(2010) 06 KAR CK 0027

In the Karnataka High Court

Case No : S.T.R.P. No. 128 of 2008 connected with S.T.R.P. No. 131 of 2008

State of Karnataka — APPELLANT

Vs

Richmond Distilleries (P) Ltd. — RESPONDENT

Date of Decision : 29-06-2010

Acts Referred:

Citation : (2012) 51 VST 215

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

N.K. Patil, J.—These two revision petitions arise out of the common order dated July 31, 2007 passed in S.T.A. Nos. 2723 of 2004 and 2724 of 2004 and Cross Objection Nos. 318 of 2007 and 319 of 2007 on the file of the Karnataka Appellate Tribunal, Bangalore, for considering the following substantial questions of law : (i) In the facts and circumstances of the case, whether in the facts and circumstances of the case, the Tribunal is right in modifying the sale price of the IML bulk litre ?

(ii) In the facts and circumstances of the case whether the Tribunal is right in accepting the sale price at a lesser rate than the actual cost of production + excise duty + profit ?

(iii) In the facts and circumstances of the case, whether the Tribunal is justified in treating the undisclosed turnover as free supply of liquor to promote business is not exigible to levy of tax ?

(iv) In the facts and circumstances of the case whether the Tribunal is right in allowing fresh grounds of facts before the first appellate authority which were not raised before the assessing authority ?

The respondent herein had filed two appeals, viz., S.T.A. Nos. 2723 and 2724 of 2004 on the file of the Karnataka Appellate Tribunal at Bangalore, assailing the correctness of the orders dated September 16, 2004, passed in KST AP Nos. 474/03-04 and 475 by the JCCT (Appeals), Bangalore City Division, Bangalore, for the assessment years 1997-98 and 1998-99. Both the appeals filed by the respondent had come up for consideration before the Tribunal. The Tribunal after hearing the learned counsel for the parties after affording reasonable opportunity and on the basis of the pleadings of the STAs coupled with the material available on record, framed the following issues for consideration : (a) Whether the sale price of liquor estimated by the AA at Rs. 66 per BL in the reassessment order passed for the year 1997-98 and at Rs. 70 per BL in the assessment order passed for the year 1998-99 and upheld by the learned FAA in the appellate orders impugned herein are justifiable and sustainable in law ?

What orders ?

2. After perusal of the assessment order passed by the assessing officer for the assessment years 1997-98 and 1998-99 and after evaluation of the oral and documentary evidence the Tribunal held that the assessing officer wrongly calculated the average sale price per BL and further erred in adding Rs. 4 per BL to the sale price at Rs. 65.83. The Tribunal recorded a finding of fact that the estimation made by the assessing officer for both the assessment years 1997-98 and 1998-99 is without any material basis arbitrary and therefore, cannot be upheld and accepted the taxable turnover declared by the respondent at Rs. 28,24,314 for sales of 49,926 BL at Rs. 56.57 per BL. Accordingly, the Tribunal directed the assessing officer to issue revised demand notices for the assessment years 1997-98 and 1998-99. Being aggrieved by the said order passed by the Appellate Tribunal, Bangalore, the appellants herein preferred these two appeals for considering the substantial questions of law as referred above.

3. We have heard the learned counsel for the parties for considerable length of time.

4. After careful perusal of the documentary and oral evidence, we are of the view that the Tribunal has recorded a finding of fact by assigning valid reasons at paragraphs 9, 10, 11 and 13 of its order. The Tribunal, after physical evaluation of the oral and documentary evidence and after giving opportunity to both the parties, held that the net value should be adopted instead of gross value. Therefore, we are of the view that it is a well-settled order passed by the Tribunal and hence we do not find any good ground as such made by the appellants. Hence, interference by this court is uncalled for. For the foregoing reasons, the revision petitions filed by the petitioners are dismissed as devoid of merit.