(2005) 05 KAR CK 0032

In the Karnataka High Court

Case No : Writ Petition No. 11610 of 2005

Wipro Technologies APPELLANT

Vs

State of Karnataka and Another RESPONDENT

Date of Decision : 30-05-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Karnataka Sales Tax Act, 1957 — Section 20, 22, 22 (5)
Karnataka Sales Tax Rules, 1957 — Rule 30B

Citation : (2008) 11 VST 631

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

Bench : Single Bench

Advocate : K.P. Kumar for P.M. Vasudev and Co, for the Appellant; Niloufer Akbar, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Writ petition is by a dealer directed against an interim order passed by the Karnataka Appellate Tribunal in second appeal preferred u/s 22 of the Karnataka Sales Tax Act, 1957 (for short, "the Act")

2. The appellant who was disputing the total tax liability of Rs. 2.38 crores in the appeals had filed an application for stay u/s 22(5) of the Act. It is not in dispute that the appellant had deposited a sum of Rs. 1.41 crores and odd and the balance amount out of the subject-matter still payable by the petitioner was Rs. 1,19,46,499. The said amount was the subject-matter of three appeals before the Tribunal for the years 2001-02, 2002-03 under the KST Act and for the year 2002-03 under the Central Sales Tax Act, 1956.

3. For maintaining an appeal and to enable the Tribunal to consider such an appeal, the prerequisite under the statute is that one half of the disputed tax should be deposited. It is in respect of the other half that the Tribunal is enabled to consider an application for grant of stay of the recovery of this other half in its discretion in terms of the provisions of Sub-section (5) of Section 22 which reads

as under:

22. Appeal to the Appellate Tribunal.--

(1) to (4) ...

(5) Notwithstanding that an appeal has been preferred under Sub-section (1), tax shall be paid in accordance with the assessment made in the case:

Provided that the Appellate Tribunal may, except in case of an appeal against an order passed by the (Deputy Commissioner) or (Joint commissioner) u/s 20 in its discretion, give such directions as it thinks fit, in regard to the payment of tax, if the appellant furnishes sufficient security to its satisfaction in such form and manner as may be prescribed:

Provided further that the Appellate Tribunal may, in case of any appeal against an order passed by the Deputy Commissioner or Joint Commissioner u/s 20, in its discretion, stay payment of one half of tax, if the appellant makes payment of the other half of the tax disputed:

Provided also that the Appellate Tribunal shall dispose of such appeal falling under second proviso within a period of one hundred eighty days from the date of the order staying proceedings of recovery of one half of tax and, if such appeal is not so disposed of within the period specified, the order of stay shall stand vacated after the said period.

4. The Tribunal in exercise of this power, in fact, has passed an order dated March 17, 2005 which is impugned in the writ petition holding that the payment of recovery of the balance amount of Rs. 1,19,46,499 is stayed subject to the following conditions:

i. The appellant shall pay 50 per cent of the balance tax remaining unpaid by cash/demand draft.

ii. For balance 50 per cent of tax remaining unpaid it shall furnish bank guarantee or any other security to the satisfaction of the assessing authority as specified under Rule 30-B of the Karnataka Sales Tax Rules, 1957.

iii. The aforesaid conditions shall be complied within 7 days from today failing which this stay automatically stands vacated.

iv. This order of stay will be vacated on expiry of 180 days from today or on disposal of the appeals whichever is earlier.

5. It is about the correctness of this conditional order, the present writ petition is preferred.

6. Submission of Sri K. P. Kumar, learned Senior Counsel appearing for the petitioner is that the conditions imposed is not in consonance with the proviso to Sub-section (5) of Section 22 of the Act; that the Tribunal while passing the order under this provision, having taken note of that the petitioner has already

paid more than 50 per cent of the subject-matter of appeal, should have granted stay without imposing any further conditions; that the conditions now imposed virtually amounts to insisting on the petitioner-appellant to deposit 75 per cent of the amount in dispute subject-matter of appeals; that, that is not the proper understanding of the provisions of Sub-section (5) of Section 22 of the Act or the proviso to this sub-section ; that when once the appellant before the Tribunal has deposited the amount equal to or exceeding one half of the disputed tax amount in the appeal; the Tribunal should grant an order of stay in respect of the other half.

7. The alternative submission on behalf of the petitioner by its Senior Counsel is that the Tribunal having once observed that the other half or balance amount of Rs. 1,19,46,499 is stayed, thereafter it could not have imposed conditions calling upon the petitioner to deposit further 50 per cent in this amount, etc.

8. I have heard Ms. Niloufer Akbar, learned Additional Government Advocate appearing for the respondents.

9. The legal question canvassed is as to whether the Tribunal is justified in imposing conditions as found in its order and as to whether it is in consonance with the statutory provisions.

10. A bare reading of the provision will make it very clear that the discretion that is given to the Tribunal in granting stay of the recovery of the amount is only in respect of the other half of the amount after the appellant deposited one half of the amount. After depositing such amount, the appellant-dealer is enabled to move the Tribunal for seeking stay of the recovery of the balance amount under the proviso to Sub-section (5) of Section 22 of the Act. The Tribunal is definitely entitled to stay this other half of the amount in its discretion. Discretion means that it is to the satisfaction of the Tribunal depending upon the facts and circumstances of the case. The discretion can vary from granting an absolute stay of the entire amount or a conditional stay, in the sense that, some part of the amount may have to be deposited and for some part of the amount there should be a security or in a given case the Tribunal may find no justification for stay of any part of the amount. It is in exercise of that power, the Tribunal in the instant case, has directed the appellant before it to deposit 50 per cent of the balance amount and furnish bank guarantee for other 50 per cent of that amount. I do not think there is anything wrong at all in the order nor in the understanding of the scope of the proviso to Sub-section (5) of Section 22 of the Act by the Tribunal. If the Tribunal has understood in the manner as is stated to and contended by the learned Counsel for the petitioner, I am of the view that such an understanding is in consonance with the statutory provisions. In fact, the order indicates that the understanding is such. Therefore, the contention that the conditional order is not in consonance with the proviso to Sub-section (5) of Section 22 of the Act or that it is not a proper understanding of the provisions cannot be accepted and it is rejected.

11. The alternative submission that when once the Tribunal says that the remaining tax amount is stayed, it could not have imposed conditions thereafter, is a submission which is to be noticed only to be rejected. The mere construction of a sentence while passing a conditional order cannot in itself be understood or interpreted as one which can in any way affect the manner in which the power can be exercised. There cannot be a dispute that the Tribunal has the discretion to stay the balance 50 per cent subject to such conditions as it may impose. What the Tribunal has done under the impugned order and assuming that the phraseology could have been better, that cannot constitute a ground for invalidating the order. I find absolutely no scope for interference in an interim order, that too a discretionary interim order passed by the Tribunal in the pending appeals before it.

12. No scope for interference in the exercise of writ jurisdiction under Articles 226 and 227 of the Constitution of India.

13. Writ petition is dismissed.

Though the petition is dismissed as one not warranting interference, Sri Kumar, learned Senior Counsel appearing for the petitioner submits that the petitioner may be granted some further time to deposit the amount and furnish security in terms of the order of the Tribunal, impugned in this writ petition.

14. Learned Government Advocate has pointed out that the order itself was a conditional one and could have operated subject to the petitioner having complied with the conditions, but the petitioner preferred the writ petition to buy time, instead of depositing the amount within the permitted time and therefore the order of stay never became operative, in the sense that, in the absence of such deposit within seven days from the date of order, there was no stay, etc.

15. Be that as it may, if the stay order had become ineffective after the lapse of seven days, perhaps that could have been made use of by the Revenue for resorting to recovery, but that had not happened and later this court had granted an interim order of stay pending further proceedings in this writ petition, and now that the writ petition is being dismissed, the position as earlier will be restored.

16. However, a request is being made by the learned Senior Counsel appearing for the petitioner for grant of further time and an undertaking in the nature of an affidavit is filed, praying for four weeks'' time from this day to the petitioner to enable the petitioner on its own to make good the amount in compliance with the conditions imposed by the Tribunal under the impugned order in depositing the amount as indicated therein and furnish a security as per that order and this will be done even without compelling the revenue to resort to recovery, etc.

17. I am of the opinion that it may be appropriate to pass an order that the petitioner shall in terms of the undertaking, deposit the amount and furnish security as per the order of the Tribunal and as per the undertaking affidavit filed

before this court today within four weeks from today and during such time the respondents shall not resort to recovery proceedings.

18. However, it is for the petitioner to abide by the affidavit and undertaking given herein, failure of which will undoubtedly amount to petitioner filing affidavit without bona fide and without justification and only for the purpose of buying time. It is hoped that the petitioner will not give room for such a circumstance. Except for this observation, the writ petition is dismissed.