

(2009) 08 KAR CK 0014

In the Karnataka High Court

Case No : Sales Tax Revision Petition No's. 13 and 15 of 2009

WIPRO Limited Infotech Group

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 07-08-2009

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 18 AA, 18 AA (4), 23 (1)

Citation : (2010) 29 VST 521

Hon'ble Judges : D.V. Shylendra Kumar, J;Aravind Kumar, J

Bench : Division Bench

Advocate : V.S. Arbatti, for P.M. Vasudev and Co, for the Appellant; H.M. Manjunath, AGA, for the Respondent

Judgement

D.V. Shylendra Kumar, J.

Re: STRP No. is of 2009

1. The revision petitioner is a dealer under the provisions of the Karnataka Sales Tax Act, 1957 [for short. KST Act], has filed the petition u/s 23(1) of the KST Act.

2. The petitioner in its return indicated certain amount that had been collected by way of tax in respect, of merchandise sold by the petitioner-dealer at a particular rate and also remitted the amount of tax as indicated in the return. It was subsequently noticed that for the relevant period, the particular product sold by the petitioner-dealer was exempt from levy of tax, except for one or two months of the entire period, and in respect of rest of the period it was at nil rate, whereas the tax, it appeals, had been indicated to have been collected at 4% and on such premise, remitted the tax component along with the returns.

3. The authorities on noticing this position, caused a notice u/s 18AA KST Act read with Section 9(2) of the Central Sales Tax Act, 1956 [for short, CST Act], as it was found that the position was not much different in respect of the amount shown to be the tax component under the KST Act and the CST Act and the dealer was called upon to show cause as to why the amount should not be

forfeited in terms of the provisions.

4. The dealer, it appears, came up with an ingenious explanation that though the periodical returns in fact did show the amount to be as tax component of the price amount collected from the purchasers, nevertheless, the transaction with the purchasers was one of fixing a price as lump sum amount in respect of the product sold and that no part of the price was collected by way of tax and therefore the dealer in fact had never paid any amount from out of the sale price by way of tax nor the dealer had collected the part of the amount though shown as tax collected in the return filed as by way of tax and therefore submitted that the amount was not liable for forfeiture, as the amount had not in fact been collected by way of tax from the customers. This explanation did not find favour with the assessing officer.

5. Aggrieved dealer preferred an appeal and further appeal to the tribunal. Both the appellate authorities found on facts the explanation was totally untenable; that the very returns by the dealer indicate the amount as component of tax of the sale price and there was no way of the dealer contending to the contrary and rejected the contentions and dismissed the appeals. It is against these orders the present revision petitions.

6. Appearing on behalf of the revision petitioner, submission of Sri PM Vasudev is that the authorities should have examined the factual position as asserted by the dealer, that in fact there was no collection of any amount by the dealer as tax from its customers and if so the provisions of Section 18AA of the KST Act were not even attracted and there is no quantum amount in terms of the provisions of Section 18AA of the KST Act.

7. In support of the submission, learned Counsel for the petitioner would further elaborate that though the periodic monthly returns filed by the dealer did indicate that the dealer had collected certain amount as by way of tax, both under the KST Act and CST Act, the amount, in fact, had not been so collected; that the amount paid by the purchasers only represents the price, of the entire product and if so, the authorities not examining this factual aspect is an error committed; that it would ultimately reflect on the justification of the forfeiture of the amount or otherwise and in support of this submission has placed reliance on the decision of the Supreme Court in the case of Central Wines, Hyderabad Vs. Special Commercial Tax Officer, and submits that it was open to the dealer to demonstrate that in fact the amount had not been collected by way of tax from the purchasers and non-examination of this aspect by the authorities below has vitiated the orders. In this regard, learned Counsel would draw our attention to the judgment of the Supreme Court pointing out that the amount which is otherwise shown as sale price is split up into price of the goods as well as the tax in itself is not conclusive to hold that the product is sold at the very price on which the invoice as indicated, but it can nevertheless be concluded that it had been sold at the net price and as corollary to this argument, it was open to the present petitioner to demonstrate that though in the periodic returns filed by the

dealer, it had been shown as price component and tax component by splitting to net price and tax, and it was nevertheless open to the dealer to demonstrate that in fact it was not so, but the entire amount only represents price component and therefore no tax in fact had been collected from any purchasers.

8. The Supreme Court was examining a situation where a dealer wanted to contend that the turnover by itself included tax component and therefore that part should be excluded from the turnover for the purpose of computation of tax liability and this argument had been rejected in fact as indicated in para-14 of the very judgment, which reads as under:

14. Lastly it was argued that in the second category of cases where the sales tax was not included in the bill and was kept in the suspense account by the seller, it could not be included in the total turn over. This fallacious argument was rightly negated by the High Court for the obvious reason that the amount includible in the turn over on the true interpretation of the relevant provisions cannot become excludable merely by reason of the accountancy device adopted by the assessee concerned.

the Supreme Court characterized an argument as advanced in the present to indicate that such an argument itself is a fallacious argument and had been rightly negated by the high court for obvious reason that the amount includible in the turnover on the true interpretation of the relevant provisions cannot become excludable merely by reason of the accountancy device adopted by the dealer. In the present case, the dealer seeking an explanation for discrepancy as a mistake attributable to the functioning of the computer, in the sense, invoices as generated by utilizing computers continue to indicate the amount was as tax component and price component and whereas in reality, the entire amount was only price component.

9. While the judgment relied upon by the learned Counsel for the petitioner does not advance the case of the petitioner, but on the other hand would work in the reverse direction. Even otherwise also, it is not open to a dealer to contend that an amount which was shown and declared to have been collected as by way of tax and payment remitted to the government as by way of tax, was not at all collected earlier, only because it subsequently points out that during the relevant time, there is no tax liability on the product and therefore there was no occasion for the dealer to have collected the amount and the amount was collected is not liable for forfeiture in terms of Section 18AA of the KSAT Act This argument fails and is rejected.

10. One another argument advanced on behalf of the petitioner is that the amount having been paid by the dealer itself in the sense, the tax component as indicated for the goods having been supplied by the dealer itself from out of the sale price received from the customers, it was still even if the amount was forfeited to the state, if anything recorded by the assessing officer and the higher authorities that the dealer had in fact collected is modified or varied, a finding is

recorded that it had not been collected, the dealer can take the benefit of sub-section (4) of Section 18AA, the matter requires examination on merits in this revision.

11. In the first instance, it is not open to the dealer to put forth such a contention, in the light of the finding of fact recorded by all the three authorities below and even otherwise on the principle of estoppel that the dealer expressly declared the amount as a tax collected from the buyers, but went even further by claiming corresponding deduction from out of the total turnover for the purpose of

computing the taxable turnover part of the total turnover and it is in these circumstances, it is not open for the dealer to assert that the amount on to the contrary was not actually collected as such from the buyers and coming up with this stand much later.

12. It is to be noticed that sub-section (4) of Section 18AA is a provision applicable only to persons who had in fact paid some amount by way of tax, which has been collected by the registered dealer and ultimately having been found not to be a tax, but anything other than that, and therefore liable for forfeiture in the hands of such a dealer and the buyers to claim refund. Such is not the situation here. Therefore, reference to sub-section (4) of Section 18AA of the KST Act is of no consequence. The argument fails and accordingly STRP 15 of 2009 is dismissed.

Re: STRP No. 13 of 2009

13. In this revision petition, though the questions arise in the context of the provisions of the CST Act, the fact situation and the orders passed by the authorities below being identical to the fact situation in STRP 13 of 2009 and for the reasons assigned to reject STRP No. 15 of 2009. STRP No. 13 of 2009 is also rejected.