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(2013) 12 KAR CK 0008

In the Karnataka High Court

Case No : S.T.R.P. No''s. 357 of 2012 and 139 to 156 of 2013

State of Karnataka APPELLANT

Vs

M/s. Steel Tech Industries RESPONDENT

Date of Decision : 13-12-2013

Acts Referred:

Citation : (2014) 78 KarLJ 16

Hon'ble Judges : Rathnakala, J;N. Kumar, J

Bench : Division Bench

Advocate : S. Sujatha, A.G.A, for the Appellant; Vani H., for the Respondent

Judgement

N. Kumar, J.—The State has preferred these revision petitions against the order passed by the Karnataka Appellate Tribunal holding that the goods sold to MESCOM by the assessee is declared goods and tax payable is only at the rate of 4% as prescribed u/s 15 of the Act. The assessee supplied RCC pole clamps, anchor rods, cross arms, H-frames to MESCOM as per the agreement entered into between them. The said items are manufactured out of iron and supplied to MESCOM. The photographs are produced to show the materials which is supplied to MESCOM. The assessee contended that it has supplied the iron and steel goods to MESCOM by just bending of iron and steel according to the specification of MESCOM. Hence, the process cannot be considered as manufacturing activity. The Assessing Authority did not accept the contention of the assessee. They assessed the said goods sold in terms of residuary entry u/s 4(1)(b) and levied tax at 12.5%. Aggrieved by the said order, the assessee preferred first appeal which also came to be dismissed. Aggrieved by these orders, the assessee preferred appeals to the Karnataka Appellate Tribunal. The Tribunal held that the Assessing Authority has wrongly considered the case by using the word ''manufacture'', in the sense, it has created a new article. It was of the view that the assessee has bent the basic iron to different forms as per the specification given by MESCOM. The process of mere bending as per the specification of the purchaser, cannot be considered as manufacturing activity and therefore, it

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allowed the appeal, set aside the order and held that at the time of delivery of the goods, the goods continued to be declared goods and therefore, the tax liability is only at 4%. Aggrieved by the said order, the present appeal is filed.

2. We have heard the learned counsel for the parties. We have gone through the orders passed by all the three authorities. We have also looked into the photographs produced by the assessee before the authorities.

3. From the aforesaid material, we are satisfied, though the assessee did not sell to MESCOM, iron and steel in the same condition in which it was acquired, but the process undertaken by the assessee before it was delivered to MESCOM cannot be strictly considered as any manufacturing activity. After the process, no new product has come into existence. The iron and steel is bent and cut according to the specifications of MESCOM. Infact, this Court had an occasion to consider this question in the case of ''Nagarjuna Constructions Ltd.'', whereby, by a detailed order, it was held that at the time of sale of goods, unless the goods purchased had transformed into new goods, as such, it is not liable to be taxed under the residuary provision. If the goods acquired is declared goods and it continued to be declared goods ever; at the time of sale, may be in different form, the levy of tax should be only as declared goods and not as residuary in nature. In that view of the matter, we do not find any merit in the petitions. The Tribunal has rightly allowed the appeal and granted relief to the assessee.

For the aforesaid reasons, we pass the following

ORDER

The revision petitions are dismissed.

The authority shall refund the tax paid, to the assessee within one month from the date of communication of the order, failing which the authority shall pay interest at 12% and interest shall be collected from the person who was not diligent in obeying the Court order and make refund to the assessee.

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