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In the Karnataka High Court

Case No : S.T.R.P. No''s. 129 and 132 of 2008

State of Karnataka — APPELLANT

Vs

Richmond Distilleries (P) Ltd. — RESPONDENT

Date of Decision : 01-07-2010

Acts Referred:

Citation : (2011) 42 VST 182

Hon'ble Judges : N.K. Patil, J;B.V. Nagarathna, J

Bench : Division Bench

Advocate : T.K. Vedamurthy, Government Pleader, for the Appellant; G. Rabinathan and M. Thirumalesh, for the Respondent

Final Decision : Dismissed

Judgement

B.V. Nagarathna, J.—These two revision petitions have been filed by the State challenging the order passed by the Appellate Tribunal by raising the following substantial question of law:

(i) Whether, in the facts and circumstances of the case, the Tribunal is justified in accepting the taxable turnover declared by the Assessee with respect to premium and cheaper brands of liquor ?

2. Since these revisions petitions pertain to similar facts and raise identical questions of law in respect of the very same Assessee, but for different assessment years, they have been clubbed together and have been heard and disposed of by this common judgment. S.T. R.P. No. 132 of 2008 is in respect of assessment year 1998-99 while S.T. R.P. No. 129 of 2008 in respect of assessment year 1995-96.

3. The facts leading to the filing of these petitions are that the Respondent - Assessee which is engaged in the business of manufacture and sale of liquor, for the relevant assessment years, filed its return with regard to the payment of Central sales tax. The said returns were scrutinised and the assessing officer passed an order. However, in the assessment order it was categorically recorded

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that the books of account were not produced at the time of assessment. Subsequently, the books of account were produced but were not accepted and accordingly, common order was passed in respect of the assessment years in question. Being aggrieved by the said assessment orders, the Respondents-Assessee preferred appeals before the first appellate authority, who partly allowed the appeals. As against the order of the first appellate authority, the Assessee preferred appeals before the Karnataka Appellate Tribunal. The Tribunal by its separate orders passed on July 31, 2007, allowed the appeal of the Respondent-Assessee. It is the said orders which are challenged in these revision petitions by the State.

4. We have heard the leaned counsel for the parties and perused the material on record.

5. The main contention of the State is that the Respondent had maintained a single sale account in respect of the premium brand of liquor as well as cheaper or ordinary brand and that in the absence of there being no separate books of account maintained in respect of these brands of liquor, the assessment officer was justified in not accepting the books of account and passed his judgment which did not call for any interference. Therefore, the Tribunal ought to have dismissed the matter.

6. Per contra, it is submitted on behalf of the Assessee that at the appellate stage, the Assessee furnished copies of the sale registers for the period in question along with the copies of the sale invoices and on the basis of such material, the first appellate authority granted partial relief and the Tribunal being satisfied with the sale bills as well as the taxable turnover and thereby allowed the appeal filed by the Assessee which order does not call for any interference in these revision petitions.

7. Having heard the learned Counsel on both sides and on perusal of the material on record, we find that the assessing officer did not accept the books of account furnished by the Assessee and passed his best judgment assessment. However, it is not forthcoming from the assessment order as to how the assessing officer quantified the sale price of liquor at Rs. 27.50 per litre. When the sale bills and the books of account maintained by the Assessee showed that the total quantity of liquor sold in inter-State sales was 1,05,021 bulk litre, sale of premium brand was 26,255 bulk litre and cheaper brand was 78,776 bulk litre and as per the sale invoice the premium brand sold was Rs. 25.50 per bulk litre and cheaper brand for Rs. 13.98 per bulk litre. Accordingly, the Tribunal has recorded that the entire production of liquor was sold in inter-State sales and the sale bills were issued for all the sales and that the sales were credited to books of account as per the sale bills. That the taxable turnovers declared in the return of turnover filed was in conformity with the sales as per the books of account and that there was no detection that the Assessee had failed to account for any sales or that the Assessee had effected any sale outside the books of account. The Tribunal on verification of sales statements along with copies of sale invoices and sales

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registers produced gave a finding in favour of the Assessee and held that the sales declared are acceptable and that there is no concealment or under-pricing of the sales which in our view does not call for any interference. However, the only contention of the learned Government Pleader is that a single sale account was maintained in respect of sale of premier brand as well as the cheaper brand of liquor but in the absence of any finding that the Assessee maintaining a single sale account and not keeping separate accounts for sales of premium and cheaper brand and that the same is prejudicial to the interest of Revenue, we are unable to accept, the contention of the learned Government Pleader that maintenance of single account would result in loss of revenue to the State.

8. For the aforesaid reason, we uphold the order passed by the Tribunal and accordingly, we dismiss these revision petitions by holding that they do not give rise to any substantial question of law. Ordered accordingly.

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