

(2011) 07 KAR CK 0278
In the Karnataka High Court
Case No : TAET No. 3 of 2010 (KTEG)

V.T. Switch Gears and Transformers

APPELLANT

Vs

Additional Commissioner of Commercial Taxes, Zone II,
Bangalore

RESPONDENT

Date of Decision : 29-07-2011

Acts Referred:

Karnataka Tax on Entry of Goods Act, 1979 — Section 15 (1), 5 (4)

Citation : (2012) 54 VST 507

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

Bench : Division Bench

Advocate : Kamath and Kamath, K.J. Kamath and K.G. Kamath, for the Appellant; K.M. Shivayogi Swamy, High Court Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

N. Kumar, J.—There is a delay of 68 days in preferring this appeal. An application is filed to condone the delay. The application is not opposed. Accepting the cause shown in the affidavit filed in support of the application for condonation of delay, the delay of 68 days in preferring the appeal is condoned. The assessee has preferred this appeal challenging the order passed by the revisional authority, which held that the assessee is not entitled to the commission on the payment of entry tax in so far as petroleum oil, which is used in the manufacturing of transformers.

2. The assessee is engaged in the manufacture and sale of transformers. The assessee had bought into the local area transformer oil at Rs. 1,02,31,869 and he has not admitted the tax liability at five per cent on the sale under the provisions of the Karnataka Tax on Entry of Goods into Local Areas for Consumption, Use or Sale Therein Act, 1979 (for short, hereinafter referred to as "the Act"). The transformer oil was taxable at five per cent as per notification dated March 30, 2002. Therefore, the assessing authority passed an order u/s

5(4) of the Act for assessment years 2005-06 and 2006-07 subjecting the entry value of transformer oil to tax under the Act and determined the entry tax, interest and penalty. Aggrieved by the said order, the assessee preferred an appeal to the Joint Commissioner. The Joint Commissioner allowed the appeal holding that the transformer oil was brought into the local area as an input in the manufacturing of transformers. Therefore, the same was not liable for entry tax. Consequently, he held that interest and penalty imposed is also unsustainable and set aside the order passed by the assessing authority. The Additional Commissioner of Commercial Taxes by virtue of the power conferred u/s 15(1) of the Act exercised suo motu proceedings and issued notice to the assessee and called upon the assessee to show cause as to why the order of the assessing authority should not be restored. In the show-cause notice, he clearly mentioned that the Joint Commissioner while passing the impugned order has not taken into consideration the subsequent notifications issued on March 15, 2003 and July 3, 2003 which clarified the position that the transformer oil which is brought into the local area as an input is liable for entry tax. The assessee contested the claim. However, after hearing both the parties, taking note of the aforesaid notifications and also the provisions of the Act, the Additional Commissioner held that the transformer oil which is not found in the entry in Explanation I invariably falls under Explanation II, wherein it is clear that even if the goods mentioned in Sl. Nos. 1 to 10 are brought into the local area for use or consumption as raw materials and inputs in the manufacture of tobacco products and liquor, the tax leviable and collectable on such goods shall be at the rate specified in such serial numbers and in the case of the company is five per cent and it is not exempted from payment of entry tax and therefore, he restored the order passed by the assessing authority and directed the authority to issue revised demand notice immediately. Aggrieved by the said order, the assessee is in appeal.

3. The learned counsel appearing for the assessee assailing the impugned order contends that though the entry tax is payable for bringing these petroleum products in the local area by a dealer who is dealing with the same but when a manufacturer brings the said petroleum products as a raw material to be used as an input in the manufacture of final product, the entry tax is not leviable and in support of his contention, he places reliance on the Explanations, Schedule I and the notifications.

4. Per contra, the learned counsel appearing for the Revenue supported the impugned order.

5. As rightly pointed out by the Additional Commissioner, the Joint Commissioner who upheld the contention of the assessee has not looked into the subsequent notifications issued and in particular the Explanations I and II appended to the said notifications. For ready reference these Explanations are extracted hereunder :

Explanation I.--No tax shall be payable by a dealer on the goods specified in serial numbers 2, 3, 4, 7, 8 and 9 in the table above when brought by him into a

local area for consumption or use as raw materials, component parts and inputs in the manufacture of an intermediate or finished product but excluding when brought for use in the manufacture of tobacco products and liquor.

Explanation II.--If any of the goods specified in serial numbers 1 to 10 in the above table are brought into a local area for use or consumption as raw material and inputs in the manufacture of tobacco product and liquor, the tax leviable and collectable on such goods shall be at the rate specified in such serial numbers.

Explanation.--If any of the goods specified in Sl. Nos. 1 to 10 in the above table are brought into a local area for use or consumption as raw material, component parts and inputs in the manufacture of a intermediate or finished product, the tax payable on such goods shall be at the rate specified therein.

6. A careful reading of the aforesaid three Explanations makes it very clear that the transformer oil which finds entry in sub-entry (viii) of (b) of main entry 1 are taxable at five per cent when they are caused entry into local area for consumption, use or sale therein. The transformer oil which finds entry in serial No. 1(b)(viii) is always taxable at rate of five per cent on its entry into local area whether for consumption, use or sale therein.

7. Therefore, the reviewing authority on a proper consideration of these Explanations was justified in holding that the transformer oil even though it is brought into the local area by the assessee as a raw material and to be used as an input manufacturing of transformers, it is liable to tax at five per cent. Therefore, we do not see any error with the well considered order passed by the Additional Commissioner, which has held that the assessee is liable for payment of tax and interest. However, when the Additional Commissioner himself is not sure about the liability of tax and when he has set aside the order of the assessing authority, it is obvious that these provisions did give rise to various interpretations and as to who was not liable for tax. In that view of the matter, imposition of penalty is uncalled for. Now the legal position is clear. The assessee cannot take advantage of these doubts and confusion in these provisions. Therefore, the penalty portion of the order requires to be interfered with and accordingly, it requires to be set aside. Hence, we pass the following :

ORDER

The appeal is allowed in part. The order of the revisional authority setting aside the order of the Joint Commissioner and restoring the order passed by the assessing authority in so far as payment of tax and interest is concerned is upheld. However, the penalty portion of the order of the assessing authority as well as the revisional authority is hereby set aside. Therefore, the assessing authority is directed to issue of fresh demand excluding the penalty portion. Ordered accordingly.

The learned Government Advocate is permitted to file power within four weeks.