(2014) 04 KAR CK 0259

In the Karnataka High Court

Case No : Civil Revision Petition No. 168 of 2011

State of Karnataka APPELLANT

Vs

Kraft Sales and Services India Limited RESPONDENT

Date of Decision : 24-04-2014

Acts Referred:

Karnataka Tax on Entry of Goods Act, 1979 — Section 15-A

Citation : (2014) 79 KarLJ 94 : (2014) 72 VST 288

Hon'ble Judges : Dilip B. Bhosale, J;B. Manohar, J

Bench : Division Bench

Advocate : T.K. Vedamurthy, High Court Government Pleader, Advocate for the Appellant; E.R. Indrakumar, Senior Advocate for E.I. Sanmathi, Advocate for the Respondent

Judgement

Dilip B. Bhosale, J.—This civil revision petition u/s 15-A of the Karnataka Tax on Entry of Goods Act, 1979 (for short, ''the Act'') is preferred against the order dated 12th July, 2010 rendered by the Karnataka Appellate Tribunal, Bangalore (for short, ''the Tribunal'') in S.T.A. No. 1066 of 1999 whereby the Tribunal allowed the appeal and set aside the orders passed by the Assessing Authority and the First Appellate Authority and directed to refund to the respondent, the entry tax paid by them. In this revision petition, the Revenue framed the following questions of law for our consideration:

1. In the facts and circumstances of the case whether the Tribunal is right in giving a finding that electrical power tools such as grinding and cutting wheel and various tools which are operated by electrical power are electrical tools and not parts and accessories of the machinery?

2. Whether in the facts and circumstances of the case, the Tribunal is right in allowing the appeal filed by the assessing holding that the goods brought into the local area by the assessee are electrical tools not notified by the Notification No. FD 11 CET 2002, dated 30-3-2002?

2. Mr. T.K. Vedamurthy, learned Counsel appearing for the petitioner, at the outset, invited our attention to the judgment of this Court in State of Karnataka Vs. M/S R.K. Powergen Pvt. Ltd., submitted that the questions of law raised in this petition are squarely covered by the said judgment.

3. Mr. E.R. Indrakumar, learned Senior Counsel on the other hand, submitted that the judgment of this Court in R.K. Powergen Private Limited''s case was not available when the Tribunal decided the appeal and therefore, he has no objection for remanding the matter to the Tribunal to consider it afresh in the light of this judgment. He made such submission after inviting our attention to paragraph 10 of the judgment of the Tribunal contending that the Tribunal while deciding the appeal has not made any distinction between machines and tools such as grinding and cutting wheel and other various tools which are operated by electrical power. He submitted that the words ''electrical tools'' used by the Tribunal in the order would mean machines in which, the respondent-assessee deals in. The Tribunal has not considered the appeal in proper perspective as to whether those machines are covered by Notification No. FD 11 CET 2002, dated 30th March, 2002.

4. From bear perusal of the order of the Tribunal, in particular paragraph 10 thereof, we are also satisfied that the Tribunal has not made any distinction between the machines and tools, such as grinding and cutting wheel and other tools which are operated by electrical power. According to the petitioner, in the present case, we are concerned only with the electrical power tools such as grinding and cutting wheel and various other tools and not with the machines as such. We are not examining the submissions advanced by the learned Counsel for the parties, as they fairly stated that the matter can go back to the Tribunal for its decision afresh in the light of the judgment of this Court in R.K. Powergen Private Limited''s case. In the circumstances, the revision petition is allowed. The order dated 12th July, 2010 passed by the Tribunal is set aside and S.T.A. No. 1066 of 1999 is restored to its file. The Tribunal is directed to consider the appeal afresh in the light of the judgment of this Court in R.K. Powergen Private Limited''s case.

All contentions of the parties are kept open.

The Tribunal shall endeavor to decide the appeal as expeditiously as possible and preferably within a period of eight months from the date of receipt of this order.

