(2014) 06 KAR CK 0074

In the Karnataka High Court

Case No : Sales Tax Revision Petition Nos. 283 of 2011 and 265 to 275 of 2012

State of Karnataka APPELLANT

Vs

Sri Krishna Spinning and Weaving Mills Private Limited RESPONDENT

Date of Decision : 11-06-2014

Acts Referred:

Karnataka Value Added Tax Act, 2003 — Section 10, 11(5), 14, 39(1)

Citation : (2014) 79 KarLJ 570

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

Bench : Division Bench

Advocate : S. Sujatha, Additional Government Advocate, Advocate for the Appellant; Harish V.S. and Sumashree, Advocates, D.N.S. Law House, Advocate for the Respondent

Judgement

N. Kumar, J.—The Revenue has preferred these revision petitions challenging the order dated 17-8-2011 passed by the Karnataka Appellate Tribunal, Bangalore (hereinafter referred to as ''the Tribunal'' for short) made in STA Nos. 1719 to 1730 of 2010, whereby the Tribunal has allowed the appeals and set aside the order passed by the authorities below directing the Assessing Authority to workout input tax on consumables used in Dyeing and Printing of Textiles. The assessee is a private limited company registered under the provisions of Karnataka Value Added Tax Act, 2003 (hereinafter referred to as ''the Act'' for short). It is engaged in the Printing and Dyeing of fabrics. The place of business of the respondent/assessee was inspected by the Assessing Authority on 7-10-2009. The respondent had admitted the tax liability only on 0.75% of the turnover and the rest of the turnover was claimed as exemption of tax representing it as receipt of labour and like charges. The proceedings were initiated u/s 39(1) of the Act. After hearing the assessee, the orders were passed denying among other things input tax on consumables used in Dyeing and Printing of textiles. The assessee preferred appeals before the Joint Commissioner of Commercial Taxes (Appeals-1), Bangalore (hereinafter referred to as ''the First Appellate Authority'' for short). The First Appellate Authority dismissed the appeals confirming the order of the Assessing Authority. Aggrieved by the said order, the assessee preferred appeals before the Tribunal. The Tribunal allowed the appeals and the orders passed by the authorities below were set aside with a direction to the Assessing Authority to correctly workout the input tax on consumables used in the process of works contract of Dyeing and Printing of Textiles and to allow input tax. It is also directed to find out the extent of use of capital goods for purposes of works contract of Dyeing and Printing of fabrics and to allow that portion as a deduction and to issue revised demand notice. Aggrieved by the said order, the Revenue is in appeal.

2. Learned Counsel for the Revenue assailing the impugned order contended that the Tribunal was not justified in allowing the input tax credit on consumables used in the process of works contract of Dyeing and Printing of Textiles carried on by the assessee. Similarly, the Tribunal was not justified in granting deduction on the depreciation claimed in respect of the capital goods and therefore she submits that the order of the Tribunal requires to be interfered with.

3. Per contra, learned Counsel appearing for the assessee argued in support of the impugned order.

4. The assessee is engaged in the business of Printing and Dyeing of fabrics on the basis of the works contract. The assessee has purchased the consumables for which it has paid input tax and claimed deduction on the said input tax out of the output tax payable. The question is:

Whether the assessee is entitled to the same?

This Court had an occasion to consider the said question in the case of State of Karnataka Vs. Ashok Iron Works Private Limited, , in STRP Nos. 204 and 217 to 224 of 2011, decided on 17th February, 2014 interpreting Sections 10 and 11(5) of the Act. It was held that, if any tax is paid on purchase of goods that are despatched outside the State or used as inputs in the manufacture, processing or packing of other taxable goods despatched to a place outside the State, other than as a direct result of sale or purchase in the course of inter-State trade or commerce except as provided in Section 14 of the Act, the assessee is not entitled to deduction on input tax. Further if the assessee has paid the output tax within the State, then it is entitled to deduction on input tax.

5. In the instant case, the assessee is engaged in the business of Printing and Dyeing of fabrics manufactured by them as also Printing and Dyeing of fabrics on works contract for others. No output tax is payable in respect of the works contract. However, the assessee has paid the input tax for the consumables which it has purchased to execute the works contract. The assessee is also carrying on the business of Printing and Dyeing of fabrics manufactured by them in respect of which they are liable to pay output tax. Therefore, no output tax is payable for job works. As the assessee is carrying on business of manufacturing and sale of fabrics in respect of which it is liable to pay output tax, the input tax paid in respect of job works could be set off against the output tax payable in

respect of his business and therefore, the authorities below were justified in allowing the claim of the assessee and it cannot be found fault with.

6. The other claim deals with the disallowance of depreciation of capital assets as deduction by the Assessing Authority which was affirmed by the First Appellate Authority. This Court in the case of Larsen and Toubro Limited Vs. The State of Karnataka, , in STRP No. 8 of 2006, decided on 2nd September, 2009 has held that such deductions are permissible. Against the said judgment, the Revenue has preferred a SLP before the Apex Court in Special Leave to Appeal (Civil) Appeal No. 34858 of 2011, wherein leave has been granted. Therefore, it is submitted that the Assessing Authority shall decide the said question in the light of the judgment to be rendered by the Apex Court even in this case also. Accordingly, we pass the following:

ORDER

These STRPs are dismissed. The Assessing Authority shall await the judgment of the Hon''ble Supreme Court in the aforesaid case and then decide whether the tax is payable on depreciation claimed.

Ordered accordingly.

