(2011) 12 KAR CK 0220

In the Karnataka High Court

Case No : Sales Tax Revision Petition No. 193 of 2011

State of Karnataka — APPELLANT

Vs

Ksa Kamath and Sons — RESPONDENT

Date of Decision : 09-12-2011

Acts Referred:
Central Sales Tax Act, 1956 — Section 9 (2)

Citation : (2012) 50 VST 360

Hon'ble Judges : V. G. Sabhahit, J;S. N. Satyanarayana, J

Bench : Division Bench

Advocate : S. Sujatha, for the Appellant;

Final Decision : Dismissed

Judgement

V. G. SABHAHIT, J.—This revision petition is filed by the State being aggrieved by the order dated July 28, 2010, passed by the Karnataka Appellate Tribunal, Bangalore (hereinafter referred to as, "the Tribunal"), wherein the Tribunal has allowed the appeal and set aside the order passed by the assessing authority, which is confirmed by the first appellate authority, i.e., the Joint Commissioner of Commercial Taxes (Appeals), Mangalore, dated August 2, 2005 and remitted the matter to the assessing authority, who shall afford adequate opportunity to the appellant and thereafter adjudicate the matter and come to the conclusion as to whether the impugned transaction is consignment sale or is inter-State sale. Brief facts leading up to this revision petition are as follows :

The assessments of the respondent for the year 2003-04 under the KST and CST Act were concluded on March 21, 2005. In the meanwhile, in view of the investigation report received on April 11, 2005 from the office of the Commercial Tax Officer, Korba (Intelligence I), wherein it was reported that in respect of consignment sale made against Form F for Rs. 2,10,800 in favour of consignee, S. Kumar and Company, Gujarat, is not genuine one and the same is required to be rejected. Accordingly the assessing officer reopened the assessment u/s 12A of the Karnataka Sales Tax Act read with section 9(2) of the Central Sales Tax Act and issued proposition notice dated April 18, 2005. The respondent did not file any objection and the assessing authority reassessed and levied taxes on the disputed turnover at the rate of 10 per cent and also levied penalty of Rs. 10,540. The said order of the assessing officer was challenged before the first appellate authority and the first appellate authority has dismissed the appeal filed by the assessee. Being aggrieved by the same, the appeal was filed before the Tribunal and the Tribunal after considering the contentions of the counsel appearing for the parties and after scrutinising the material on record held that mere fact that no objection has been filed would not by itself amount to the fact that form F were not genuine and further the assessing authority as also the first appellate authority come to its own conclusion as to whether the impugned transaction is consignment sale or is inter-State sale, which exercise has not been done either by the assessing authority or by the first appellate authority and accordingly the order of the first appellate authority confirming the order of the assessing authority is unsustainable and accordingly passed the order. Being aggrieved by the said order of the Tribunal, this revision petition is filed by the State.

2. We have heard the learned Government Advocate appearing for the revision-petitioner.

3. The learned Government Advocate appearing for the State submitted that since form F has been held to be not genuine and the finding has been given by the assessing authority and the first appellate authority, the Tribunal was not justified in setting aside the order passed by the first appellate authority and assessing authority and remitting the matter to the assessing authority to pass fresh order, after affording opportunity to the respondent herein.

4. We have given our careful consideration to the contentions of the learned Government Advocate appearing for the State and scrutinised the material on record. The material on record including the order passed by the assessing authority and the first appellate authority would clearly show that though no objection is filed by the assessee in response to the show-cause notice issued to it, the authorities have not done the exercise of finding out as to whether the impugned transaction is consignment sale or is inter-State sale and wherefore the order of remand made by the Tribunal is justified. Since all the contentions are kept open to be urged before the assessing officer and the assessing officer is required to pass fresh orders in accordance with law, without being influenced by the observations made in the appeal before the Tribunal, we do not find any question of law that requires to be determined in this revision petition. Accordingly we hold that the revision petition is devoid of merits and accordingly we pass the following :

ORDER

Revision petition is dismissed.

