(2011) 01 KAR CK 0215

In the Karnataka High Court

Case No : S.T.A. No. 144 of 2009

Vishal Infrastructure Ltd. — APPELLANT

Vs

State of Karnataka and Another — RESPONDENT

Date of Decision : 06-01-2011

Acts Referred:

Citation : (2011) 46 VST 401

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

Bench : Division Bench

Advocate : B.G. Chidananda Urs and B.S. Prasad, for the Appellant; Sujatha, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—The assessee has preferred this appeal challenging the order passed by the Commissioner of Commercial Taxes, who has set aside the order passed by the Authority for Clarification and Advance Ruling (for short, hereinafter referred to as "the ACAR"). The assessee is a contractor carrying on civil works contract. According to his understanding, the civil works like construction of buildings, bridges, roads, etc., fell under the works contract and that only goods which are transferred fell under the purview of taxation, only goods used in the course of execution of works contract are deemed to be sold. Therefore there is sale of only materials used in execution of works contract and the tax liability is restricted to the extent of materials transferred during the course of execution of works contract and not on all the materials used in the process. Therefore, he sought for a clarification from the ACAR.

2. The ACAR, after considering the definition of "works contract" u/s 2(37) of the Karnataka Value Added Tax Act, 2003 and sections 3(1) and 7 of the Act gave ruling as under:

In the case of a works contract, only the goods which are transferred, fall under the purview of taxable event and the rate applicable on the value of such goods involved in the works contract shall be at the rates applicable to these goods under the KVAT Act, 2003.

3. It is this order which is reviewed by the Commissioner of Commercial Taxes. The Commissioner was of the view, whether the goods purchased for works contract were incorporated in the same form or not is a question of fact which is to be addressed by the assessing authority and not by the Advance Ruling Authority. It was erroneous on the part of the Advance Ruling Authority to give an advance ruling that the rate of tax applicable on goods involved in the execution of works contract shall be at the rate of applicable to these goods under the KVAT Act, 2003. The said ruling is prejudicial to the interest of the Revenue as it preempts assessing authorities from giving a different interpretation of law depending on the facts and circumstances of each case. Therefore, it set aside the advance ruling and directed that the matter is left to the assessing authorities to determine the rate of tax applicable on works contract involving transfer of property in goods during the year 2005-06. It is against this order, the present appeal is filed.

4. The learned counsel for the appellant assailing the impugned order contends that the scope of revision is very much limited. If the revisional authority was of the view that the order passed by the Advance Ruling Authority is erroneous, they could correct the same and say what the correct law is. However, after setting aside the order of the Advance Ruling Authority, it cannot keep the question open to be decided by the assessing authorities. For that purpose, the review power cannot be exercised and therefore, it is an order passed without jurisdiction and requires to be set aside.

5. Per contra, learned Government Advocate supporting the impugned order contended that, as is clear from the wordings of section 64(2), the revisional authority is vested with the power to pass such order thereon as the circumstances of the case justify apart from the order enhancing or modifying the assessment or cancelling the assessment or directing the fresh assessment. In the facts of this case, the revisional authority was justified in setting aside the order passed by the Advance Ruling Authority and leaving the question to be decided by the assessing authority as it is purely a question of fact and liability to tax depends upon the material which is used in the construction and thereafter transfer and therefore, she submits, no fault could be found with the said order.

6. Section 64(2) of the Karnataka Value Added Tax Act, 2003 reads as under:

....

The Commissioner may on his own motion call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of the Revenue, he may if necessary, stay the operation of such order for such period as he deems fit and after giving the person concerned an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment or directing a fresh assessment.

7. A reading of the aforesaid section makes it very clear, while exercising power under the aforesaid provision, the Commissioner may pass the following orders:

(a) Such order thereon as the circumstances of the case justify.

(b) An order enhancing the tax.

(c) Order modifying the assessment.

(d) Cancelling the assessment.

(e) Directing a fresh assessment.

8. Therefore, it is not as if when an order is passed by the Advance Ruling Authority, he should positively state whether the Advance Ruling Authority was wrong and what is the correct law. That is normally the procedure. In a case of this nature, when the reference to the Advance Ruling Authority itself is too vague and when it is answered in too general terms, as the question of construction work is purely a question of fact, as different materials are used in construction and thereafter they are transferred, the revision authority was justified in leaving that question to be decided by the assessing officer keeping in mind law on the point. The Advance Ruling Authority was not justified in giving their opinion in too general terms and was capable of being misinterpreted. Certainly, the opinion given by the Advance Ruling Authority is prejudicial to the interest of the Revenue and it is also not in accordance with law. We do not see any justification to interfere with the well considered order passed by the Commissioner. No merits. Dismissed.