

---

**(2010) 03 KAR CK 0226**  
**In the Karnataka High Court**  
**Case No : S.T.R.P. No. 45 of 2006**

TVS Electronics Limited

APPELLANT

Vs

The State of Karnataka

RESPONDENT

---

**Date of Decision :** 04-03-2010

**Acts Referred:**

Karnataka Sales Tax Act, 1957 — Section 13, 8 A

**Citation :** (2011) 38 VST 194

**Hon'ble Judges :** K.L. Manjunath, J;B.V. Nagarathna, J

**Bench :** Division Bench

**Advocate :** G. Shivadass, Suresh Astekar and Anil Kumar, for the Appellant;  
Geetha Menon, Government Advocate, for the Respondent

**Final Decision :** Allowed

---

## **Judgement**

K.L. Manjunath, J.—This revision petition is filed by the assessee, challenging the legality and correctness of the order passed by the Joint Commissioner of Commercial Taxes (Appeals), Bangalore, dated 12th April 2004, which has been affirmed by the Karnataka Appellate Tribunal, Bangalore on 7th March 2006, in S.T.A. No. 2407 of 2004. The dispute is in regard to the assessment year 1997-1998.

Though the revision petition was admitted to consider the following substantial questions of law,

i] Whether the Karnataka Appellate Tribunal was right in law in dismissing the appeals holding that the exemption granted to a 100% EOU vide Notification No. FD 32 CSL 96 (V) dated 15.11.1996 is applicable only to the extent of goods purchased and used in the manufacture of goods which are physically exported out of the country and not applicable to extent of goods sold in the DTA?

ii] Whether the interpretation of Hon'ble Karnataka Appellate Tribunal of condition No. (i) of the Notification No. FD 32 CSL 96 (V) dated 15.11.1996 to the effect that the said condition provides for the quantum or the nature of

incentive to EOUs is correct in law.

iii] Whether the interpretation of Hon"ble Karnataka Appellate Tribunal of condition No. (iii) of the Notification No. FD 32 CSL 96 (V) dated 15.11.1996 to the effect that the said condition is only for the purpose of granting the status or continuing the status of an EOU as EOU, is correct in law.

iv] Whether the expression "subject to relaxation permitted by Government of India from time to time" occurring in condition No. (iii) of the notification No. FD 32 CSL 96 (V) dated 15.11.1996 would not include within its ambit the DTA sales made by an EOU?

v] Whether the Tribunal was right in law in not considering and giving any finding on the dispute as regards the correctness of the quantification of the tax demand?

vi] whether the Tribunal was right in not considering and giving any finding on the rate of turnover Tax applicable i.e. whether the rate applicable to the selling dealer or to the purchasing dealer?

vii] Whether the Tribunal was right in not considering and not giving any finding on the penalty imposed on the Petitioner?

viii] Any other question of law that this Hon"ble Court deems fit in the facts and circumstances of the case.

the learned Counsel appearing for the parties submit that the actual substantial question of law raised in this petition would be only one. i.e.,

i] Whether the Hon"ble Karnataka Appellate Tribunal was right in law in dismissing the appeals holding that the exemption granted to a 100% EOU vide Notification No. FD 32 CSL 96 (V) dated 15.11.1996 is applicable only to the extent of goods purchased and used in the manufacture of goods which are physically exported out of the country and not applicable to extent of goods sold in the DTA?

In view of the request, we have to consider question No. I only.

The facts leading to this case are as here under:

2. The petitioner assessee is a 100% Export Oriented Unit (EOU) set up in the year 1995. Pursuant to the Notification issued by the Government under No. FD 32 CSL 96 (V) dated 15th November 1996, it purchased certain raw materials to be used for the manufacture of its products from a registered dealer and tax was not paid on the purchase made by it from the registered dealer since it is a 100% EOU in the manufacture of goods for exports. The revenue did not grant the exemption on the ground that there was violation of the terms and conditions of the aforesaid Notification in as much as the petitioner assessee had sold a portion of the finished product in domestic market, without exporting all the goods manufactured by it as required under the Notification, contending that

Clauses (i) to (iii) are violated by the petitioner assessee, and the exemption granted to it was withdrawn. Being aggrieved by the same, the assessee filed an appeal before the Joint Commissioner of Commercial Taxes (Appeals), Bangalore, which appeal came to be dismissed. A second appeal was preferred before the Karnataka Appellate Tribunal, which was also dismissed by the Tribunal, on the ground that the assessee having contravened the clauses of the Notification was not entitled for the benefit. Therefore, the present revision petition is filed.

3. The main contention of the petitioner's counsel before us is that the Department has committed a serious error in not considering the case of the assessee properly and on account of improper interpretation of the Notification dated 15th November 1996, the relief has been denied to the assessee, not only by the Department, but also by the two appellate authorities. In the circumstances, he contends that the assessee is entitled for the relief of all the orders which are required to be set aside.

4. Per contra, the learned Government Advocate contends that in view of the violation of Clauses (i) to (iii) of the Notification, the revenue, invoking Clause (v) of the Notification, was justified in denying the relief to the assessee and therefore, she requests the Court to dismiss the petition.

5. Having heard the counsel for the parties, the only point to be considered by us in this petition is:

Whether there is any violation of any of the clauses of the Notification dated 15th November 1996 by the assessee to enable the revenue to deny the relief entitled to by the assessee in terms of the aforesaid Notification?

In order to appreciate the contention of both the parties, it would be proper for us to reproduce the Notification as it is.

NOTIFICATION No. FD 32 CSL 96 (V), Dated 15th November, 1996

In exercise of the powers conferred by Section 8A of the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957), the Government of Karnataka hereby reduces with immediate effect, the rate of tax payable under the said Act to "nil" on sales of raw materials, component parts, packing materials, consumables, capital goods, spares, materials handling equipment's, intermediate and semi-finished goods and sub-assemblies by a registered dealer to 100 per cent Export Oriented Units located in the State subject to following conditions and restrictions:

(i) such goods are put to use by the 100 per cent Export Oriented Unit in the manufacture of goods for export;

(ii) time limit for use of such goods in the manufacture of goods for export shall be before the expiry of the accounting year immediately succeeding year in which the goods are purchased;

(iii) the 100 per cent Export Oriented Unit shall export its entire production of

goods subject to relaxation permitted by Government of India from time to time.

(iv) Where for any reason, the 100 per cent Export Oriented Unit fails to comply with the condition (iii) above, it shall forthwith cease to be eligible for the benefit of this Notification;

(v) Where for any reason the restriction or condition stipulated under (i), (ii) and (iii) above is contravened or not complied with, either wholly or partly, the provisions of Clauses (a) and (b) of Sub-section (5) of Section 8A of the said Act shall apply and the 100 per cent Export Oriented Unit shall be liable to pay an amount equal to the tax payable at the rates prescribed under the said Act, on purchases of raw materials, components, packing materials, intermediate and semi-finished goods and sub-assemblies in respect of which such contravention or non-compliance has taken place. The amount so payable shall be deemed to be amount due for purposes of Section 13 of the said Act;

(vi) Registered dealer effecting the sales to 100 per cent Export Oriented Unit shall produce before the assessing authority, the certificate prescribed hereunder duly filled in and signed by the said Export Oriented Unit.

#### CERTIFICATE

Name and address of 100 per cent Export Oriented Unit and K.S.T.R.C. No.

To:

(Name and address and K.S.T.R.C. No. of the registered dealer to whom certificate issued)

Certified that the goods, as per details below are purchased from you for use in the manufacture of goods for export out of the Territory of India.

Purchase Sl. No. Bill No. Description Quantity Value and date (1) (2) (3) (4) (5) Signature Place: Name and status of the authorised Dated: person of the 100 per cent Export Oriented Unit. Explanation, - For the purpose of this Notification:

(i) "100 per cent Export Oriented Unit" means a unit which under takes to export its entire production of goods subject to the relaxation as permitted by Government of India from time to time and includes Units set up either under the Export Oriented Unit or under ERIP (Export Promotion Industrial Park) scheme or under the EHIP (Electronic Hardware Technology Park) Scheme or Software Technology Park Scheme and certified to be a 100 per cent Export Oriented Unit by the Director of Industries and Commerce, Government of Karnataka or by the Government of India;

(2) "Export" means export as defined to Sub-section (1) of Section 5 of Central Sales Tax Act, 1956 (Central Act 74 of 1956);

(3) Eligibility to reduction of the rate of tax to nil under this Notification is restricted to 100 per cent Export Oriented Units under the package of Incentives

and Concessions as per Government Order No. CI 30 SPC 96, dated 15th March, 1996.

Procedure- The 100 per cent Export Oriented Unit seeking this facility shall produce before the assessing authority:

(i) Certificate issued by the Director of Industries and Commerce, Government of Karnataka or Government of India certifying that it is registered as a 100 per cent Export Oriented Unit.

(ii) The said certificate shall be produced, in proof of its being valid, in each assessment year, within 60 days of commencement of the assessment year.

This Notification shall be valid up to (31st March, 2001).

It is not in dispute that the raw materials purchased by the assessee is to put to use by it in respect of the products manufactured for the purpose of export since the assessee is a 100% EOU. The learned Government Advocate does not dispute this fact. There is no violation of Clause (ii) of the Notification since the material purchased by the assessee has been utilized within the time stipulated in accordance with Clause (ii). Therefore, what is required is, whether there is any violation of Clause (iii) and whether Clause (iii) of the Notification has to be read in isolation with the Clauses (i) and (ii) or Clauses (i) to (iii) are to be read together in order to consider the case of both parties.

6. The learned Government Advocate also does not dispute that pursuant to the relaxation granted by the Government of India, portion of the materials manufactured by the assessee for the purpose of export has been sold in Domestic Tariff Area (DTA). Therefore, what is to be considered is, if a portion of the goods manufactured by the assessee is sold in Domestic Tariff Area, does it amount to violation of any of the clauses of the Notification dated 15th November 1996 and based on the same, the relief granted to the assessee could be withdrawn by the Government?.

7. As rightly pointed out by the learned Government Advocate, if Clause (i) and (ii) alone is considered excluding Clause (iii), then, we have to dismiss this petition, holding the question of law framed, against the assessee and in favour of the revenue. According to us, Clauses (i) to (iii) are to be read together as we have to give harmonious constructions to the clauses in the Notification, either of the Clauses of (i), (ii) or (iii) cannot be read in isolation. The Joint Commissioner of Commercial Taxes (Appeals) as well as the Tribunal have committed a serious error in reading the clause in isolation with Clause (iii) on account of bifurcation of Clauses (i) to (iii) separately, and an error has been committed by the authorities below in denying the relief to the assessee. According to us, if relaxation has been granted by the Government, the assessee is entitled to sell its products in the Domestic Tariff Area. If the assessee had sold in excess of the permission granted by Government of India, in the Domestic Tariff Area, in such circumstances, the respondent would have been justified in denying the claim of

the assessee. But, it is not the case of the revenue that in excess of the relaxation permitted by the Government of India to the assessee to sell its products in the Domestic Tariff Area, the assessee has sold the goods manufactured by it. Since there is no violation, we are of the view that the orders passed by the Karnataka Appellate Tribunal as well as by the Joint Commissioner of Commercial Taxes and so also by the Deputy Commissioner of Commercial Taxes are required to be set aside, answering the question of law in favour of the assessee and against the revenue. Accordingly, this revision petition is allowed.