(2010) 02 KAR CK 0107

In the Karnataka High Court

Case No : S.T.R.P. No. 120 of 2008

State of Karnataka APPELLANT

Vs

Reliance Industries Ltd. RESPONDENT

Date of Decision : 16-02-2010

Acts Referred:

Citation : (2012) 51 VST 274

Hon'ble Judges : K.L. Manjunath, J;B.V. Nagarathna, J

Bench : Division Bench

Advocate : Geetha Menon, for the Appellant; G. Rabinathan and M. Thirumalesh, for the Respondent

Final Decision : Allowed

Judgement

Mrs. B.V. Nagarathna, J.—This revision petition has been filed by the State challenging the order dated February 12, 2008 passed in S.T.A. No. 413 of 2007 by the Karnataka Appellate Tribunal, Bangalore. The relevant facts of the case are that the respondent assessee is engaged in the business of trading in polyester yarn and other, such materials and is a dealer under the provisions of the Karnataka Value Added Tax Act, 2003 (hereinafter referred to as, "the Act") and the Central Sales Tax Act, 1956. For the period from April 2006 to September 2006 respondent filed monthly returns under the provisions of section 35(1) of the Act read with rule 38 of the Karnataka Value Added Tax Rules, 2005 (hereinafter referred to as, "the Rules"). Claiming deduction in the total turnover declared in the monthly returns filed towards discount allowed to its purchasers which has resulted in reduction of taxable turnover relating to goods sold during the said months. The respondent had issued invoices for the sales effected during the said period and had charged sales tax for goods at the rate of four per cent under the Act separately.

2. According to the respondent, incentive scheme was extended to its purchasers to encourage them to purchase higher quantities of goods and make payments towards the goods purchased for which respondent had issued credit notes in

every month and allowed certain discount to its buyers subsequent to tax invoices already issued under the provisions of section 29 of the Act and Rules made thereunder. On account of the said scheme of incentives and the issuance of credit notes and by way of trade discounts which has resulted in reduced taxable turnover relating to the goods sold for particular months for which respondent had claimed reduction in the amount of tax from the total turnover of the said months.

3. For the tax period April 2006 the respondent had declared total turnover including the exempted sales and has claimed deduction of Rs. 52,24,775 (including tax at four per cent) towards discount of taxable goods which has resulted in corresponding reduction in the taxable turnover and consequently on the tax liability of Rs. 2,08,991. The assessing authority however disallowed such discounts and levied tax by order dated January 29, 2007. An application for rectification of the said order was also rejected by the assessing authority by endorsement dated February 23, 2007. Aggrieved by the assessment order, the respondent had preferred an appeal before the first appellate authority which by its order dated May 20, 2007, dismissed the appeal and confirmed the order of the appellate authority. Being aggrieved by the said order, the matter was carried to the Tribunal in S.T.A No. 410 of 2007 which was pleased to allow the appeal and the amount of trade discount on the strength of the credit notes issued subsequent to the issue of tax invoices was allowed and a direction was given to issue revised demand notice. The said order is under challenge in this revision petition.

4. We have heard the learned Government Advocate and the learned counsel for the respondent-assessee.

5. It is submitted on behalf of the petitioner that the Tribunal was not justified in granting benefit of reduced tax in allowing the amount as trade discount on the strength of credit notes subsequent to the issue of invoices and that rule 3(2)(c) of the Rules had not been complied with by the respondent. She therefore submits that the order of the Tribunal requires to be set aside and order of the first appellate authority as well as the assessing authority be given effect to.

6. Per contra, it is submitted on behalf of the respondent that the system of incentive given by the respondent is in order to achieve higher sales and prompt repayments and that the price variation occurs subsequent to the issuance of the invoice and in order to encourage the purchasers credit notes are issued which would mean that the amounts at which invoices were issued would automatically be reduced to the extent of credit notes given to various purchasers and that the Tribunal was justified in taking note of the said fact and granting benefit with regard to reduced turnover by allowing the appeal filed by the respondent.

7. Having heard the learned counsel for the parties and on perusal of the material on record, it is not in dispute that in terms of the incentive scheme the respondent has given to its various purchasers credit notes with the purpose of

encouraging them to sell greater quantities of its products and also with regard to prompt repayment. The issuance of the credit notes would automatically mean that the amounts as mentioned in the invoices would be reduced which would result in reduction in the overall turnover relating to the goods sold for the particular month. However, we find that the Tribunal has not taken into consideration various details with regard to variation in the total turnover on account of the credit notes issued. The Tribunal merely proceeds on the basis that there is a conflict between rule 3(2)(c) and rule 31 of the Rules. In fact, it is necessary to note that rule 3(2)(c) of the Rules pertains to the discounts that can be allowed in terms of the regular practice whereas rule 31 is with regard to particulars of credit and debit notes which have to be furnished by the registered dealers as and when the credit notes are issued to the purchasers which would automatically result in variation in the amounts as stated in the invoices issued. There is in fact no conflict between the aforesaid Rules. In fact, when sale invoices are given by the respondent that would be total turnover of the respondent-assessee but when credit notes are subsequently issued by the assessee, it would automatically result in lower amount of turnover which would result in a lower quantum of sales tax. This aspect has not been taken into consideration by the assessing authority as well as the first appellate authority.

8. From the material on record, it is not known as to whether the details as stated in rule 31 of the Rules had been furnished by the assessee to the assessing authority at the time of claiming benefit under the said rule. Under the circumstances, we deem it proper to remand the matter to the assessing authority with a direction to the respondent-assessee to furnish all details in terms of rule 31 of the Rules and thereby direct the assessing authority to reconsider the entire matter in the light of the said provisions and pass fresh orders in accordance with law. For the aforesaid reasons, this revision petition is allowed.

