(2013) 12 KAR CK 0385

In the Karnataka High Court

Case No : Writ Petition No. 55411 of 2013 (T-RES)

Wipro Limited APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 06-12-2013

Acts Referred:

Citation : (2014) 78 KarLJ 493

Hon'ble Judges : B.V. Nagarathna, J

Bench : Single Bench

Judgement

B.V. Nagarathna, J.—The endorsement dated 21-11-2013 issued by the Assistant Commissioner, Mysore, is assailed in this writ petition. The brief facts of the case are that the petitioner is engaged inter alia in the sale of computer hardware and software and registered under the Karnataka Value Added Tax Act, 2003 (hereinafter referred to as "the KVAT Act") as a dealer. Under the provisions of the Act, the petitioner has to file monthly returns in Form VAT 100 of the Karnataka Value Added Tax Rules, 2005 and annual returns in Form VAT 240. It is an admitted fact that in respect of certain transactions entered into by the petitioner with certain other dealers during the assessment years 2007-2008 and 2009-2010, the monthly returns filed in Form VAT 100 were incomplete inasmuch as certain transactions pertaining to inter-State purchase turnover and stock transactions were not reflected in the monthly returns, the details of which are at Annexure-B. It is also stated that those transactions found a place in the annual return filed for the aforesaid years in Form VAT 240. By a communication dated 8-11-2013 (Annexure-B), the petitioner made a request for C and F Forms of the Central Sales Tax (Registration and Turnover) Rules, 1957 in respect of transactions detailed in Annexure-B. In response to which the impugned endorsement at Annexure-C has been issued stating that as the monthly returns in Form VAT 100 has been incomplete and therefore C and F Forms cannot be issued. That endorsement is assailed in this writ petition.

2. I have heard the learned Counsel for the petitioner and learned Additional

Government Advocate appearing for respondents on advance notice and perused the material on record.

3. During the course of submission, it has been pointed out that Rules 38 and 39 are the relevant Rules made under the Act applicable to the case on hand. It is contended by the learned Counsel for the petitioner that if there is any incorrect or incomplete monthly return filed, then a notice has to be issued in Form VAT 150 requiring the dealer to complete the return within ten days from the date of issuance of the notice. In the instant case, such a notice has not been issued by the respondent to the petitioner. Even if there is a mistake in the monthly returns filed, with regard to the aforesaid assessment years, the petitioner had to be notified to correct those monthly returns. But the impugned endorsement declines the grant of C and F Forms, which cannot be a consequence of the non-filing of the correct monthly returns. In other words, it is contended that the filing of incorrect or incomplete monthly returns in Form VAT 100 cannot result in withholding of C and F Forms by the Department. In these circumstances, learned Counsel for the petitioner states that if sometime is granted, the petitioner would correct the monthly returns filed in Form VAT 100 for the aforesaid years wherein incomplete and incorrect returns are filed.

4. Learned Additional Government Advocate supporting the endorsement, has stated that in the absence of correct and complete return being filed, no relief cannot be granted to the petitioner. I have perused Rules 38 and 39 of the Rules 2005 made under the Act as well as the endorsement impugned in this writ petition. It is noted that in Form VAT 150 notice has to be issued to the petitioner by the respondent. As no such notice has been issued by the respondent, the impugned endorsement shall be construed as if it is a notice issued in Form VAT 150 under sub-rule (1) of Rule 39 of the Rules of 2005. The petitioner undertakes to file the correct monthly returns in Form VAT 100 as required under sub-rule (1) of Rule 39 as if a notice has been issued in Form VAT 150, the aforesaid exercise shall be carried out by the petitioner within ten days from the date of receipt of the certified copy of this order. If such correct returns are filed by the petitioner, then the respondent is directed to issue C and F Forms within one week thereafter.

With the aforesaid directions, the writ petition is disposed of.

