

(2010) 07 KAR CK 0017
In the Karnataka High Court
Case No : S.T.R.P. No. 127 of 2008

State of Karnataka

APPELLANT

Vs

Zuari Industries Ltd.

RESPONDENT

Date of Decision : 22-07-2010

Acts Referred:

Citation : (2011) 43 VST 47

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

Bench : Division Bench

Advocate : T.N. Vedamurthy, High Court Government Pleader, for the Appellant;
G. Rabinathan and M. Thirumalesh, for the Respondent

Judgement

N. Kumar, J.—The Revenue has preferred this revision challenging the order passed by the Karnataka Appellate Tribunal, which has set aside the order passed by the appellate authority as well as the assessing officer. The net effect of it is, there is no liability on the part of the assessee to pay the amount u/s 18AA of the Karnataka Sales Tax Act, as per the forfeiture order. Hence, the revision has been filed by the State.

2. The respondent is the manufacturer of various brands and varieties of fertilizers. The respondent is a registered dealer under the provisions of the Karnataka Sales Tax Act, 1957, (for short, hereinafter referred to as "the Act"). For the assessment years 1994-95 and 1995-96, the respondent collected tax as per form No. 3 and form No. 4 in a sum of Rs. 2,58,48,158 and Rs. 4,01,76,658, respectively. Subsequently, they filed a revised return of turnover in form No. 4 for both the years, as a sequel to the decision of the Allahabad High Court in the case of Rashtriya Chemicals and Fertilisers Limited v. State of U.P. reported in (1996) 101 STC 487 (All). In the said judgment it was held that subsidy given by the Government is an exempted value and cannot be part of the turnover. The element of tax was reworked as being collected for both the assessment years in question by excluding the value of the subsidy of Rs. 2,44,63,505 for the assessment year 1994-95 and Rs. 3,80,02,898 for the assessment year 1995-96.

Accordingly, the respondent claimed the difference of tax as shown in original form No. 4 and revised form No. 4 at Rs. 13,84,653 and Rs. 21,73,760 for the assessment years 1994-95 and 1995-96.

3. The assessee had collected taxes on the subsidy amount by including the said taxes as part of turnover as per form 3 and original annual return. The taxes so collected being Karnataka sales tax and surcharge were collected from dealers/distributors by separately charging in the sale invoices. The dealers/distributors were aware about payment of taxes by them even on subsidy amount. The price on chemical fertilizers which has been collected from the farmers by the dealers/distributors had included the taxes collected on subsidy and therefore the price inclusive of taxes on subsidy was paid by the farmers. Such being the case, the assessee was not permitted to retain such amounts as it is not their amount which is amount of taxes collected from the farmers in the chain of sales and therefore it is public revenue. Instead of declaring and paying over the same to the Department, the assessee preferred to retain the above amount by shifting the taxes on subsidy amount as collected to the basic price of the chemical fertilizers as per the revised annual return. Thus in effect they illegally appropriated the taxes collected on the subsidy amount. Therefore, a show-cause notice was issued u/s 18AA of the Act. The assessee filed objections. They contended that the assessing officer has considered the aforesaid contentions and passed an order and therefore the question of reconsidering the same would not arise. They contended that they have not collected any taxes on the subsidy amount. Therefore the notice issued for forfeiture of the amount which they had not received, would not arise. In fact, they also filed returns showing that they had not collected taxes on subsidy. They also gave examples in writing to show how no tax was collected on the subsidy which is extracted in the order of the assessing officer. On consideration of the same, the assessing officer found that the assessee had designed their claim in such a way that it gave an impression that they have not committed any discrepancy. Though maximum retail price is fixed in case of certain chemical fertilizers, it cannot be said that whatever the amounts they have worked out within that price was not violative of provisions of section 18 of the Act. The maximum retail price including the tax component had been passed on to the consumers, namely, farmers. In this process the assessee had realised taxes on subsidy from the farmers which could not have been retained by them and cannot also be added up to the basic price of the product. In the result, they were in clear violation of section 18(1)(b) of the KST Act, 1957. Accepting this, due to changed position of law, they could have either remitted or should not have claimed the adjustment of taxes as per revised annual return. Therefore the objections were overruled by the assessing officer and the proposal for forfeiture of tax collected on subsidy was upheld and an order forfeiting the aforesaid amount for the said two years was passed.

4. Aggrieved by the said order, the assessee preferred an appeal to the Additional Joint Commissioner of Commercial Taxes (Appeals). The appellate authority by a reasoned order pointed out by working out figures that the

assessee had collected taxes on the subsidy and it was impermissible to add that tax collected to the basic price of the products and therefore it dismissed the appeal. Aggrieved by the same, the assessee preferred an appeal to the Karnataka Appellate Tribunal.

5. The Tribunal on appreciation of the facts held that the sale proceeds realised by the assessee were the amounts billed as net invoice values or MRP inclusive of tax but excluding subsidy. The tax amounts comprised within the net invoice values would be the basic tax, surcharge and cess payable on sale prices excluding subsidy. That the assessee met the difference in the cumulative incidence of tax as between the taxes comprised within the net invoice value excluding subsidy and the sale prices inclusive of subsidy, out of the subsidies received from Government, there was no collection of tax by way of tax or purporting to be by way of tax from any purchasing dealer. Such payments by the appellant, therefore, fell outside the mischief of sub-section (1) of section 18. Therefore, the Tribunal held that assessment for two years, 1994-95 and 1995-96 did not in actuality involve collection of tax in excess of the tax payable on the sale prices of fertilizers exclusive of subsidy and therefore the assessee could not be held to have committed any contravention of sub-section (1) of section 18 of the Act, so as to be attracted by the forfeiture provision of sub-section (3) of section 18AA of the Act. Therefore the Tribunal set aside the orders passed by the lower authorities and granted the benefit claimed by the assessee. Aggrieved by the said orders, the Revenue has filed this revision.

6. The learned counsel for the Revenue submitted that as is clear from the invoice, it is not in dispute that tax is levied and collected on the amount inclusive of subsidy. However while selling the products they have given deduction of subsidy of Rs. 10,000. Therefore, it is obvious that proportionate tax on subsidy is not given deduction to. That is what is collected by the assessee from the customers, which they have no right to retain, as the burden of tax is passed on to the customers. Therefore, they are neither entitled to refund or adjustment, but on the contrary, they are liable to pay amount to the Department.

7. Per contra, the learned counsel for the assessee submitted that as is clear from the invoice, the money which they have collected from the consumers is after giving deduction to the subsidy. They have not collected any tax. As such, they are not liable to pay any amount to the Department in terms of the impugned order passed by the assessing officer.

8. In the light of the aforesaid facts and rival contentions, the short point that arises for our consideration in this revision is :

Whether the assessee has collected sales tax on the subsidy and has not passed on the said collected tax to the Department as contended by the Department.

9. In order to appreciate these rival contentions, we intend to extract annexure C, the invoice on which the learned counsel for the assessee relies upon.

Products

Tones

Bags

Rate/tonne

Amount (Rs.)

Description

Code

(DAP 6:0)

04

10,000

200

10,280

1,02,800

Tax

Surcharge

2%

2,056

R.T.C.

15%

309

Concession

5%

103

(Subsidy)

1,000

10,000

Net invoice

value

95,268

10. The aforesaid figures indicate the basic cost of the fertilizers as Rs. 1,02,800,

Rs. 2,056, Rs. 309 and Rs. 103 are the tax component of the basic price of Rs. 1,02,800, Rs. 10,000 is the subsidy amount which is to be deducted out of Rs. 1,02,800. That is how the figure of Rs. 95,268 is arrived at. Though the subsidy amount is deducted, the tax on the aforesaid amount of Rs. 10,000 is not deducted on arriving at net invoice value. Tax is collected on Rs. 1,02,800, whereas, tax should have been collected on Rs. 1,02,800 minus Rs. 10,000, i.e., on Rs. 92,800.

11. Therefore, it is obvious from the aforesaid figures that the contention of the assessee that they have not collected tax is *ex facie* incorrect. Once they have collected tax in excess of what is prescribed under law, they have passed on the burden of tax on the customers. If at all, it is the customers who are entitled to refund and not the assessee. In view of sub-section (4) of section 18AA of the Act, the assessee has no right to retain the said amount. Under the said sub-section any amount paid or payable by any dealer, to the extent it is not due as tax can be forfeited by the State Government and recovered from the dealer and such payment or recover)" would discharge the dealer of the liability to refund the amount to the person from whom it was collected. Therefore the order passed by the assessing officer directing the assessee to make good the difference in the amount which they have collected and which they have actually paid is strictly in accordance with law. The Tribunal committed a serious error in proceeding on the assumption that tax is collected on the net amount excluding the subsidy. The amount of tax is collected before giving deduction to the subsidy. Thus though subsidy amount is deducted but tax collected on subsidy is not deducted. Therefore the difference in amount which the assessee has no right to retain is now ordered to be paid to the Department by the forfeiture order. Therefore, the Tribunal was not justified in interfering with the well considered order passed by the first appellate authority as well as the assessing officer. In that view of the matter, the order of the Tribunal cannot be sustained. Hence, we pass the following order.

12. The order passed by the assessing officer as confirmed by the appellate authority is restored. Parties to bear their own costs.