(2007) 03 KAR CK 0035

In the Karnataka High Court

State of Karnataka APPELLANT

Vs

Quality Machine Tools, Bangalore RESPONDENT

Date of Decision : 07-03-2007

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 5(3)(A)

Citation : (2009) 67 KarLJ 207

Hon'ble Judges : Anand Byrareddy, J;R. Gururajan, J

Judgement

R. Gururajan, J.-The State is before us aggrieved by the order of the Tribunal accepting the case of the assessee in terms of the order dated 28-3-2006 passed in STA No. 1411 of 2000.

2. The year of assessment involved is 1988-89. The Assessing Authority concluded the assessment for the relevant assessment year. Thereby, he assessed the machinery and subjected the same at 4% in terms of the notification dated 31-3-1997. An appeal was filed before the First Appellate Authority. The First Appellate Authority dismissed the same. Thereafter, the matter was taken to the Tribunal and the Tribunal has chosen to allow the appeal filed by the assessee. It is in these circumstances, the State is before us.

3. Smt. S. Sujatha, learned Government Advocate would argue that a reading of the notification dated 31-3-1997 would show that the rate of tax applicable is referred to under Section 5-A and according to her, reference to Section 5-A of the Act is with reference to Form 37. She would say that it is procedural in nature. She would also argue that rate of tax cannot be reduced on the basis of Section 5-A as has been done by the Tribunal.

4. In the light of the argument, we have perused the Notification. The Notification has to be read as a whole. The notification would read as under:

"In exercise of the powers conferred by Section 8-A of the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957), the Government of Karnataka hereby reduces with effect from the First day of April, 1997 for a period of three years, the tax payable by a dealer under Section 5 of the said Act to four per cent on the sale of.-

....

(iii) Machinery specified in Serial No. 1(iii)(a) of Part ''M'' of Second Schedule to an Industrial unit located in the State for use by such unit in the manufacture or processing of goods for sale; and

....

Subject to the condition that the dealer produces before the Assessing Authority declaration in Form 37 duly filled in and signed by the said industrial units or power projects as the case may be, and subject to further condition that all the provisions relating to taxation of industrial inputs under Section 5-A of the said Act shall apply mutatis mutandis to this notification".

5. A reading of the entire notification shows that rate of tax is subject to a further condition that all provisions relating to taxation of industrial inputs under Section 5-A of the said Act shall apply mutatis mutandis to this notification. The Tribunal after referring to various case-laws and the material facts in our view has come to a right conclusion in the case on hand. Any acceptance of the arguments of the learned Government Advocate would be contrary to the intention of the Legislature in terms of the notification. We do not find any error of law or error of facts. No grounds. The petition is rejected.

