
(2011) 09 KAR CK 0228
In the Karnataka High Court
Case No : STRP No. 36 of 2009

Tribuvan Motors

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 08-09-2011

Acts Referred:

Citation : (2013) 57 VST 324

Hon'ble Judges : Ravi Malimath, J;N. Kumar, J

Bench : Division Bench

Advocate : S. Sujatha, Additional Government Advocate, for the Respondent

Judgement

N. Kumar, J.—This appeal is by the assessee challenging the imposition of tax at three per cent on the total turnover for the period from April 1, 1999 to December 31, 1999. The facts are not in dispute. The assessee is an authorised dealer for Hero Honda Motorcycle and motor cycle parts at Bangalore. For the assessment year 1999-2000, he filed annual return in form 4 declaring gross turnover and taxable turnover at Rs. 12,97,16,709.37 and Rs. 11,32,84,913.08, respectively. The assessee admitted turnover tax liability u/s 6B at one per cent. While passing the assessment order the turnover tax was levied at three per cent on a sum of Rs. 7,37,33,304.85 which represented the turnover for the period from April 1, 1999 to December 31, 1999 and one per cent on Rs. 3,41,78,404.95. Aggrieved by the same, the assessee preferred an appeal which came to be dismissed. The second appeal to the Tribunal also met with the same fate. The Tribunal set aside the order and remanded the matter back to the assessing authority. Even after remand the very same order is passed and that is how the assessee is before us.

2. The learned counsel appearing for the petitioner assailing the impugned order contends that the turnover for the period from April 1, 1999 to December 31, 1999 is only Rs. 7,37,33,304.85 which is less than 10 crores and therefore the rate of turnover tax payable only at two per cent. Therefore the authorities were not justified in levying the tax during the said period. Secondly he contends that

on January 1, 2000, a notification came to be issued reducing the tax payable u/s 6B of the Act to one per cent. Though the said notification was issued on January 1, 2000, which came into effect immediately, the assessee is entitled to the benefit of the said notification for the whole assessment year. He submits that how these notifications are to be interpreted is well-settled. Any notification which is in favour of the assessee should be made applicable retrospectively whereas any notification which is in favour of the Revenue is only prospective. If the rule is applied the assessee is liable to pay only one per cent which has been wrongly rejected by the authorities.

3. Per contra, the learned counsel appearing for the Revenue supporting the impugned order contends that the total turnover to be taken note of for the purpose of imposition of tax is for the whole assessment year and if it is borne in mind the total turnover of the assessee is above 1000 lakh rupees and therefore he is liable to pay three per cent tax for the relevant period. The notification reducing the tax to one per cent was issued on January 1, 2000. It is well-settled law that notifications granting exemptions and reductions of taxes should be construed strictly and therefore it cannot be interpreted so as to give a retrospective effect when the notification expressly states that it has come into effect with immediate effect that is from the date of the notification.

4. Section 6B of the Act is extracted in the order passed by the Tribunal. Clause (iii) makes it clear that three per cent of the total turnover, if a total turnover is not less than 1,000 lakh rupees in a year. Therefore the language employed in describing the total turnover is very clear. The total turnover has to be calculated in a year and therefore for the purpose of finding how and what is the rate of tax payable it is not the turnover for seven months, as made out by the assessee which is to be taken into consideration. For seven months the total turnover is Rs. 7,37,33,304.85 but it is not the total turnover. The total turnover for a year is Rs. 12,97,16,709.37. Therefore the imposition of tax at three per cent as stipulated in the charging section is proper and it cannot be found fault with. In so far as the retrospective operation of the notification is concerned the learned counsel relies on a judgment of the apex court in the case of Commr. of Central Excise, Bangalore Vs. Mysore Electricals Industries Ltd., where the apex court accepted the submission of the counsel that the circular being oppressive and against the respondent has to apply only prospectively and cannot be applied retrospectively. In other words, a beneficial circular has to be applied retrospectively while an oppressive circular has to be applied prospectively. In the instant case, we are not interpreting the circular, but we are interpreting the notification. The circular is issued by the Department explaining and clarifying the doubts which may occur while explaining a particular section. It is in that context, the apex court has held that any beneficial interpretation of a statutory circular issued by the Revenue, should be retrospective in nature and if it is oppressive or against the assessee then it has to be prospective. It is equally well-settled law that all notifications granting exemptions and deductions of tax has to be strictly construed. It is not open to the court to interpret the

notification so as to dilute or extend the benefit beyond what is intended by the Legislature. When the notification in question specifically states that tax payable u/s 6B of the Act is reduced with immediate effect it categorically states from what date the said notification comes into operation. The notification is issued on January 1, 2000 and the word used is immediate effect and therefore the benefit of that notification is available to the assessee from the date of the notification. If the court were to extend the benefit on the ground that the same is applicable retrospectively, the court will be re-writing the notification which is not permitted in law. In that view of the matter, as the said notification cannot be construed as retrospectively, the benefit of one per cent tax is available to the assessee only from the date of the notification till the end of the financial year. In that view of the matter, the orders passed by the authorities are strictly in accordance with law and do not suffer from legal infirmity and do not call for any interference. Accordingly it is dismissed.