

(2009) 10 KAR CK 0039

In the Karnataka High Court

Case No : Writ Appeal No"s. 3481 to 3492 of 2009

Total Environment Building Systems Pvt. Ltd.

APPELLANT

Vs

The Deputy Commissioner of Commercial Taxes (Audit-52),
The Commissioner of Commercial Taxes and The State of
Karnataka

RESPONDENT

Date of Decision : 07-10-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Karnataka Value Added Tax Act, 2003 — Section 39 (1), 62

Citation : (2009) ILR (Kar) 4217 : (2010) 1 KCCR 719 : (2010) 29 VST 572

Hon'ble Judges : L. Narayana Swamy, J;D.V. Shylendra Kumar, J

Bench : Division Bench

Advocate : R.V. Prasad and Vasavi Associates, for the Appellant; Geetha Menon, Additional Government Advocate, for the Respondent

Judgement

D.V. Shylendra Kumar, J.—These writ appeals are directed against the order dated 10.08.2009 passed in Writ Petition Nos. 19283 to 19294 of 2009 where under the learned single Judge of this court dismissed all the writ petitions only on the premise that the writ petitioners had the alternative statutory remedy of appeals u/s 62 of the Karnataka Value Added Tax Act, 2003 [for short "the Act"] and therefore reserving liberty to the petitioners, the petitions were dismissed enabling the petitioners to file appeals seeking statutory remedies.

2. The writ petitions themselves were directed against the good number of assessment orders [Annexure-D series] passed by the assessing authority under the provisions of the Karnataka Value Added Tax Act, 2003 determining the tax liability of the writ petitioners for the various periods mentioned in the orders by passing such orders in terms of the provisions of Section 39[1] of the Act.

3. Writ petitioners were aggrieved by these orders for the reason that certain principles relating to the understanding and the attraction of the liability for payment of tax under the provisions of the Act were basically wrongly

understood by the assessing authority; that what was not even goods and virtually something in the nature of immovable property was sought to be taxed by the assessing authority treating the property as though it was goods and therefore the authority basically lacked jurisdiction to pass such orders.

4. It is for this reason, the writ petitioners had chosen not to avail of the appellate remedy under the Act but to approach this court for relief in the petitions under Article 226/227 of the Constitution of India.

5. It appears the learned single Judge of this court had initially directed issue of notice to the respondents pending issue of rule as per order dated 8.7.2009 and had also granted interim order as prayed for in the orders passed in writ petition Nos. 19283 - 19294 of 2009 and like orders had been passed in all other similar writ petitions.

6. It is thereafter the learned single Judge has passed the impugned order dismissing all the writ petitions reserving liberty to the writ petitioners to avail of the statutory remedy of appeal.

7. Aggrieved by the present order passed by the learned single Judge dismissing the writ petitions not on merits but on the premise that the petitioners had the remedy of statutory appeal, the present writ appeals.

8. Appearing on behalf of the appellant, Sri. R.V. Prasad, learned Counsel would vehemently urge that the learned single Judge is very wrong in dismissing the writ petitions and directing the petitioners to avail of the alternative statutory remedy; that the learned single Judge failed to notice the alternative remedy of appeal though provided under the Act was neither an efficacious remedy nor of any use for the present appellants; that the authorities functioning under the Act had no choice but to apply a law that had been declared in terms of the Judgment of the Supreme Court in the case of K. Raheja Development Corporation Vs. State of Karnataka, ; that the principles of law as had been opined by the Supreme Court in this case had been applied and followed by the single Bench of this court, affirmed in. writ appeal by the division Bench and that matter which was a decision of this court rendered in writ appeal No. 1409 of 2007 [copy at Annexure-F] as per Judgment dated. 06.08.2007 was again subject matter of appeal before the Supreme Court and while examining this appeal .the Supreme Court itself had second thoughts about the correctness or otherwise of its earlier Judgment rendered in Raheja Development Corporation's case [supra] and it has been so doubted in the case of Larsen & Toubro Limited and Anr. v. State of Karnataka and Anr. reported in [2008] 17 VST 460 [SC].

9. Sri. Prasad, learned Counsel for the appellant would also submit that following these developments, there is another writ appeal entertained by another division Bench of this court and the matter is pending and therefore this matter should be admitted and the matter kept pending awaiting further decision of the Supreme Court.

10. In the first instance, we find none of the course of action as suggested by learned Counsel for the appellant is either feasible or necessary course to be taken by this court.

11. In taxation matters when the statute has provided a hierarchy of appeals, revisions etc., and specialized departmental statutory authorities examine the cases and render decision both on facts and on law, it is eminently desirable that such scheme as envisaged in the statute itself i.e., in the present case Karnataka Value Added Tax Act, 2003 should be allowed to operate.

12. An interference in this course of scheme under the writ jurisdiction may be possible, if at all in a situation where an authority purporting to exercise functions under the Act assumes jurisdiction not under the Act or while exercising powers and functions under the Act and as statutory authorities grossly misuses or abuses the power or even victimizes a given assessee or dealer due to irrelevant considerations.

13. Otherwise, this court even while exercising writ jurisdiction will not normally examine the correctness or otherwise of all the orders passed by the authorities but would relegate all such wrongs, mistakes or erroneous orders to be corrected in the manner as is provided by the Act itself.

14. Coming to the present situation, we find that the law as declared by the Supreme Court that holds the field as of now is the law that had been indicated and opined in Raheja Development Corporation's case [supra]. It may be so that the subsequent Bench of the Supreme Court might have expressed doubt about the correctness of this position of law. But, that in itself does not change the constitutional position and legal position and until and unless the Supreme Court itself opines otherwise, the law as had been declared in Raheja Development Corporation's case [supra] is the law of the land and the law declared by the Supreme Court under Article 141 of the Constitution of India and it is the bounden duty of all other courts in the country to apply that law and it is not for the High Court to either doubt or express any apprehension about the correctness or otherwise of the Judgment of the Supreme Court, it may be the prerogative of the Supreme Court itself but not of this court.

15. It is for this reason, we are not inclined to accept the submission of Sri. Prasad, learned Counsel for the appellant to entertain these appeals and to keep these matters pending and to await further decision of the Supreme Court. If an earlier division Bench of this court had already applied the law as had been declared by the Supreme Court in Raheja Development Corporation's case [supra], we can only follow that and dismiss the appeals and Sri. Prasad, learned Counsel for the appellant also urges us to do so.

16. However, this is also not possible for the simple reason that the learned single Judge had indicated that the matter may go back to the statutory authorities for availing the statutory remedy and the matter having not been examined by the learned single Judge on merits, we do not propose to enter

upon an area on the merits of the order impugned in the writ petitions.

17. It is open to the appellant to avail of the statutory remedy in accordance with law.

18. Therefore, these writ appeals are dismissed at the threshold without being admitted.

19. Consequently, Misc. W. 9651 of 2009 for stay does not survive for consideration and is hereby dismissed.