(2015) 08 KAR CK 0074

In the Karnataka High Court

Case No : STRP Nos. 173 and 260 - 264 of 2014

State of Karnataka — APPELLANT

Vs

Technocon Builders — RESPONDENT

Date of Decision : 26-08-2015

Acts Referred:

Karnataka Value Added Tax Act, 2003 — Section 63, 63-A, 63-A(2)(b), 63-A(3)

Citation : (2015) 08 KAR CK 0074

Hon'ble Judges : Vineet Saran and B. Manohar, JJ.

Bench : Division Bench

Advocate : K.M. Shivayogiswamy, A.G.A., for the Appellant; P.E. Umesh, Advocate, for the Respondent

Judgement

Vineet Saran, J.—These revision petitions have been filed by the State of Karnataka challenging the order of the Tribunal, whereby the order passed under Section 63-A of the Karnataka Value Added Tax Act, 2003 (for short ''the KVAT Act'') by the Joint Commissioner of Commercial Taxes has been set aside on the ground that it was passed beyond the period of limitation.

2. We heard Sri K.M. Shivayogiswamy, learned Additional Government Advocate appearing for the petitioner - State of Karnataka as well as Sri P.E. Umesh, learned counsel appearing for the respondent - assessee and perused the record.

3. In brief the facts of this case are that the respondent herein is a civil works contractor. He is assessed to tax under the KVAT Act. The dispute in the present petitions is with regard to the assessment period of April, May, July, August, September, and November, 2005. For the said period, assessment order was passed on 28.12.2006 imposing certain tax. The said assessment order was not challenged in appeal. On 26.8.2009, the assessment record relating to the aforesaid period was sent by the Assessing Authority to the Joint Commissioner of Commercial Taxes, which is the Revisional Authority empowered to exercise suo motu revisional power under Section 63-A(3) of the KVAT Act.

4. It is an admitted case that on receipt of the said record, the same was examined by the Joint Commissioner and on such examination, the Joint Commissioner found that the assessment order was prejudicial to the interest of the revenue. He, thus, issued a show cause notice to the respondent - assessee on 7.12.2010. On 29.11.2011, the Revisional Authority-Joint Commissioner passed the order under Section 63-A of the KAVT Act, which was challenged by the assessee before the Tribunal. The Tribunal has held that after initiation of proceedings under Section 63-A(3) of the KVAT Act, the Joint Commissioner could pass an order under within one year from the date of initiation of proceedings, which was on 26.8.2009 and since the order was passed on 29.11.2011, the same was beyond one year and hence it was held to be barred by limitation. Another issue was also raised before the Tribunal that since the order was passed after expiry of four years from passing of the order dated 28.12.2006, which was sought to be revised, hence the impugned order passed on 29.11.2011 was beyond the period of limitation under Section 63-A(2)(b) of the KVAT Act. However, the Tribunal did not go into the aforesaid issue.

5. The submission of the learned Additional Government Advocate appearing for the petitioner is that under Sub-Section (3) of Section 63-A of the KVAT Act, the period of one year within which the Joint Commissioner could pass the order would be from the date of initiation of proceedings, which in the present case, according to the learned Additional Government Advocate, would be the date of show cause notice, which was 7.12.2010. It is contended that as the order was passed on 29.11.2011, which was within one year of 7.12.2010, the same would be within the period of limitation of one year.

6. Per contra, Sri Umesh, learned counsel for the assessee has submitted that the period of limitation of one year would begin either from the date of initiation of proceedings or from the date of calling for the record as the case may be, and since the record had been called for or received in the office of the Joint Commissioner on 26.8.2009, the order could not have been passed beyond 25.8.2010.

7. Relevant sub-Section 3 of Section 63-A of the KVAT Act reads thus:

"63-A. Revisional powers of Joint Commissioner:

(1) The Joint Commissioner may on his own motion call for and examine the record of any order passed or proceeding recorded under this Act and if he considers that any order passed therein by any officer, who is not above the rank of a Deputy Commissioner, is erroneous in so far as it is prejudicial to the interest of the revenue, he may, if necessary, stay the operation of such order for such period as he deems fit and after giving the person concerned an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or (canceling the assessment and directing afresh assessment).

(2) The Joint Commissioner shall not exercise any power under this section, if

(a) the time for appeal against the order has not expired; or

(b) more than four years have expired after the passing of the order sought to be revised.

(3) The Joint Commissioner shall pass order under this section within a period of one year from the date of initiation of proceeding or calling for the records under this section, as the case may be."

8. The fact that the records relating to the case were sent by the Assessing Authority to the Joint Commissioner on 26.8.2009 is not in dispute. It is also not in dispute that the order under Section 63-A of the KVAT Act was passed on 29.11.2011. The issuance of show cause notice on 7.12.2010 is also not in dispute. The question before us would be as to whether the period of limitation of one year under sub-Section (3) of Section 63-A of the KVAT Act would commence from the date on which the record was sent, which was 26.8.2009, or from the date of show cause notice, which was issued on 7.12.2010.

9. The submission of the learned Additional Government Advocate appearing for the petitioner is that the Joint Commissioner had not called for records, but the same had been sent by the Assessing Authority on its own, and hence the date of sending the records would not be relevant. In our opinion, what would be relevant is the date when the records had reached the office of the Joint Commissioner, because it was only on perusal of such records, that the show cause notice was issued to the assessee on 7.12.2010, which was after gap of may be 16 months. The period of limitation of one year under sub-Section (3) of Section 63-A of the KVAT Act would begin from when the record was sent to the Joint Commissioner, on the basis of which the proceedings were initiated. If that is not to be accepted then the Joint Commissioner would possibly be allowed to initiate proceedings under Section 63 of the KVAT Act even after several years of receipt of record by issuing a show cause notice at a much later date. This cannot be the intention of the legislature in providing limitation.

10. Section 63-A of the KVAT Act is an exception to the general provision of challenging an order passed by the Assessing Authority, either by way of filing revision or appeal. This is an additional power given to the Joint Commissioner for initiating suo motu proceedings, where it finds that the order is erroneous insofar as it is prejudicial to the interest of the revenue. The said power can be exercised subject to the limitation provided under sub-Sections (2) and (3) of Section 63-A of the KVAT Act. In such view of the matter, we are of the opinion that the period of limitation as provided under Section 63-A of the Act should be construed strictly. Sub-Section (3) provides that the Joint Commissioner shall pass orders within one year. There is no discretion with the Joint Commissioner to pass orders beyond the period of one year. Word used in sub-Section (3) is ''shall'' and not ''may'' and thus it mandates the Joint Commissioner to pass orders within one year from the date of initiation. Even if it is accepted that the

Assessing Authority had, on its own, sent the records to the Joint Commissioner and that the Joint Commissioner had not called for such records, in our view, the same would not make much difference as it was only on perusal of the such records that the Joint Commissioner had proceeded against the assessee, and as such, the same ought to have been concluded within one year from the date of receipt of the records. In such facts, the order passed under Section 63-A of the KVAT Act has been held to be beyond the period of limitation provided under sub-Section (3) of Section 63-A of the KVAT Act. We do not find any error with such order of the Tribunal.

11. Further, with regard to the order having been passed beyond the period of limitation as provided under sub-Section (2)(b) of Section 63-A of the KVAT Act, it is submitted that the order sought to be revised was passed on 28.12.2006 whereas the revisional order under Section 63-A of the KVAT Act was passed on 29.11.2011, which was beyond the period of four years. Though the submission of the learned counsel for the respondent-assessee in this regard may have some substance, but in view of the fact that the order passed under Section 63-A of the KVAT Act has been held to be passed beyond the period of limitation provided under sub-Section (3) of Section 63-A of the KVAT Act, we are not inclined to go into this other question.

For the foregoing reasons, we are of the opinion that no substantial question of law arises in these revision petitions for determination by this Court.

Revision petitions stand dismissed.

