
(2009) 12 KAR CK 0092
In the Karnataka High Court
Case No : S.T.R.P. No. 47 of 2007

State of Karnataka

APPELLANT

Vs

Madhu Traders

RESPONDENT

Date of Decision : 10-12-2009

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 12 A, 20 (5)

Citation : (2010) 30 VST 215

Hon'ble Judges : K.L. Manjunath, J;Aravind Kumar, J

Bench : Division Bench

Advocate : Vedamurthy, Government Pleader, for the Appellant;

Final Decision : Allowed

Judgement

K.L. Manjunath, J.—The State has come up with this revision challenging the legality and correctness of the order passed by the Karnataka Appellate Tribunal, Bangalore in S.T.A. No. 1186 of 2005 dated August 24, 2006.

2. The appeal is admitted to consider the following question of law, which reads thus:

In the facts and circumstances of the case, whether the Karnataka Appellate Tribunal was justified in setting aside the order passed by the assessing authority and the appellate authority holding that there was no suppression established by the authorities to reassess the dealer u/s 12A of the KST Act and to levy tax and penalty?

3. We have heard learned Counsel for the parties.

4. The facts involved in this case are as follows:

For the assessment year 1999-2000, the Deputy Commissioner of Commercial Taxes, Intelligence, West Zone, Mangalore, has passed an order u/s 12A of the Karnataka Sales Tax Act, 1957 (for short, "the KST Act"), on the ground that the respondent herein is indulging in clandestine business of dealing in vegetable oils

by producing demand drafts in the name of one Parameshwarappa, bearing account No. 860 in Vysya Bank, Hassan. Therefore, based on the statement given by one C. Ajith Kumar, managing partner of the assessee before the Income Tax authorities wherein, he had admitted the clandestine transactions of edible oil and also unaccounted transactions in the form of demand drafts by issuing notice to the assessee, the Deputy Commissioner of Commercial Taxes, came to the conclusion that the order of assessment has to be reopened and accordingly, it was reopened and levied penalty and completed the order of assessment. Challenging the order of the Deputy Commissioner of Commercial Taxes dated March 31, 2005, the assessee filed an appeal before the Joint Commissioner of Commercial Taxes in Appeal No. KST. Appeal 69/2005-06, which came to be dismissed on October 1, 2005 u/s 20(5) of the KST Act. Aggrieved by the concurrent findings, the assessee filed an appeal before the Karnataka Appellate Tribunal, Bangalore, in S.T.A. No. 1186 of 2005, which appeal came to be allowed by setting aside the order of the Joint Commissioner of Commercial Taxes (Appeals) DVO, Malnad Division, Shimoga, on August 24, 2006. Questioning the said order, the present revision is filed.

5. The learned Government Pleader submitted that the Tribunal has committed a serious error in not considering the statement made before the Income Tax authorities, wherein the managing partner has admitted the clandestine transactions of edible oil by obtaining demand drafts in clandestine manner in the name of others. According to him, the Tribunal has given go by to the material available on record and has allowed the appeal erroneously. Therefore, he requests the court to answer the question of law in favour of the Revenue, since the Tribunal was not justified in setting aside the order passed u/s 12A of the KST Act in levying the tax as well as the penalty.

6. Per contra, learned Counsel for the assessee contends that, though an opportunity has been given to the Revenue by the Tribunal as averred in paragraph 21 of its order, the authority without taking steps has preferred this appeal. Therefore, he contends that the appeal has to be dismissed. He further contends that no material was available with the Deputy Commissioner of Commercial Taxes to pass an order u/s 12A of the KST Act.

7. Having heard the learned Counsel for the parties, we are of the view that the Tribunal has committed a serious error in setting aside the order passed against the assessee u/s 12A of the Act. In paragraph 21, the Tribunal without considering the observations made by the Deputy Commissioner of Commercial Taxes has wrongly stated that the Department did not have any information from the Income Tax Department, which according to us, prima facie is an irregularity committed by the Tribunal. According to us, without considering the order of assessment, the Tribunal has observed as if the Department did not secure any information from the Department of Income Tax. Therefore, only on this short ground, the order passed by the Karnataka Appellate Tribunal has to be set aside, as the same is arbitrary and perverse. We are of the view that if the

assessment officer or appellate authority had not considered the material available on record, it was open for the Appellate Tribunal to remand the matter to the assessing officer to consider the case of the assessee. Instead of doing so, by overlooking the documents which are available on record, the Tribunal has erroneously passed the order by allowing the appeal of the assessee.

8. In the circumstances, answering the substantial question of law in favour of the Revenue, we hereby set aside the order of the Karnataka Appellate Tribunal passed in S.T.A. No. 1186 of 2005 dated August 24, 2006. The matter is remanded to the Deputy Commissioner of Commercial Taxes, for fresh consideration and in accordance with law by giving reasonable opportunity. If any other materials are required, it is open for the Department to secure the same and proceed with the matter.

9. Accordingly, the appeal is allowed.