

(2015) 09 KAR CK 0244

In the Karnataka High Court

Case No : STRP Nos. 329, 482-487 of 2014 in STA Nos. 2570-2576/2012

The State of Karnataka

APPELLANT

Vs

Manyata Promoters Pvt. Ltd.

RESPONDENT

Date of Decision : 30-09-2015

Acts Referred:

Karnataka Value Added Tax Act, 2003 — Section 10, 10(4), 20, 20(2), 30

Citation : (2015) 09 KAR CK 0244

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

Bench : Division Bench

Advocate : T.K. Vedamurthy, HCGP, for the Appellant; K.P.

Kumar Advocate Advocate and S. Siva Kumar, Advocate, for the Respondent

Judgement

B. Manohar, J.—The Revenue has preferred these revision petitions challenging the order dated 23-01-2014 made in STA Nos. 2570-2576/2012 passed by the Karnataka Appellate Tribunal (hereinafter referred to as "the Tribunal" for short) holding that the assessee is entitled for the benefit of refund of tax paid on purchase of inputs as Special Economic Zone Developer (hereinafter referred to as "the SEZ" for short) for the tax period from April 2009 to March 2010.

2. The assessee is a Private Limited Company and is a registered dealer under the provisions of the Karnataka Value Added Tax Act, 2003 (hereinafter referred to as "the KVAT Act" for short) having TIN No. 29070284329. Dealer is a developer of Special Economic Zone, at Rachenahalli, Nagavara Outer Ring Road, vide order dated 23-4-2007, issued by the Development Commissioner, Cochin, SEZ, Cochin, the authorities specified by the Central Government in this behalf. As per the policy of Government of India, as a SEZ Developer, the assessee is entitled for refund of input tax paid on purchases from the local registered dealers and the contractors. The assessee filed returns in Form VAT-100 before the jurisdictional LVO-020 as prescribed under the KVAT Act for the Tax period from April 2009 to May 2010 and claimed refund of input tax paid on purchases on the ground that the assessee is a developer of SEZ at Rachenahalli. The

dealer has submitted a detailed purchase statement and SEZ monthly report copies for verification. The Assessing Officer after verifying the purchase statement submitted by the dealer noticed that the dealer has claimed input tax credit in a particular tax period related to purchase of some other months. Accordingly, issued an endorsement dated 31-3-2011 proposing to disallow the input tax claimed by the dealer. In response to the said endorsement, the dealer has filed objections to the said proposition notice contending that no where in the KVAT Act, it is stated that the purchasing dealer has to claim input tax credit on the same period, in which the bills have been raised by the selling dealers. Section 10 and other Sections of the KVAT Act do not state anywhere that the purchasing dealer has to claim input tax credit in the same month vis-a-vis the dates of the invoices raised by the selling dealer. The sale of goods is completed only after the goods purchased are cleared by their Purchase Department and in some cases, by their Technical Consultants. Hence, it is unavoidable that the bills raised by the Suppliers in a particular month are processed only in subsequent months leading to the accounting of these purchases in their books of account in the month in which the bills of the Suppliers are recognized and accounted as purchased. The objections filed by the dealer has been examined with the provisions of KVAT Act by the Assistant Commissioner of Commercial Taxes, by its proceedings dated 26-05-2011, relying upon Section 35(4) of the KVAT Act and has disallowed refund of input tax to the extent of Rs. 5,18,64,074/- while allowing refund of input tax to an extent of Rs. 84,95,621/-. Being aggrieved by the order dated 26-5-2011, the dealer filed an appeal before the Joint Commissioner of Commercial Taxes, (Appeals)-I, Bangalore (hereinafter referred to as "the First Appellate Authority" for short). The First Appellate Authority allowed the appeal in part except disallowing the refund with respect to the belated claims of input tax claims made in the monthly returns for the purpose of refund. Being not satisfied with the order passed by the First Appellate Authority, the dealer has filed appeals before the Tribunal.

3. The Tribunal, after examining the provisions of Section 20(2) read with Rule 128(2), 130A(4) of the KVAT Act and Rules, held that the dealer is entitled for the benefit of refund of tax paid on purchase of inputs as a SEZ Developer, by its order dated 23-01-2014. Being aggrieved by the said order, the Revenue has preferred these revision petitions.

4. Sri T.K. Vedomurthy, Additional Government Pleader appearing for the Revenue contended that the order passed by the Tribunal is perverse and unsustainable in law. Section 35(1) of the KVAT Act prescribes that every registered dealer shall furnish a return in such form and manner, including electronic methods, and shall pay the tax due on such return within 20 days, after the end of the preceding month or any other tax period as may be prescribed. Section 35(4) of the KVAT Act provides for furnishing revised returns, if any dealer having furnished a return under the Act discovers any omission or incorrect statement therein other than as a result of an inspection or receipt of any other information, within six months from the end of relevant tax

period. In the instant case, belated claim has been made and there is an inordinate delay in claiming refund of input tax credit. The assessee can claim the input tax credit in respect of each tax period within 20 days or 15 days at the end of preceding month or any other tax period as may be prescribed. The assessee is not entitled for the benefit of input tax claim made beyond six months. If there is any error in furnishing the returns, he can file revised return within a period of six months as provided under Section 35(4) of the Act. The order passed by the Tribunal holding that there is no limitation prescribed for claiming the input tax credit by interpreting Section 20(2) of the KVAT Act is contrary to law and hence sought for setting aside the order of the Tribunal by allowing the revision petitions.

5. On the other hand, Sri K.P. Kumar, learned Senior Advocate appearing along with Sri S. Shivakumar for the respondent argued in support of the order passed by the Tribunal and contended that the State Government, with a view to encourage the development of Special Economic Zone Units and its developers, amended Section 20 of the KVAT Act on 01-04-2007 and special provision has been made under Sub-section (2) of Section 20 of the KVAT Act. Under Sub-section (2), the tax paid on purchase of inputs by a registered dealer who is a developer of any Special Economic Zone or an Unit located in any Special Economic Zone established under the authorization by the authorities specified by the Central Government, shall be refunded or deducted from the output tax payable by such dealer subject to such conditions and in the manner as may be prescribed. Rule 130-A was inserted by notification dated 26-07-2007 which came into force w.e.f. 01-04-2007. A registered dealer being a developer of any Special Economic Zone, is eligible for refund of tax paid on any inputs purchased by him or deduction of such tax from the output tax payable by him as specified in Sub-section (2) of Section 20 of the KVAT Act. These are the beneficial legislations, in order to encourage the people to develop Special Economic Zones. Section 20 is itself a Code, and it is not controlled by any other Section. Section 10 will not be applicable to Section 20(2) of the KVAT Act. The Tribunal, after examining the relevant provisions of the KVAT Act and Rules made thereunder, granted the relief. There is no infirmity or irregularity in the said order and sought for dismissal of the revision petitions. In support of his contention, Sri K.P. Kumar relied upon the order made in STRP Nos. 294/2011 & 210/2013 disposed of on 31-07-2014.

6. The revenue has preferred these revision petitions raising the following questions of law:

(1) Whether in the facts and circumstances of the case the Tribunal is right in giving a finding that there is no time limit prescribed under the Act for claiming input tax and thus, the Assessee/Respondent is entitled to the claim of the input tax claimed beyond 6 months?

(2) In the facts and circumstances of the case, Whether the Tribunal is right in holding that Section 20 of the KVAT Act overrides Section 35(4) of the KVAT Act?

(3) Whether in the facts and circumstances of the case input tax claim by a SEZ unit being a dealer can avail the benefit of input tax without following the mandatory requirements of the KVAT Act?

7. We have heard the arguments addressed by the learned counsel for the parties and perused the order impugned and other relevant records.

8. The respondent-assessee is a developer of Special Economic Zone at Rachenahalli as per the permission granted by the Government of India. As per the policy of the Government of India, the assessee is eligible for refund of tax paid on purchases from the local dealers for the purpose of development, operation or maintenance of the processing area in a Special Economic Zone. In order to give the said benefit to those SEZ developers, Sub-section (2) of Section 20 of the KVAT Act has been inserted to the Act, by Act No. 6/2007 and Rule 130A has been inserted vide notification dated 26-07-2007, which was given effect to from 01-04-2007.

9. Section 20 and Rule 130A of the KVAT Act reads as under:

20. Deduction of input tax on exports and inter State sales, [and to special economic zone units and developers]

(1) Tax paid under this Act by any dealer on purchase of inputs in respect of,-

(a) any goods sold in the course of export out of the territory of India, or

(b) any goods taxable under the Act, sold in the course of Inter State [trade or commerce];

[(c) xxxxx;

(d) xxxxx],

shall be deducted as provided under Section 10 , [subject to such conditions as may be prescribed] from output tax payable by such dealer.

[(2) Tax paid under this Act on purchase of inputs by a registered dealer who is a developer of any special economic zone or an unit located in any special economic zone established under authorization by the authorities specified by the Central Government in this behalf, shall be refunded or deducted from the output tax payable by such dealer, subject to such conditions and in the manner as may be prescribed.]

Rule 130-A. Registered dealer being a developer of any Special Economic Zone:-

(1) Any registered dealer being a developer of any special economic zone or an unit located in any special economic zone shall be eligible for refund of tax paid on any inputs purchased by him or deduction of such tax from the output tax payable by him as specified in sub-section (2) of Section 20 , subject to the following conditions, namely.-

(a) If such inputs are purchased for the purpose of development, operation or

maintenance of the processing area in a special economic zone;

(b) If such inputs are purchased for the purpose of setting up, operation or maintenance of an unit in the processing area of a special economic zone;

(c) If such inputs are purchased for use in manufacture, trading, production, processing, assembling, repairing, reconditioning, re-engineering or packing in an unit located in the processing area of any special economic zone.

(2) The refund or deduction of tax under this rule shall be allowed on the goods actually used in the processing area of a special economic zone for the authorized operations as specified.

10. For the assessment year 2009-10, the assessee filed return in VAT-100 and claimed refund of input tax of Rs. 6,17,95,795/-. The Assessing Officer, on verification of the return, found that the dealer has claimed input tax credit in a particular tax period related to purchase of some other month. As per Section 35(1) of the Act, the dealer shall furnish the return within 20 days or 15 days after the end of the preceding month or any other tax period, as may be prescribed. However, if there is any omission or incorrect statement therein, the dealer can file revised return within a period of 6 months. Since the assessee did not file the revised return within a period of six months, belated returns cannot be accepted and rejected the claim for refund of input tax credit. However, granted the relief only to the extent of Rs. 84,95,621/-. Being aggrieved by the same, the assessee preferred an appeal before the First Appellate Authority. The First Appellate Authority partly allowed the appeals and gave certain reliefs. Being aggrieved by the same, the assessee preferred appeals before the Karnataka Appellate Tribunal. The Appellate Tribunal after examining the matter, granted the relief holding that there is no express provision under the KVAT Act or Rules made thereunder prescribing the dealer claiming input tax credit only in the month in which the tax invoice is raised by the Seller. Being aggrieved by the said order of the Tribunal, the Revenue has preferred these revision petitions.

11. A reading of Section 20(2) read with Rule 130A of the KVAT Act and Rules makes it very clear that a developer of Special Economic Zone, while developing the SEZ Zone with the permission of the Competent Authority under the Government of India, is eligible for refund of tax paid on any inputs purchased by him or deduction of such tax from the output tax payable by him. Section 20(2) makes it very clear that the tax paid on purchase of inputs by the registered dealer who is developer of any Special Economic Zone shall be entitled for refund or deduction from output tax payable by such dealer. This is beneficial legislation made by the Government of India for the development of Special Economic Zone. There is no dispute with regard to the fact that the assessee is a developer of Special Economic Zone at Rachenahalli, and he is eligible for refund of input tax credit. The assessee replied to the proposition notice and explained the circumstances under which the delay has occurred for claiming the input tax credit. He has contended that after receipt of the bills, measurement,

certification about the quantity and quality of the work by the qualified engineer and fulfilling other formalities takes one or two months. On fulfilling the said formalities, these bills were processed in the Accounts Section and then finally accepted and accounted in the Books of Account. Under Section 10(4) of the Act, the input tax credit can be claimed only when the input invoice is with the registered dealer. Nowhere in the Act has it been stated that the input tax credit should be claimed in the month in which the date of the invoice of the Supplier/ Vendor falls or the purchasing dealer has to claim input tax credit in the same period in which the bills have been raised by the selling dealers. A reading of Section 35 makes it very clear that there is no requirement for the purchasing dealers to claim input tax credit in the same month in which the date of the invoice of the supplier or vendor falls. Section 35(1) makes it clear that every registered dealer shall furnish the return in such form and manner, and shall pay the tax due on such return within 20 days or 15 days after the end of preceding month. Nowhere in the said Section has it been contemplated that the Purchasing dealer shall claim input tax in the same month. Section 35(4) contemplates that any dealer having furnished the return discovers any omission or incorrect statement therein, he may furnish the revised return at any time within a period of six months from the end of relevant tax period. The case on hand does not fall under Section 35(4) of the KVAT Act.

12. In the instant case, there is some delay in claiming refund of input tax because of many reasons. The refund of input tax cannot be denied on the ground of belated claim. A reading of Section 20(2) , which is a beneficial legislation, makes it very clear that the developer of Special Economic Zone or an Unit located in any Special Economic Zone is entitled for the refund of input tax credit or deduction from the output tax payable by such dealer. Section 20(2) does not contemplate any period within which, such developer shall claim refund of input tax. Further, Rule 130A which was inserted w.e.f. 1-4-2007 also does not contemplate the period within which the developer shall claim the refund of input tax. Section 35 cannot control Section 20(2) . The benefit of beneficial legislation has to be extended to the SEZ dealers. The technicalities shall not come in the way of giving some reliefs. Hence, Section 20(2) has a over-riding effect against Section 35 of the Act. The Tribunal, after examining the matter, has given the relief. We find no infirmity or irregularity in the said find.

13. The Division Bench of this Court in a judgment reported in , (2012) 73 KLJ 429 in the case of STATE OF KARNATAKA vs. K. BOND POLYMERS PRIVATE LIMITED has given relief in the similar circumstances. Paragraph 5 of the judgment reads as under:

"Therefore, the assessee was entitled to claim refund of input tax in July 2006. However, he has putforth the claim six months, thereafter. As rightly pointed out by the Tribunal, if he had putforth the claim in July 2006, the amount due to the assessee by way of refund was Rs. 1,36,837/-. Because the claim was made in December 2006, the amount due to him is Rs. 1,04,375/-. Sub-section (3) of

Section 30 deals with when the payment of tax is to be made, it does not deal with the claim for refund of input tax. Once the tax is paid under the Act, the assessee is entitled to the benefit of input tax. Either

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The entire approach of the Assessing Authority and the First Appellate Authority is contrary to law and runs counter to the spirit of the Act. The Tribunal was justified in interfering with the said order and allowing refund of input tax to the assessee to which is legitimately entitled to under the Act. In that view of the matter, we do not see any merit in this appeal. Accordingly, it is dismissed."

Hence, the assessee is entitled for refund of input tax credit. The appellant has not made out a case to interfere with the same. The substantial questions of law framed are held against the Revenue. Accordingly, we pass the following:

The revision petitions are dismissed.