

(2010) 02 KAR CK 0091

In the Karnataka High Court

Case No : Writ Petition No's. 2692-2721 of 2010

T.V. Sundaram Iyengar and Sons Ltd.

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 15-02-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 19 (1) (g), 265
Karnataka Value Added Tax Act, 2003 — Section 2 (36), 30, 4

Citation : (2010) ILR (Kar) 1919 : (2010) 32 VST 489

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : Harish and Co, for the Appellant; K.M. Shivayogiswamy, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

Ram Mohan Reddy, J.—The petitioner, a company incorporated under the Companies Act, 1956 having its registered office at Madurai, engaged in retail sale of motor vehicles/chassis manufactured by General Motors India Private Limited and Ashok Leyland Ltd., apart from spares, has its outlet in the State of Karnataka at the address shown in the causetitle, is a registered dealer under the Karnataka Value Added Tax Act, 2003 (for short "Act") and Karnataka Value Added Tax Rules, 2005 (for short "Rules").

2. According to the petitioner, during the period April 2006 to January 2008, it effected sales in the following manner:

(A) ASHOK LEYLAND LIMITED:

A proforma invoice is raised disclosing the ex-showroom price (M.R.P.) of the chassis, inclusive of VAT. On receipt of the full consideration (either in part from the financier and the balance from the purchaser and in case of excess payment, refund to the purchaser) a tax invoice is raised making the purchaser (customer) and the financier aware of a discount as set out in a worksheet prepared prior to

or simultaneous with the tax invoice. The vehicle is handed over only after the receipt of the price, less the discount from the customer. Thereafter, a credit note is raised on the customer in respect of the discount, including the tax element on the discount, resulting in reduction in the price.

(B) GENERAL MOTORS INDIA PRIVATE LIMITED:

A proforma invoice is raised disclosing on road price of the car inclusive of all VAT, road tax, Insurance, etc., and the customer fills up the "order form" leading to the preparation of a "customer worksheet" disclosing payment received and discount offered. Thereafter, a "tax invoice" is raised disclosing the ex-showroom price inclusive of VAT and on receipt of the price, less the discount, the vehicle is delivered. It is thereafter that a credit note is raised on the customer in respect of the discount including the tax element on discount, resulting in reduction in price.

It is further stated that discount extended to customers are dependant upon various factors such as quantity of off-take, corporate, fleet, product discount, retail volume discount, etc. The petitioner having filed its returns for the period April 2006 to January 2008, was issued with a notice dated 27-12-2007 Annexure-"D" to show cause against a proposal to reject the claim of deduction by way of discount as not being in compliance with Rule 3(2)(c) of the Rules and that the discount was not brought to the notice of the buyers, which when questioned in W.P. 1959/2008, the petitioner was directed to file its objections.

3. The petitioner having responded to the show cause notice, was issued with yet another notice dated 15-12-2009 Annexure-"F" with the very same proposal, to which a reply was caused contending that the Karnataka Appellate Tribunal in STA Nos.410-415/2007, recorded a finding that discounts granted through credit notes subsequent to raising tax invoice are eligible for deduction and that the Rule 3(2)(c) of the rules, is invalidated. It is the allegation of the petitioner that the 2nd respondent Assessing Authority, without application of mind, confirmed the proposal by order dated 16-01-2010 Annexure-"H".

Hence this petition for the following reliefs:

a. A Writ of Declaration or any other writ or order or direction in the nature of a Writ of Declaration, declaring the words "and the tax invoice or bill of sale issued in respect of the sales relating to such discount shows the amount allowed as discount" contained in Rule 3(2)(c) of the Karnataka Value Added Tax Rules, 2003 as ultravires Section 2(36), 4 and Section 30 of the Karnataka Value Added Tax Act, 2003 read with Rule 31 of the KVAT Rules and Article 14, 19(1)(g), 265 and Entry 54 of List II of the VII Schedule to the Constitution of India, as far as the petitioner is concerned; and

b. Writ of Certiorarified Mandamus to call for the impugned order passed u/s 39(1) of the KVAT Act, dated 16.01.2010 by the 2nd respondent, for the period from October 2006 to March 2009, i.e., Annexure "H" and quash the same as

arbitrary, illegal and ultra vires Section 2(36), 4 and Section 30 of the Karnataka Value Added Tax Act 2003 read with Rule 31 of the KVAT Rules and Article 14, 19(1)(g), 265 and Entry 54 of List II of the VII Schedule to the Constitution of India, in the interest of equity and justice.

The vires of Rule 3(2)(c) of the Rules in so far as it is set out in the prayer column supra, is grounded on:

(i) The levy of tax on discount, not received or receivables in terms of the contract of sale by the seller transgresses the power of the State under Entry-54 of List-II of the 7th Schedule to the Constitution of India;

(ii) The mandate of the rule that discount if reflected in the tax invoice alone, is entitled to deduction in the taxable turnover, is in conflict with Section 2(36) read with Sections 4 and 30 of the Act;

(iii) The two categories of discounts namely discount reflected in the tax invoice and those not reflected in the tax invoice resulting in diminution of the price are met with differential tax treatment creating hostile discrimination, failing to satisfy Article 14 namely Intelligible differentia and nexus with the object sought to be achieved;

(iv) The opinion in *Southern Motors v. State of Karnataka and Anr.* (2008) 18 VST 161 (Kar) of a learned Single Judge of this Court, holding Rule 3(2)(c) as intravires Section 30(1) of Act is not on the premise that the Rule is ultravires when read with Section 2(36), Section 4, Section 30 and Rule 31.

The challenge to the assessment order Annexure-"H" is grounded on:

(i) Failure to apply the decision in STA 410 to 415/2207 recording a finding that, discount through credit note subsequent to raising the tax invoice is also eligible for deduction;

(ii) The contract with M/s. Shakti Management Services for Teflon coating does not involve a transfer of property;

(iii) Painting of motor vehicles do not result in transfer of property merely because paint and polish are used, as held by the Apex Court in 88 STC 204;

(iv) The levy of tax on the supplier as well as the petitioner on the sale of bearing parts for motor vehicles, though the supplier discharged the difference in tax at 8.5% by raising a debit note on the petitioner, is arbitrary and illegal;

(v) The levy of penalty and interest is without jurisdiction.

4. In order to appreciate the contentions of the petitioner, it is useful to extract the relevant provisions of the Act and Rules, which reads thus:

Section 2(32) "Tax invoice" means a document specified u/s 29 listing goods sold with price, quantity and other information as prescribed;

Section 2(33) "Tax period" means such periods as may be prescribed;

Section 2(34) "Taxable turnover" means the turnover on which a dealer shall be liable to pay tax as determined after making such deductions from his total turnover and in such manner as may be prescribed, but shall not include the turnover of purchase or sale in the course of inter-State trade or commerce or in the course of export of the goods out of the territory of India or in the course of import of the goods into the territory of India and the value of goods transferred or despatched outside the State otherwise than by way of sale;

Section 2(35) "Total turnover" means the aggregate turnover in all goods of a dealer at all places of business in the State, whether or not the whole or any portion of such turnover is liable to tax, including the turnover of purchase or sale in the course of inter-State trade or commerce or in the course of export of the goods out of the territory of India or in the course of import of the goods into the territory of India and the value of goods transferred or despatched outside the State otherwise than by way of sale;

Section 2(36) "Turnover" means the aggregate amount for which goods are sold or distributed or delivered or otherwise disposed of in any of the ways referred to in Clause (29) by a dealer, either directly or through another, on his own account or on account of others, whether for cash or for deferred payment or other valuable consideration, and includes the aggregate amount for which goods are purchased from a person not registered under the Act and the value of goods transferred or despatched outside the State otherwise than by way of sale, and subject to such conditions and restrictions as may be prescribed the amount for which goods are sold shall include any sums charged for anything done by the dealer in respect of the goods sold at the time of or before the delivery thereof;

Section 3. Levy of tax

The tax shall be levied on every sale of goods in the State by a registered dealer or a dealer liable to be registered, in accordance with the provisions of this Act.

The tax shall also be levied, and paid by every registered dealer or a dealer liable to be registered, on the sale of taxable goods to him, for use in the course of his business, by a person who is not registered under this Act.

Section 29. Tax invoices and bills of sale

(1) A registered dealer effecting a sale of taxable goods or exempt goods along with any taxable goods, in excess of the prescribed value, shall issue at the time of the sale, a tax invoice marked as original for the sale, containing the particulars prescribed, and shall retain a copy thereof.

(2) A tax invoice marked as original shall not be issued to any registered dealer in circumstances other than those specified in Sub-section (1), and in a case of loss of the original, a duplicate may be issued where such registered dealer so requests.

(3) A registered dealer selling non-taxable goods or a dealer opting to pay tax by way of composition u/s 15 selling goods in excess of the prescribed value or a dealer permitted to pay tax u/s 16 shall issue a bill of sale containing the particulars prescribed.

(4) Notwithstanding anything contained in Sub-section (1) or (3) or Sub-section (1) of Section 7, a registered dealer executing civil works contracts shall issue a tax invoice or bill of sale at such time and containing such particulars as may be prescribed.

Section 30. Credit and Debit Notes

(1) Where a tax invoice has been issued for any sale of goods and within six months from the date of such sale the amount shown as tax charged in that tax invoice is found to exceed the tax payable in respect of the sale effected or is not payable on account of goods sold being returned within the prescribed period, the registered dealer effecting the sale shall issue forthwith to the purchaser a credit note containing particulars as prescribed.

(2) Where a tax invoice has been issued for sale of any goods and the tax payable in respect of the sale exceeds the amount shown as tax charged in such tax invoice, the registered dealer making the sale, shall issue to the purchaser a debit note containing particulars as prescribed.

(3) Any registered dealer who receives or issues, credit notes or debit notes shall declare them in his return to be furnished for the tax period in which the credit note is received or debit note is issued and claim reduction in tax or pay tax due thereon.

(4) Any document issued by the registered dealer as required under any other law containing particulars of credit note or debit note as prescribed shall be deemed to be a credit or debit note for the purpose of this section.

Rules 30(1) and 31 of the Rules read thus:

Rule 30. Particulars of bill of sale.--(1) A bill of sale as specified in Section 29, issued by a registered dealer where the value of the goods sold is in excess of one hundred rupees, or a registered dealer selling nontaxable goods or a registered dealer selling goods in the course of inter-state trade or commerce or in the course of export out of the territory of India or import into the territory of India, shall contain the following details, namely.

- (a) a consecutive serial number with date of sale;
- (b) the name, address and registration number of the selling dealer; and
- (c) a description of the goods with its value:

Provided that a consolidated bill of sale shall be prepared by the dealer at the close of each day in respect of all sales whose value does not exceed one hundred rupees:

Provided further that where the purchaser so requires, a bill of sale may be issued irrespective of the value of the goods sold.

Rule 31. Particulars of credit and debit notes.-- Where a registered dealer has given a tax invoice in respect of a sale of goods and thereafter the goods or any part thereof are returned to the seller if the sale is cancelled or for any other reason, or the value of the sale is altered, whether due to a discount or otherwise, he shall, subject to the provisions of Section 30, give to the buying dealer a credit or debit note containing the following details, namely.

- (1) the nature of the document issued;
- (2) a consecutive serial number;
- (3) the date of the issue of the document;
- (4) the name, address and registration number of the selling dealer;
- (5) the name and address of the buyer, together with buyer's registration number, if registered;
- (6) the number and date of the relevant tax invoice;
- (7) the value of the goods and the amount of the tax credited or debited to the buyer; and
- (8) signature of the selling dealer or his agent.

5. A plain reading of the aforesaid statutory provisions discloses that a registered dealer is required to issue in duplicate, marking the first copy as original, a tax invoice at the time of sale of goods exigible to tax, in compliance with Section 29(1) of the Act, containing all material particulars prescribed in Rule 30(1) of the Rules which constitutes the basis for accounting a transaction of purchase or sale of goods and evidence of the said transaction.

6. Taxable turnover is determined by allowing deductions from out of the total turnover in the manner prescribed in Rule 3(2) of the Rules. In other words, sale price received or receivable alone constitutes sale consideration liable to tax which is part and parcel of total turnover.

Rule 3(2)(c) prescribes the following three conditions:

- (a) that the discount is allowed in accordance with the regular practice of the dealer, or is in accordance with the terms of the contract or agreement between the buyer and the seller;
- (b) that such discount is reflected in the tax invoice or bill of sale issued by the seller;
- (c) The buyer has paid the sum originally charged less the discount, specified in the invoice.

7. A transaction of sale of taxable goods when completed, would result in a tax invoice issued to the customer at the time of sale. However, Section 30 of the Act provides that, within six months from the date of the tax invoice, the amount shown as charged to tax in that tax invoice, if found to exceed the tax payable in respect of the sale effected or not payable when goods sold being returned within the prescribed period, the dealer is required to forthwith issue to the purchaser a credit note containing the particulars prescribed in Rule 31 of the Rules. This section contemplates the issue of a credit note when sale value mentioned in the tax invoice is reduced, and a debit note when the sale value is increased. Viewed thus, the dealer is entitled to modify his returns filed for the period when the debit/credit note is issued, however within the period of six months from the date of tax invoice.

8. Regard being had to the aforesaid provisions of the statute, there can be no more doubt that the sale price being the consideration payable by the purchaser of the goods, is fixed at the time of sale without scope for fixing the price at a later point of time. This deduction would ensure that the Purchaser secures the reduction in the purchase price of the goods on the date of purchase or the date of invoice/bill, while the registered dealer too would benefit from such a course of action in securing the deduction from out of the Total Taxable turnover. The requirement of the rule that tax invoice should disclose the discount allowed, in my opinion, is neither ultravires Section 2(36), Section 4, Section 30 of the Act read with Rule 31 of the Rules, muchless the power of the state under Entry 54 of List-II of VII Schedule to the Constitution of India.

9. The contention that a discount not reflected in the tax invoice is given a differential treatment and therefore, the rule offends Article 14 of the Constitution of India, must necessarily fail. Such a discount does not constitute a deduction for the purpose of the Act and rules, though, Section 30 contemplates a reduction in the tax payable, if within six months from the date of issue of the tax invoice, the sale amount shown therein is found to exceed the tax payable in respect of the sale effected or for any other reason set out in the Section and not otherwise.

10. At the threshold, the challenge to the rule as untravires Article 19(1)(g) of the Constitution of India, deserves to be rejected, as not supported by necessary pleadings. Even otherwise, the rule does not, in any manner, hinder or restrict the petitioner from carrying on its profession, business or trade.

11. It is elsewhere said that the power of the State to impose tax so long as it, does not impose an unreasonable restriction to the practice, trade or profession, is not ultravires Article 19(1)(g).

12. There can be no dispute over the proposition advanced by the learned Counsel, as recorded in the order sheet dated 29.1.2010, supported by the reported opinions in *Belgaum Structural Engineering Pvt. Limited v. Additional Commissioner of Commercial Taxes, Belgaum Zone*. Belgaum 1998 (111) STC

222 and in Deputy Commissioner of Sales Tax (Law) Board of Revenue (Taxes), Ernakulam Vs. Advani Oorlikon (P) Ltd., .

13. The Division Bench of this Court, in Belgaum Structural Engineering case supra, following the observations of the Apex Court in Advani Oorlikon's case supra held that, a cash discount is allowed when the purchaser makes payment promptly or within the period of credit allowed and granted in consideration of expeditious payment, while a trade discount is a deduction beyond catalogue price of goods allowed by wholesalers to retailers engaged in trade and that a trade discount or cash discount does not enter into the composition of the sale price but exists apart from and outside it and prior to it. The Apex Court, in Advani's case held thus:

6. Under the Central Sales Tax Act, the sale price which enters into the computation of the turnover is the consideration for which the goods are sold by the assessee. In a case where trade discount is allowed on the catalogue price, the sale price is the amount determined after deducting the trade discount. The trade discount does not enter into the composition of the sale price, but exists apart from the outside it and prior to it. It is immaterial that the definition of "sale price" in Section 2(h) of the Act does not expressly provide for the deduction of trade discount from the sale price. Indeed, having regard to the circumstance that the sale price is arrived at after deducting the trade discount, no question arises of deducting from the sale price any sum by way of trade discount.

Rule 3(2)(c) is not contrary to the aforesaid principle but prescribes that such a deduction must be disclosed in the tax invoice. This salutary procedure is to ensure that the dealer does not tinker with the value of the sale of goods, as indicated in the tax invoice at the time the sale is concluded. In other words, after having issued a tax invoice, the dealer is not permitted to change the sale consideration by introducing an undisclosed phantom deduction after conclusion of the sale.

14. The reported opinion in Southern Motors case rejected the challenge to the proviso to Rule 3(2)(c) of the Rules as discriminatory or ultravires Section 30 of the Act, on the premise that the criteria to hold discrimination between the dealers cannot be based on how it affects different assesses or dealers. Nevertheless, in the circumstances, the observation therein is apposite:

8. Submission proceeds on a very fallacious ground that the rule particularly proviso to Rule 3(2)(c) of the KVAT Rules, is either discriminatory or ultra vires of Section 30. In fact, the rule mandates the applicability of the procedure to all assesses. There is no question of discrimination under this rule. As to how the rule may affect different assesses or different dealers is not the criteria for holding that the rule is a discriminatory provision and discriminates from dealer to dealer.

9. In so far as the ultra vires assessment is concerned I find that the rule only

stipulates the disclosure of some information and does not either create a new liability or an additional liability or in any way come in the way of assessees claiming the benefit u/s 30 of the Act. That is a procedure for claiming the benefit. Moreover, the benefit envisaged u/s 30 of the Act is only to make a correction within six months from the date of the sale transaction on finding the tax charged/collected is more or less, by issuing a credit note or debit note and in case goods are returned within the prescribed period, to issue a credit note forthwith and claim the value to be excluded from the taxable turnover. The value of the sale transaction is as fixed at the time of sale and even in terms of the charging section. There is no scope for fixing the price later. If under the rule, the benefit is made available subject to the condition that the discounted price should have been so indicated in the invoice value of the goods, the conditions is neither ultra vires Section 30 of the Act nor is discriminatory. I do not find any infirmity in the rule nor the rule being ultra vires under the provisions of Section 30 of the KVAT Act. I do not find the order being totally in violation of the principles of natural justice though the authority could have given some more time to the petitioner. Be that as it may, it is not a fit case for interference in writ jurisdiction when the assessee is provided statutory remedies under the Act. It is open to the petitioner to avail of statutory remedies available under the provisions of the Act.

Without prejudice, the writ petition is dismissed.

(emphasis supplied)

15. As regards the challenge to the order Annexure-"H", the petitioner has an alternative and efficacious remedy of a statutory appeal and therefore, I decline to interfere with the order.

16. Reserving liberty to the petitioner to question the order Annexure-"H" in an appropriate appeal proceedings, writ petitions are dismissed.