

(2011) 02 KAR CK 0116

In the Karnataka High Court

Case No : Writ Petition No's. 31315-350 of 2010

T.V. Sundaram Iyengar and Sons Ltd.

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 04-02-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 19 (1) (g), 265
Karnataka Value Added Tax Act, 2003 — Section 2 (36), 30, 39, 4
Karnataka Value Added Tax Rules, 2005 — Rule 3 (2) (c), 31

Citation : (2011) 185 ECR 454

Hon'ble Judges : Huluvadi G. Ramesh, J

Bench : Single Bench

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

Final Decision : Allowed

Judgement

Huluvadi G. Ramesh, J.—Petitioner is before this Court assailing the order of the 2nd Respondent at Annexure-L passed u/s 39 of the Karnataka Value Added Tax Act, 2003 (for short "KVAT" Act).

2. The main grievance of the Petitioner is the denial of deduction on the discounts by the 2nd Respondent only on the premise that the discounts had been granted through credit notes raised subsequent to the tax invoices which would result in the reduction of turnover/price and constitute tax liability. According to the Petitioner, the decision of the 2nd Respondent is arbitrary, illegal and ultra vires as per Section 2(36) 4, and 30 of KVAT Act, 2003 r/w 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. The Assessing Officer without extending the discount on the sales, treating it is a post discount, has passed the impugned order, on which aspect, the Division Bench of this Court has already dealt with.

3. Learned Senior Counsel appearing for the Petitioner submitted that the approach of the Assessment Officer is contrary to statute since the operation of

the order is stayed by the Division Bench of this Court in W.A. No. 467/10 and also in STRP No. 117/08.

4. Learned Government Pleader appearing for the Respondents, rearing upon the decision of this Court, tried to contend that under the Kerala VAT Act, the dealer is not entitled to discount unless the discount is separately shown in the tax invoice and the price collected and discount allowed.

5. Of course, the learned Counsel for the Petitioner referring to provisions of the KVAT Act and Rule 31 of the KVAT Rules has submitted that, if any value of the sale is altered in the tax invoice whether due to discount or otherwise, it is subject to the provisions of Section 30 of the Act, the registered dealer has to give the buyer a credit/debit note, also referring to Rule 3(2)(c) of the KVAT Rules 2005 as to the definition of "taxable turnover", it is submitted that the bill of sale issued in respect of the sales giving such discount does not amount to discount and the account is shown only when the purchaser had paid the original charges less discount and therefore, submitted that the approach of the Assessing Officer to impose tax on the basis of the tax invoice without taking into consideration the discount extended to the buyer and without taking into consideration the actual credit in the account is illegal.

6. In so far as the taxable turnover is concerned, whether the tax invoice issued reflecting the amount has to be taken into consideration for the purpose of calculating the imposition of tax and collection of tax or reduction of price has to be taken at the time of delivering the goods on or after delivery, is to be considered.

7. In the decision reported in Deputy Commissioner of Sales Tax (Law) Board of Revenue (Taxes), Ernakulam Vs. Advani Oorlikon (P) Ltd., the Apex Court., with reference to the taxable turnover is concerned, while defining what is "sale price" and "trade discount" on the catalogue price allowed by the wholesaler to the retailer, has held that the discount extended is not includable in taxable turnover. In para-6 of the judgment it is 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 the 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 and 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.

7. The Division Bench of this Court in STRP 117/08 disposed of on 16.2.2010 referring to Rule 3(2)(c) of the Rules has observed that Rule 3(2)(c) of the Act

pertains to the discounts that can be allowed in terms of the regular practice whereas Rule-31 is with regard to particulars of credit and debit notes, Further, in the said case, having taken note of the fact that the Tribunal has not taken into consideration the various details with regard to the variation in the total turnover on account of the credit notes issued, this Court has remanded the matter to the Tribunal to consider all those credit notes, which necessarily mean that by issuance of the credit notes, the amounts as mentioned in the invoices would be reduced which would automatically result in reduction in the over all turn over relating to the goods sold.

Rule 3, of the KVAT Rules, 2005 provides for determination of turnover-

1. The total turnover of a dealer, for the purposes of the Act, shall be the aggregate of-

a. the total amount paid or payable by the dealer as the consideration for the purchase of any of the goods in respect of which tax is leviable under Sub-section (2) of Section 3;

b. the total amount paid or payable to the dealer as the consideration for the sale, supply or distribution of any goods where such sale, supply or distribution of any goods where such sale, supply or distribution has taken place inside the State, whether by the dealer himself or through his agent;

Rule 3(2) (a), (b) & (c) reads as under:

3(2) The Taxable turnover shall be determined by allowing the following deductions from the total turnover:

(a) The aggregate of the sale prices received and receivable by the dealer in respect of sales of any goods in the course of interstate trade or commerce and export out of the territory of India and sales in the course of import into the territory of India.

(b) The value of all goods transferred or dispatched outside the State otherwise than by way of sale

(c) All amounts allowed as discount.

8. In the impugned order passed by the Assessing Officer as to the discounts extended by the dealer, it is opined that the discount provided after the issue of "tax invoice" would not reduce the sale price but it is regarded as "incentive" as the discounts like "quantity discounts", "off take discounts", "prompt discounts" are connected to the quantities, targets of performance and business promotions etc., and not to "sale price". Further, the Assessing authority has formed an opinion that Rule 31 is to be read along with Rule 3(2)(c) and if Rule 3(2)(c) does not permit "post sale discounts" it would not alter the value of sale and thereby it would not permit the dealer to reduce his tax liability even if he has issued credit notices. Rule 31 is general in nature and Rule 3(2)(c) is specific and harmonious interpretation of these rules is to be made.

9. Since the Division Bench of this Court in STRP No. 117/2008 and W.A.467/10 and connected matters has opined that the discount given in similar circumstances subsequent to the issuance of the invoice results in the lowering of the turnover, the overall opinion formed by the Assessing Officer at the time of calculating imposition of tax on the turnover is without taking into consideration the discount given.

10. The sale invoice given by the dealer would be assessed on the total turn over of the Assessee. But, the credit notes subsequently issued by the Assessee would automatically result in lowering the amount of turnover and results in lower quantum of sales tax and that is the conclusion arrived at by the Division Bench in similar situation treating this as only "incentive" and not as "trade discount". The Assessing Officer has tried to distinguish and imposed tax on the total turnover on the basis of the invoices issued without taking into consideration the discount extended in the sale transactions, which is usually permissible and it is also in vogue in the sale of goods.

11. In the circumstances, the impugned order passed by the Assessing Officer at Annexure-L is quashed. However, to assess property taking into consideration what is the discount allowed in each of the cases based on the account furnished, it is for the Assessing Officer to restrict calculation of the taxable turnover based on the discounts on the sale of the goods and to calculate the actual tax to be paid. This exercise shall be done within one month from the date of receipt of copy of this order. In this regard, the Respondent authority to seek assistance of the Petitioner to get any clarification if needed, in arriving at a conclusion. However, in the event, the amount is deposited, 50% of the total amount be refunded with interest thereon, if it is found that the amount collected is in excess. Accordingly, the writ petitions are allowed.