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(2013) 01 KAR CK 0004

In the Karnataka High Court

Case No : Writ Appeal No''s. 6452 to 6454 of 2011 (T-KST)

Telco Construction Equipment Company Limited — APPELLANT

Vs

State of Karnataka and Others — RESPONDENT

Date of Decision : 22-01-2013

Acts Referred:

Citation : (2013) 77 KarLJ 581 : (2014) 73 VST 445

Hon'ble Judges : H. Billappa, J;B.S. Indrakala, J

Bench : Division Bench

Advocate : Sriyuths G. Rabinathan, M. Thirumalesh and H.R. Kambiyavar, for the Appellant; Y.V. Raviraj, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

H. Billappa, J.—Heard the learned Counsel for the appellant and also the learned Counsel for the respondents. These appeals are directed against the order dated 24-11-2011 passed by the learned Single Judge in W.P. Nos. 66242 to 66244 of 2009.

2. By the impugned order, the learned Single Judge has dismissed the writ petitions.

3. Aggrieved by that, the appellant has filed these appeals.

4. The appellant is a Company incorporated under Companies Act, 1956 and a dealer under the Karnataka Sales Tax Act, 1957. The respondent 4 passed assessment orders dated 22-8-2006 for the years 2002-2003, 2003-2004 and 2004-2005 granting exemption from tax on the finished goods and sold in the course of inter-State trade or commerce. Thereafter, pursuant to the judgment in W.A. No. 2417 of 2007, the respondent 4 issued notices dated 25-8-2009 proposing to pass reassessment orders both under KST Act, 1957 and Central Sales Tax Act, 1956 for the years 2002-2003, 2003-2004 and 2004-2005. It was challenged in W.P. Nos. 65252 to 65254 of 2009 and notice was directed. In the meanwhile, the respondent 4 passed reassessment orders dated 15-10-2009

vide Annexures-M, N and P to the writ petition under CST Act, 1956 for the years 2002-2003, 2003-2004 and 2004-2005 and levied tax at the penal rate on the inter-State sales to non-dealers for which C Forms could not be produced and issued demand notices dated 20-10-2009. It was challenged in W.P. Nos. 66242 to 66244 of 2009. The learned Single Judge by order dated 24-11-2011 has dismissed the writ petitions. Therefore, these writ appeals.

5. The learned Counsel for the appellant contended that the impugned order cannot be sustained in law. He also submitted that the reassessment orders passed denying the benefit of set off from the sanctioned amount of incentive are unlawful and cannot be sustained in law. He also submitted that the appellant was sanctioned incentive and entitled for set off of CST levied on inter-State sales for which Forms C and D could not be produced. The demand for payment of CST levied denying the benefit of set off is illegal and cannot be sustained in law. He also submitted that the issue of incentive was not considered in W.A. No. 2417 of 2009 and amendment to Section 8(5) of CST Act, will not prohibit continuation of incentive. He also submitted that Form C was not required in respect of sales with the unregistered dealers. He therefore submitted that the impugned orders vide Annexures-M, N and P to the writ petition cannot be sustained in law. He placed reliance on the decision of this Court in M/s Adeshwar Granites Pvt. Ltd. Vs. The Additional Commissioner of Commercial Taxes and The State of Karnataka .

6. As against this, the learned Counsel for the respondents 1 to 4 submitted that the impugned order does not call for interference. He also submitted that the learned Single Judge placing reliance on the judgment of this Court in W.A. No. 2417 of 2007 and taking into consideration that Form C was required has dismissed the writ petitions and therefore, the impugned order does not call for interference.

7. We have carefully considered the submissions made by the learned Counsel for the parties.

8. The point that arises for consideration is:

Whether the impugned order calls for interference?

9. It is relevant to note, the appellant is a registered dealer under the KST and CST Acts. The respondent 4 has passed assessment orders for the years 2002-2003, 2003-2004 and 2004-2005 dated 22-8-2006 granting exemption from tax on the finished goods and sold in the course of inter-State trade or commerce. Thereafter, pursuant to the order in W.A. No. 2417 of 2007, the respondent 4 has passed reassessment orders vide Annexures-M, N and P to the writ petition and issued demand notices dated 20-10-2009. The benefit of incentive has not been given. The Division Bench of this Court in W.A. No. 2417 of 2007 has held that Section 8(5) of the CST Act is prospective in nature and the assessee who wants to avail benefit of Section 8(5) of the CST Act requires to fulfill the conditions mentioned therein namely filing of Form C. Thereafter,

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another Division Bench of this Court in Adeshwar Granites Private Limited''s case has observed as follows in paragraph 32:

32. We have examined this submission in some detail. We find that the requirement of sub-section (4) of Section 8 of CST Act in itself is for the purpose of claiming the benefit of the lower rate of tax as indicated in sub-section (1) of Section 8 of CST Act. It is therefore that on a proper and harmonious reading of Section 8(5) of the CST Act after the amendment and even after inserting of the reference to the requirement of Section 8(4) of CST Act by a dealer requirement in sub-section (4) of CST Act is one which is confined and restricted to a situation covered by the provisions of sub-section (1) of Section 8 of CST Act and it cannot in any way affect or control the exemptions granted vis-?-vis tax liability and the rate of tax as indicated in Section 8(2) of CST Act i.e., the amendment cannot have any bearing or effect in respect of exemptions granted to inter-State sales turnover either the class of dealers with reference to the goods or otherwise who are not registered dealers and not Government, In other words, restriction brought about by the amendment cannot regulate or effect an exemption if has been granted or is to be given in respect of inter-State sales turnover effected in favour of non-registered dealers and other Governments.

10. It is clear, the restriction brought about by the amendment cannot regulate or effect an exemption if has been granted or is to be given in respect of inter-State sales turnover effected in favour of non-registered dealers and other Governments. This aspect has not been considered by the learned Single Judge or the respondent 4. Therefore, the reassessment orders vide Annexures-M, N and P to the writ petition require reconsideration. Accordingly, the writ appeals are allowed and the impugned order passed by the learned Single Judge in W.P. Nos. 66242 to 66244 of 2009 and also the impugned orders at Annexures-M, N and P to the writ petitions are hereby set aside. The matter is remitted to the respondent 4 with a direction to reconsider the same in accordance with law and in the light of the judgment of this Court in Adeshwar Granites Private Limited''s case.

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