(2014) 10 KAR CK 0011

In the Karnataka High Court

Case No : STRP No. 295/2013

State of Karnataka APPELLANT

Vs

Toshiba Embedded Software (India) Pvt. Ltd. RESPONDENT

Date of Decision : 09-10-2014

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 8A(5)(a)

Citation : (2014) 80 KarLJ 447

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

Bench : Division Bench

Advocate : T.K. Vedamurthy, HCGP, Advocate for the Appellant; Sowrabh. R.K, Advocate for the Respondent

Judgement

N. Kumar, J.—The Revenue has preferred this revision petition challenging the order dated 05-11-2012 passed by the Karnataka Appellate Tribunal, Bangalore (hereinafter referred to as ''the Tribunal'' for short) made in STA No. 2590/2010, whereby the Tribunal held the liability of tax for contravention or non-observance or non-compliance to the notifications on the appellant does not arise and accordingly granted relief to the assessee by setting aside the impugned orders.

2. The assessee is in the business of programming and development of software. The assessee had issued a Certificate on 30-09-2003 for Rs. 94,82,190/- towards purchases of various kinds of the furniture for use to M/s. Open Plan Office Systems, Lingarajpuram, Bangalore (hereinafter referred to as "the seller" for short). This seller of furniture produced the said certificate and obtained tax exemption. It was noticed by the Joint Commissioner of Commercial Taxes (Appeals) DVO, Bangalore (hereinafter referred to as ''First Appellate Authority'' for short) that exemption is admissible as per Notification is in respect of sales of raw materials, component parts and packing materials by registered dealer to 100% export oriented units located in our State subject to certain conditions, restrictions and procedure prescribed therein. The goods purchased were various kinds of furniture for use in the business premises of the assessee. They do not

fall under the above classifications and the notifications entitling the assessee for tax exemption. Therefore, the assessing authority held that there was contravention of notifications by which, as per Condition No. V of the notification dated 14-09-2001 and therefore tax was levied on the assessee and penalty was also imposed. The said order was challenged before the First Appellate Authority who affirmed the said order but deleted imposition of penalty on the ground that there was no malafide intention in issuing the Certificate. Aggrieved by the said order, the assessee preferred an appeal before the Tribunal, wherein the Tribunal held that the Certificate was not issued to the Seller in terms of notification intending for availing tax exemption in assessment in favour of the seller. The certificate was produced for reduction in rate of tax to 4% in case of sale of uninterrupted power supply system to information technology units. It does not also provide for issuance of a declaration or a certificate to the seller. Still, certificate was issued which was misused by the seller to avail tax exemption. The certificate was issued for the purpose of availing tax exemption by the Seller. Therefore, it was held that the liability of tax for contravention or non-observance or non-compliance to the notifications on the assessee does not arise. In fact, the liability of tax arises on the seller according to law due to taxable sales of furniture to the assessee out of gross sales effected at Rs. 1,08,46,785/-. Therefore the orders passed by the lower authorities were set aside and certain directions were issued to the lower authorities to take action even against the assessee for such misrepresentation. Aggrieved by the said order, the present revision petition is filed.

3. Learned Government Pleader appearing for the Revenue assailing the impugned order contends that the assessee though was not entitled to the benefit of any exemption produced the certificate and made the seller to believe that he is entitled to exemption and accordingly prevented the seller from collecting tax from him. It is a clear case of misrepresentation, misuse of exemption notification and therefore, under Section 8A(5)(a) of the Karnataka Sales Tax Act, 1957 (hereinafter referred to as ''the Act'' for short) and hence the assessee is liable to pay tax.

4. Per contra, learned counsel for the assessee submitted that the notification and the certificate issued do not relate to furniture at all. Therefore, the assessee has not contravened any restrictions nor there is non-compliance of any conditions stipulated in the notification and therefore Section 8A(5)(a) of the Act is not attracted at all and the Tribunal was justified in holding that the liability of tax on the seller and not on the purchaser.

5. In the light of the aforesaid facts and rival contentions, the question of law framed is as under:

(i) Whether the Notification No.FD 102 CSL 2001(1) dated 14-09-2001 r/w another Notification No. FD 102 CSL 2001(1) dated 15-06-2002 do not envisage the respondent-assessee to issue certificate to its selling dealer in respect of modular furniture even though such assumption is not available in the said

Notification?

(ii) Whether the respondent-assessee eligible to claim exemption in respect of raw materials component parts and packing materials and not in furniture?

(iii) Whether the Department has power to proceed against the customer who allegedly did not pay tax to the dealer?

6. The facts are no in dispute. The assessee purchased furniture from the seller who is a dealer in furniture. The exemption notification relied upon is in respect of sale of raw materials, component'' parts and packing materials by the registered dealer to 100% Export Oriented Units. It has no application to the sale or purchase of furniture. The seller acting on the said notification which has no application, had granted exemption of tax to the assessee. He is at fault and primary liability to pay tax is on the seller only. If the case falls under Section 8A(5)(a) of the Act, the liability could be foisted on the purchaser-assessee. In the instant case, as the notification on which, reliance was placed is not applicable to the furniture, the assessee has not contravened any restrictions or conditions stipulated in the said notification. Because the said notification is not applicable at all. Therefore, the Tribunal was justified in holding that the tax is to be collected by the seller but action to be taken against the assessee for producing the certificate and a notification which has no application insofar as furniture is concerned. Since Section 8A(5)(a) of the Act is not attracted to the facts of the present case, no liability could be foisted on the assessee. That is what precisely the Tribunal has held. The questions of law are answered in favour of the assessee and against the Revenue. Therefore, we do not see any merit in the revision petition. Accordingly, it is dismissed.