(2016) 02 KAR CK 0210

In the Karnataka High Court

Case No : STRP No. 70/2016

WeP Peripherals Limited — APPELLANT

Vs

The State of Karnataka — RESPONDENT

Date of Decision : 17-02-2016

Acts Referred:

Central Sales Tax Act, 1956 — Section 6A, Section 6-A, Section 9(2)
Karnataka Value Added Tax Act, 2003 — Section 62, Section 63, Section 65

Citation : (2016) 02 KAR CK 0210

Hon'ble Judges : Jayant M. Patel and S. Sujatha, JJ.

Bench : Division Bench

Advocate : Venkatesh S. Arbatti, Advocate, for the Appellant; T.K. Vedamurthy, HCGP, for the Respondent

Final Decision : Disposed Off

Judgement

Jayant M. Patel, J.—1. The present petition is filed on the following questions of law:

"4.1. Whether the KAT was justified in upholding the lower authorities'' orders in a routine manner without dealing with the petitioner''s contentions independently on merits?

4.2. Whether the KAT was justified in upholding the lower authorities'' orders in a routine manner without considering the documents on record submitted by the petitioner independently on merits, which would prove that the product sale consideration under the contract between the petitioner and its customer/client, is inclusive of warranty period replacements and has already suffered tax?

4.3. Whether the KAT was justified in rejecting the contentions of the petitioner that the Warranty replacements of spares outside the State is non taxable turnover, as such it does not attract tax under the CST Act?

4.4. Whether the KAT grossly erred in not even considering the petitioner''s case against levy of interest?

4.5. Whether the KAT grossly erred in not even considering the petitioner''s case against levy of penalty?

4.6. Whether the order of the KAT suffered from very serious deficiencies and amounted to an abuse of process of law warranting interference from this Hon''ble Court."

2. The petitioner has raised more than one questions of law but we are of the view that only above referred question No. 4.2 may arise for consideration.

3. We have heard Mr. Venkatesh S. Arbatti, learned counsel for the petitioner.

4. The facts as appear from the record are that; on 18.12.2013 notice came to be issued by DCCT under Section 9(2) of CST Act seeking to carry out reassessment in relation to assessment year 2011-12. The petitioner filed reply to the proposition notice on 11.2.2014. Re-assessment order was passed by DCCT.

5. The petitioner filed appeals before JCCT under Section 62 of K-VAT Act challenging the said order. On 15.11.2014, the appeal was partly allowed in relation to Form No. ''C'' and the appeal was dismissed confirming the order of levy of tax, penalty and interest. The matter was further carried in appeals before KAT (Tribunal) under Section 63 of the K-VAT Act. On 18.12.2015, the Tribunal dismissed the appeal and confirmed the orders passed for re-assessment and further confirmed by the JCCT in the appeals.

6. Under the circumstances, the present petition under Section 65 of the K-VAT Act before this Court.

7. The perusal of the order passed by the Tribunal and more particularly at paragraphs 9 and 10 it is observed as under:

"9. The assessing authority in its order has clearly mentioned that the appellant even after utilizing the opportunity afforded to it failed to file the statutory forms. Therefore, it is clear that the appellant had not produced or submitted any such documents in support of his contention. Sec. 6A of the CST Act reads thus:

6-A: Burden of proof, etc., in case of transfer of goods claimed otherwise than by way of sale.

(1) Where any dealer claims that he is not liable to pay tax under this Act, in respect of any goods, on the ground that the movement of such goods, from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be, and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer and for this purpose he may furnish to the assessing authority, within the prescribed time or within such further time as that authority may, for sufficient cause, permit, a declaration, duly filled and signed by the principal officer of the other place of business, or his agent or principal, as the case may be containing the prescribed particulars the

prescribed form obtained from the prescribed authority, along with the evidence of dispatch of such goods and if the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed for all purpose of this Act to have been occasioned as a result of sale.

(2) If the assessing authority is satisfied after making such inquiry as he may deem necessary that the particulars contained in the declaration furnished by a dealer under sub-section (1) are true, and that no interstate sale has been effected, he may, at the time of, or at any time before, the assessment of the tax payable by the dealer under this Act, make an order to that effect and there upon the movement of goods to which the declaration relates shall, subject to the provisions of sub-section (3) shall be deemed for the purposes of this Act to have been occasioned otherwise than as a result of sale.

(3) Nothing contain in sub-section (2) shall preclude reassessment by the assessing authority on the ground of discovery of new facts or revision by a higher authority on the ground that the findings of the assessing authority are contrary to law, and such reassessment or revision may be done in accordance with the provisions of general sales tax law of the state.

Explanation:-In this section, "assessing authority", in relation to a dealer, means the authority for the time being competent to assess the tax payable by the dealer under this Act.

10. When the appellant failed to substantiate his contention by placing valid material, it cannot termed as the warranty replacements and believe the same. Further it is clear that neither in KVAT Act nor in CST the contention of the appellant is not covered and no such exemption is provided in the statute regarding the alleged warranty replacements. When the statute mandates, a dealer to file Form-F with supporting documents, he bound to submit the same in support of his claims. If the dealer fails to furnish such declarations the movement of such goods shall be deemed for all purposes of the Act as a result of sale. The burden of proof has been clearly discussed by the Hon''ble High Court of Karnataka in the case between Harison and Company, Belgaum and the Additional Commissioner of Commercial Taxes, Belgaum Zone, Belgaum, reported in 2005 in (58) Kar.L.J. 38A (HC) (DB). Therefore the appellant failed to prove his contention by adducing proper and valid materials before the AA. When he failed to do so, automatically the statute directs, that it should be treated as a sale. Accordingly the AA has acted and recomputed the tax, levied the tax, penalty and interest as per the statutory provisions."

8. Consequently, the appeal is dismissed.

9. The attempt on the part of the learned counsel for the appellant was to contend that, such can be said to be replacement of the goods or particles or the products but cannot be termed as sale nor can be termed as transfer of stock to any other place of business or his agent or principal as the case may be and therefore, the declaration was not required to be filed. In his submission, when

declaration was not required to be filed, further consequences in law for assessment of tax, penalty etc., on account of non-filing of the declaration would not arise. He submitted, the Tribunal has not properly considered the questions which arise for consideration and hence this Court may consider in the present petition.

10. As such, if the contention is examined in the light of the finding recorded by the Tribunal and more particularly at paragraph-10 it appears that, the Tribunal, upon appreciation of the evidence has found that the appellant has failed to substantiate his contention by placing valid material.

11. In our view, when, upon the appreciation of the evidence produced on record, the finding is recorded by the Tribunal that there is failure to discharge the burden and if the appellant is to contend that there was no failure to discharge the burden, such shall be an essentially a question of fact and not the question of law as sought to be canvassed.

12. The second ground contended that, as it was not a case of transfer of stock and therefore, no declaration was required to be filed, in our view, cannot be accepted on the face of Section 6-A of the CST Act more particularly when on facts there is a finding that, the appellant has failed to discharge the burden by placing valid material to show that the goods were not transferred to any other place of business or to his agent or his principal.

13. In view of the above, we do not find that petition deserves to be entertained. Hence, dismissed.

14. In view of disposal of the petition, the interim application I.A. I/16 would not survive and the same shall stand disposed of.