(2003) 07 KAR CK 0059

In the Karnataka High Court

Case No : Sales Tax Revision Petition No''s. 84 of 1996 and 76-79 of 2003

Vasavadatta Cements APPELLANT

Vs

Karnataka Appellate Tribunal and Others RESPONDENT

Date of Decision : 25-07-2003

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 23 (1), 5, 5 A

Citation : (2003) ILR (Kar) 3091 : (2003) 4 KCCR 254 SN : (2004) 138 STC 276

Hon'ble Judges : P. Vishwanatha Shetty, J;H.G. Ramesh, J

Bench : Division Bench

Advocate : A. Rama and D. Venkatesh, for the Appellant; Ananda, Government Advocate for R-2 and R-3, for the Respondent

Final Decision : Dismissed

Judgement

Ramesh, J.—The petitioner in these revision petitions is a company incorporated under the provisions of the Indian Companies Act, 1956, carrying on business in the manufacture of cement and is a dealer registered under the provisions of the Karnataka Sales Tax Act,1957 (hereinafter referred to as ''the Act'').

2. In these revision Petitions presented u/s 23(1) of the Act, the petitioner has called in question the correctness of the judgment dated 30th November 1995 made in STA Nos. 529 to 534 of 1995 by the Karnataka Appellate Tribunal (hereinafter referred to as the ''the Tribunal'').

3.The only question of law that was urged and that falls for determination in this revision Petition is as to whether on the admitted facts, the petitioner is entitled for the concessional rate of tax as provided u/s 5A of the Act, on its turnover of purchases of Bauxitee Ore during the assessment years 1987-88, 1989-90 to 1993-94.

4. We have heard the learned Counsel appearing for the petitioner and the learned Government Advocate for the respondents.

5. A few facts which may be relevant for the disposal of this revision petition may be stated as hereunder:

The Deputy Commissioner of Commercial Taxes, Gulbarga had levied tax at 13 per cent on the purchase of ''Bauxitee'' which is a raw material used by the petitioner in the manufacture of cement during the assessment years 1987-88, 1989-90, 1990-91, 1991-92, 1992- 93 and 1993-94.The said orders of assessment were called in question by the petitioner in the appeals filed before the Joint Commissioner of Commercial Taxes (Appeals), Gulbarga Division, Gulbarga. The Tribunal by means of its Order dated 30th November 1995 which is impugned in this petition confirmed the said orders passed by the Assessing Authority as well as the Joint Commissioner of Commercial Taxes (Appeals).Aggrieved by the said order, as noticed by us earlier, this revision petition is presented.

6. Smt. Rama, learned Counsel appearing for the petitioner challenging the correctness of the impugned order submitted that since there is no dispute that ''Bauxitee'' is a raw material purchased by the petitioner which is used in the manufacture of cement, the Tribunal as well as the first appellate authority and the assessing authority have seriously erred in law in taking the view that the petitioner is not entitled for the benefit of payment of concessional rate of tax at 4 per cent in terms of Section 5-A of the Act. The learned Counsel pointed out that the purchase of ''Bauxitee'' was made by the petitioner during the relevant assessment years for the purpose of manufacture of cement and as such the petitioner was liable to pay tax only at 4 percent as against 13 per cent assessed. Elaborating this submission she pointed out that Section 5-A of the Act speaks of only a sale transaction and the been fit provided u/s 5-A of the Act could be availed of both by the seller and the purchaser, and in cases wherein the seller cannot take the benefit of concessional rate of tax provided u/s 5-A of the Act, the purchaser would be entitled to get the benefit of concessional rate of tax subject to the condition that the purchaser produces Form No. 37. In support of her submissions, she placed reliance on the judgment of this Court in Kirloskar Ferrous Industries Limited Vs. Deputy Commissioner of Commercial Taxes (Assessment I) and Others, and also of the Hon''ble Supreme Court in POLESTAR ELECTRONIC (PVT) LTD. vs ADDITIONAL COMMISSIONER, SALES TAX AND ANOTHER 41 STC 409 (SC). She also relied on the Commissioner''s clarification in CLR. CR.768/90-91 dated 5.2.1991 issued in respect of iron ore Lumps.

7. Sri Anand, learned Government Advocate strongly countering the submission of the learned Counsel appearing for the petitioner submitted that the benefit of Section 5-A of the Act is available only to the seller who sells the goods or raw materials used for manufacturing purposes, provided the requirements of Section 5-A of the Act are satisfied and it is not available to a purchaser. It is the submission of Sri Anand that when Section 5-A of the Act is clear and unambiguous the Court cannot go beyond the language employed in the Section to extend the benefit of the said Section to the purchaser. It is his submission

that the intention of the Legislature is spelt out clearly in Section 5-A of the Act that the benefit of concessional rate of tax is available only to the sellers who satisfy the conditions set out in Section 5-A of the Act and not to the purchasers.

8. To appreciate the rival contentions urged by the learned Counsel appearing for the parties, it is useful to notice Section 5A of the Act as it stood at the relevant period which reads thus:

5A. Taxation of Industrial Inputs - (1) Notwithstanding anything contained in Section 5, the tax payable by a registered dealer in respect of the sale of any industrial input liable to tax under the Act to another registered dealer for use by the latter as a component part or raw material or packing material of any other goods, which he intends to manufacture inside the State for sale. shall be at the rate of four percent or the rate specified in Section 5 whichever is lower, on the turnover relating to such sale:

Provided that where the rate of tax in respect of such industrial input as specified in Section 5 is higher than four percent, the provisions of this sub-section shall not apply, unless the dealer selling the industrial inputs furnishes to his assessing authority in the prescribed manner a declaration by the buying dealer in the prescribed form obtained from the prescribed authority".

(Emphasis supplied by us)

As could be seen from the plain natural meaning of the above provision, concessional rate of tax was provided only to the selling dealers and not to the purchasing dealers. It is needless to state that a statutory enactment must ordinarily be construed according to the plain natural meaning of its language and no words should be added, altered or modified unless it is plainly necessary to do so in order to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute. This rule of literal construction is firmly established and it has received judicial recognition in numerous cases.

9. The contention of the learned Counsel for the petitioner that the petitioner is entitled for a concessional rate of tax on its purchaser turnover of Bauxit Ore u/s 5A of the Act is liable to be rejected as the Section provides for a concessional rate of tax only to the selling dealers and not to the purchasing dealers and accordingly on this sole ground, this revision petition has to fail. Nothing further need by considered as the petitioner was only a purchasing dealer relating to the turnovers in question.

However, we have considered certain other aspects of the matter in the light of the submissions made before us by the learned Counsel for the petitioner.

10. As noticed above, the petitioner is a manufacturer of cement and it had purchased Bauxite ore as a raw material for the manufacture of cement. The turnover of such purchases during the Assessment years 1987-88 to 1993-94 was brought to tax by the Assessing Authority u/s 5(3)(b) of the Act by levying

tax at the rate of 13% as provided under the third schedule of the Act as it stood at the relevant period. These Assessments made on the purchase turnovers are affirmed by the First Appellate Authority as well as the Tribunal.

11. It is relevant to note that as the goods (Bauxite Ore) in question fall within the ambit of the Third schedule of the Act, its turnover could be brought to tax only u/s 5(3)(b) of the Act and not under any other provisions of the Act.

In this context, it is relevant to extract Section 5(3)(b) of the Act, which reads thus:

"In the case of purchase of any of the goods mentioned in column (2) of the Third Schedule, at the rate and only at the point specified in the corresponding entries of column (4) and (3) of the said Schedule, on the dealer liable to tax under this Act, on his turnover of purchases in each year relating to such goods,"

(Emphasis supplied by us)

It is also relevant to note that in respect of Bauxite ore, the Commissioner of Commercial Taxes had issued a clarification in CLR.CR.286/1990-91 which stated that the concessional rate of 4% tax against form No.37 is not available since sales do not attract any tax in the State. It means that Section 5A of the Act is not applicable to the turnover of Bauxite Ore. In other words, only the goods which are liable to tax at sale point are eligible for the concessional rate of tax against form No.37 u/s 5A of the Act and the goods which are liable to tax at purchase point are not eligible for the concessional rate of tax against form No.37 u/s 5A of the Act. This clarification only states the correct legal position at the relevant period and nothing more.

12. The decision in the case of Kirloskar Ferrous Industries Limited Vs. Deputy Commissioner of Commercial Taxes (Assessment I) and Others, cited by petitioners counsel and the Commissioner''s clarification in CLR.CR768/90-91 dated 5.2.1991are not relevant to decide the question urged before us. In the aforesaid judgment, this Court has held that as ''Iron ore Lumps'' did not fall within the ambit of the Third schedule of the Act, till it was included therein by Act No.5 of 1996, and accordingly, as clarified by the Commissioner of Commercial Taxes in CLR.CR. 768/90-91 dated 5.2.1991, it could be purchased against form No.37 u/s 5A of the Act. Further, the decision of the Hon''ble Supreme Court in Polestar Electronic (Pvt.) Ltd. Vs. Additional Commissioner, Sales Tax and Another, is also not relevant to decide the controversy in question.

13. To complete the discussion, the legislative change brought with effect from 1.4.2002 needs to be noticed. The newly substituted Section 5A of the Act which came into effect from 1.4.2002 provides for a concessional rate of tax to the purchasing dealers as could be seen from sub-section (2), of that Section which reads as follows:

"5A Taxation of Industrial inputs

(1)..............................

(2) Notwithstanding anything contained in clause (b) of subsection (3) of Section 5 or Section 6, the tax payable by a registered dealer in respect of the purchase of any Industrial input liable to tax under the Act for use by him as a component part or raw material or packing material of any other goods which he intends to manufacture inside the State for sale shall be at the rate of four percent or the rate specified in Section 5, whichever is lower, on the taxable turnover relating to such purchase."

....

(Emphasis supplied by us)

Obviously, the above provision has no application for the Assessment years 1987-88 to 1993-94.

14. In the light of the discussion made above, we hold that the petitioner is not entitled for the concessional rate of tax as provided u/s 5A of the Act, on its turnover of purchases of Bauxite ore during the assessment years 1987-88 1989-90 to 1993-94. Hence, we do not see any error in the order of the Tribunal impugned in these revision petitions are accordingly dismissed. However, no order is made as to costs.