was held as follows (pages 164 and 165 in 18 VST) :

8. Submission proceeds on a very fallacious ground that the rule particularly proviso to rule 3(2) (c) of the KVAT Rules, is either discriminatory or ultra vires of section 30. In fact, the rule mandates the applicability of the procedure to all assessees. There is no question of discrimination under this rule. As to how the rule may affect different assessees or different dealers is not the criteria for holding that the rule is a discriminatory provision and discriminates from dealer to dealer.

9. In so far as the ultra vires assessment is concerned I find that 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 assessees claiming the benefit u/s 30 of the Act. That 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 case goods are returned within the prescribed period, to issue a credit note forthwith and 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 the 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. I do not find any infirmity in the rule nor the rule being ultra vires under the provisions of section 30 of the KVAT Act. I do not find the order being totally in violation of the principles of natural justice though the authority could have given some more time to the petitioner. Be that as it may, it is not a fit case for interference in writ jurisdiction when the assessee is provided statutory remedies under the Act. It is open to the petitioner to avail of statutory remedies available under the provisions of the Act.

Without prejudice, the writ petition is dismissed.

7. Aggrieved by the said order, the petitioner therein preferred a writ appeal in W.A. No. 1198 of 2008, wherein by the order dated March 11, 2010, the writ appeal was disposed of on certain terms. The Division Bench of this court noted the submissions of the appellant than the constitutional validity challenged in the writ petition, which has been urged in the writ appeal, would not be pressed in the writ appeal. Accordingly, the submission was noted and on merits of the appeal, the matter was remanded.

8. The counsel appearing for the assessee submits that the Division Bench has not recorded a finding upholding the order passed by the learned single judge and consequently, he is entitled to contend that rule 3(2) (c) is ultra vires section 30 and ultra vires the Constitution of India. We are unable to accept the said contention. The constitutional validity and the validity of rule 3(2) (c) with section 30 of the Act having been held to be intra vires, the writ petition challenging the same was dismissed. The grounds urged in the writ petition challenging the validity were not pressed in the writ appeal. Therefore, the findings recorded by the learned single judge with regard to the validity of rule 3(2)(c) were held to be constitutionally valid. We have no reason to opine otherwise. Under these circumstances, the contentions raised are wholly unacceptable.

9. The validity of rule 3(2)(c) was also the subject-matter of the proceedings before the Division Bench in STRP No. 117 of 2008, wherein by the order dated February 16, 2010, State of Karnataka Vs. Reliance Industries Ltd., the Division Bench held that there is no conflict between rule 3(2)(c) and rule 31. It was noted that rule 3(2)(c) pertains to the discounts that can be allowed in terms of the regular practice whereas rule 31 pertains to particulars of credit and debit notes, which has to be furnished as and when the credit notes are issued. Therefore, the Division Bench held that there is no conflict between the aforesaid two rules. These two judgments were cited before the Tribunal. However, the Tribunal held at para 25 as follows :

25...

Therefore, since the dismissal of the writ petition has been clearly recorded to be without prejudice to the other rights of the petitioner to agitate before any other appellate forum the relegation to the appellate remedy in that case is not restricted in any manner and the appellate authorities are required to adjudicate on the issues relating to the claims of the appellant u/s 30 in accordance with the law of the land. Therefore, this Tribunal has to adjudicate on the issue of the specific conflict made out and proved beyond doubt between rule 3(2) (c) and rule 31 on the one part and rule 3(2) (c) and section 30 of the KVAT Act on the other part.

10. It is highly unfortunate to note that notwithstanding the clear pronouncement in the two judgments referred to above, the Tribunal has proceeded to hold that it has to adjudicate on the conflict between rule 3(2) (c) and rule 31 on one part and rule 3(2) (c) and section 30 of the KVAT Act on the other part. The Tribunal has exceeded its jurisdiction in arriving at such a conclusion. The Tribunal has exceeded its jurisdiction in interpreting the judgments of the High Court. When the law has been clearly declared, it is the duty of the Tribunal to follow it. It is not open for the Tribunal to opine contrary to the judgments of the High Court. It is even suggested by the learned counsel appearing for the State that the action of the Tribunal would border on contempt of court arising as a situation of obstructing the course of justice.

11. We are of the considered view that the Tribunal exceeded its jurisdiction in dwelling upon this aspect with regard to the validity and adjudication with regard to the conflict as mentioned hereinabove. Therefore, we are of the considered view that the entire matter having since been seized and covered by the earlier judgments of this court as mentioned hereinabove, the Tribunal committed an error in passing the impugned order.

12. The proviso to rule 3(2)(c) reads as follows :

3...

(2)...

(c)...

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 that amount allowed as discount); and Provided further that the accounts show that the purchaser has paid only the sum originally charged less discount.

13. Therefore, the tax invoice issued in respect of sales must show and disclose the amount of discount that is being offered: It is an admitted fact that no such discount has been shown in the tax invoice. That the discount offered is subsequent to the raising of the tax invoice.

14. On facts, we are of the view 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. In the instant case, the same is absent. Hence, It is evident that the view of the Tribunal requires to be set aside as being contrary to the proviso to rule 3(2) (c).

15. The Tribunal held that the dealers have a right to revise the sale price of goods in accordance with contracts of sale. Even though the dealers may have a right to revise the sale price of their goods in accordance with 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. Discount on a product cannot be offered after a sale has taken place. A discount is offered at the time of sale. Once a sale takes place, the question of offering a discount thereafter does not arise for consideration.

16. The assessee has relied upon a particular scheme envisaged by it. The scheme would read that if four numbers of televisions bearing Model No. KSTS-2101P are purchased, a discount of Rs. 300 is offered. If 5 to 11 numbers of televisions are purchased, discount of Rs. 550 is offered. If 12 and above numbers of televisions are purchased, a free KSTS-2202G TV is given. The document relied upon by the assessee to strengthen their case, on the contrary, supports the case of the Revenue. The documents on record do not disclose the

grant of discount subsequent to the period of invoice. Therefore, the contention of the learned counsel for the assessee is not acceptable and liable to be rejected.

17. Under these circumstances and in view of the admitted fact that the tax invoice did not contain the discount and its subsequent credit notes are sought to be treated as discount to claim relief is wholly unjustified. The Tribunal fell in gross error in holding to the contrary. Therefore, we are of the considered view that for the aforesaid reasons, the order of the Tribunal requires to be set aside.

18. For the aforesaid reasons, we pass the following : ORDER

The order dated April 24, 2009 passed in S.T.A. Nos. 985 to 991 of 2008 by the Karnataka Appellate Tribunal, Bangalore is set aside. Consequently, the order of the assessing authority dated February 26, 2007 stands restored.