(2014) 06 KAR CK 0116

In the Karnataka High Court

Case No : Sales Tax Revision Petition Nos. 19 and 383 to 388 of 2012

State of Karnataka — APPELLANT

Vs

Samsung India Electronics Limited — RESPONDENT

Date of Decision : 19-06-2014

Acts Referred:

Citation : (2014) 80 KarLJ 60

Hon'ble Judges : N. Kumar, J;B. Manohar, J

Bench : Division Bench

Advocate : R. Devdas, Additional Government Advocate, Advocate for the Appellant; Mallah Rao K, Advocate for the Respondent

Judgement

N. Kumar, J.—The Revenue has preferred these revision petitions challenging the order dated 16-6-2011 passed by the Karnataka Appellate Tribunal, Bangalore (hereinafter referred to as ''the Tribunal'' for short) made in STA Nos. 526 to 532 of 2007, whereby the Tribunal has allowed the appeals and set aside the order passed by the authorities below insofar as disallowing discount for the tax periods from April 2006 to October 2006 and also directing the Assessing Authority to allow the claim of deduction towards trade discount as per the credit notes and to issue revised demand notice. The assessee is a registered dealer under the provisions of Karnataka Value Added Tax Act, 2003 (hereinafter referred to as ''the KVAT Act'' for short) engaged in the business of trading of Electronic goods and IT products. The assessment for the tax period April 2006 to October 2006 was concluded Deputy Commissioner of Commercial Taxes (Audit-4), LDU, Bangalore on 29-1-2007. While concluding the said assessment, the Assessing Authority disallowed the claim of deduction towards discounts on the ground that the said discounts were not mentioned at the time of issue of tax invoices, but the respondent claims that it had issued credit notes at the end of the month. Being aggrieved by the said assessment order, the assessee filed 7 appeals before the Joint Commissioner of Commercial Taxes (Appeals), DVO-I and III, Bangalore (hereinafter referred to as ''the First Appellate Authority'' for short) which came to be dismissed. Being aggrieved by the said order, the assessee preferred second appeal before the Tribunal. The Tribunal allowed the appeals and set aside the assessment order passed by the Assessing Authority which was confirmed by the First Appellate Authority and directed the Assessing Authority to allow the claim of deduction in respect of trade discount as per the credit notes for the tax period April 2006 to October 2006. Being aggrieved by the said order, the Revenue has preferred these revision petitions.

2. This Court had an occasion to consider the question whether the discount falls outside the turnover in the case of Southern Motors Vs. State of Karnataka, , wherein it was held that: "once the sale invoice is issued and the sale price is collected along with tax, the aggregate of such sale constitutes the total turnover and the tax is payable on taxable turnover. To arrive at the taxable turnover what are the deductions that are legitimately be made is provided under Rule 3(2) of the Rules. One such permissible deduction is that the amount paid by way of discount provided that the discount is reflected in the sale invoice. Accordingly by issuing a credit note after receiving the amounts, of course, before filing the returns it cannot be said that the amount of discounts goes outside the purview of the turnover".

3. In the instant case also, discount do not find a place in the tax invoice. So-called discount is given after completion of the sale which is not acceptable and therefore, the order passed by the Tribunal excluding discount from taxable income is erroneous. Accordingly, the said order is hereby set aside and the order passed by the Assessing Authority which was confirmed by the First Appellate Authority is restored. For the aforesaid reasons, we pass the following:

ORDER

"The revision petitions filed by the Revenue are allowed. The impugned order is hereby set aside.

The judgment of this Court in Southern Motors case is under challenge before the Hon''ble Supreme Court in SLP Nos. 28309 to 28325 of 2013. In the event of judgment of the Apex Court being in favour of the assessee, the assessee would be entitled to the benefit, otherwise the consequences of this order follows."