



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF MARCH, 2025

PRESENT

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

AND

THE HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR

SALES TAX REVISION PETITION NO. 42 OF 2022

BETWEEN:

M/S SANDOZ PRIVATE LIMITED
NO.86, 3RD CROSS, NTY LAYOUT,
OFF MYSURU ROAD, BENGALURU - 560 026
REP BY SRI. SUDHIR GHATGE,
HEAD INDIRECT TAX &
AUTHORITIES SIGNATORY.

...PETITIONER

(BY SRI. THIRUMALESH M.,ADVOCATE)

AND:

STATE OF KARNATAKA
DY. COMMISSIONER OF COMMERCIAL TAXES,
(AUDIT) 2.2, DVO-2,
2ND FLOOR, PIONEER PLAZA,
KENCHANAHALLI MAIN ROAD,
RAJARAJESHWARI NAGAR,
BENGALURU - 560 098.

...RESPONDENT

(BY SRI.ADITYA VIKRAM BHAT.,AGA)

THIS SALES TAX REVISION PETITION UNDER SECTION 65(1) OF KARNATAKA VALUE ADDED TAX ACT,2003 AGAINST THE JUDGMENT DATED 29.01.2021 PASSED IN STA NO.674/2016 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL AT BANGALORE, DISMISSING THE APPEAL FILED AGAINST THE ORDER DATED 12.07.2016 PASSED IN JCCT/(AP)2T/16-17 CST/AP/13-11-12 ON THE FILE OF THE JOINT COMMISSIONER OF COMMERCIAL TAXES(APPEALS-2), BENGALURU, REJECTING THE RECTIFICATION APPLICATION

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signed by
CHETAN B C
Location:
HIGH
COURT OF
KARNATAKA



DATED 28.06.2016 FILED BY THE APPELLANT TO RECTIFY THE APPEAL ORDER NO.CST/AP/13/11-12 PASSED ON 22.06.2016 IN RESPECT OF THE APPEAL FILED AGAINST ENDORSEMENT OF DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT)-22, DVO-2, BENGALURU, THE APPELLANT HAS REQUESTED FOR RECTIFICATION OF THE REASSESSMENT ORDER DATED 07.02.2011 PASSED BY THE DCCT, BENGALURU UNDER SECTION 9(2) OF THE CENTRAL SALES TAX ACT, 1956 FOR THE TAX PERIODS OF APRIL 2005 TO MARCH 2006.

THIS STRP COMING ON FOR FINAL HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE KRISHNA S DIXIT
AND
HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR

ORAL ORDER

(PER: HON'BLE MR JUSTICE KRISHNA S DIXIT)

This revision petition filed by the Assesse u/s.65(1) of Karnataka Value Added Tax Act, 2003 seeks to call in question Karnataka Appellate Tribunal's order dated 29.01.2021 whereby his STA No.674/2016 has been negatived thereby upholding the rejection of his rectification application qua the appeal order dated 22.06.2016.

2. Petition is structured on the following questions of law:



"i) Whether , in the facts and circumstances of the case of the petitioner, the Karnataka Appellate Tribunal was in error in having raised an issue, which had not been raised by the lower authorities and also not argued at the time of final hearing by both the sides, and answered the same against the petitioner?

ii) Whether, in the facts and circumstances of the case of the petitioner, the Karnataka Appellate Tribunal was in error in having held that the petitioner is not entitled for exemption of turnover under section 5 (3) of the CST Act as there is no claim for exemption in the monthly return and no revised return has been filed, in spite of the fact that the export turnover had been declared as inter-State sales turnover?

iii) Whether, in the facts and circumstances of the case of the petitioner, the Karnataka Appellate Tribunal was in error in having held that the judgment of this Hon'ble Court in the case of M/s A.R. Associates dated 2-1-2001 was applicable to the petitioner's case for the year 2005-06 in spite of sub-sections (4) & (5) having been inserted in section 5 of CST Act, 1956 with effect from 13-5-2005 by Act No.18 of 2005 and it is the single and only condition prescribed in sub-section (4) for applicability of sub-section (3) that the dealer should produce the prescribed declaration duly filled and signed by the exporter to whom the goods are sold, namely, Form H prescribed in rule 12(10) of CST (R & T) Rules, 1957?"

3. Learned counsel for the petitioner vehemently argues that the very approach of the Tribunal as also the



authorities to the matter in question is flawsome inasmuch as they have misconstrued the provisions of Central Sales Tax Act, 1956 and rules promulgated thereunder; the Tribunal and the authorities failed to see that the applicable provisions of law having been considered by the Madras High Court, relief has been accorded to Assessee of the kind; Form-H and other evidentiary material can be produced at any point till assessment proceedings are concluded; the transaction in question demonstrably fits into Sec.5(3) of the Act r/w Rule 12(10)(a) of CST (Registration and Turnover) Rules 1957 coupled with Form-H; therefore tax exemption ought to have been granted to the sale of pharmaceuticals which were intended to be exported. Learned AGA appearing for the Revenue per contra opposes the petition contending that the questions framed cannot be termed as questions of law at all; concurrent findings of the authorities on the fact matrix as to the transaction in question was toward intended export, cannot be a subject matter of deeper examination at the hands of revisional court; even



otherwise, no benefit can be granted to the petitioner in view of a Co-ordinate Bench decision in **A.R.ASSOCIATES vs. COMMISSIONER OF COMMERCIAL TAXES¹**. So contending he seeks dismissal of the petition.

4. Having heard the learned counsel for the parties and having perused the petition papers, we decline indulgence in the matter broadly agreeing with the reasoning of the Tribunal. Sub-section (3) of Sec.5 of the Act has the following text:

"Notwithstanding anything contained in sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export."

Section 5 is intended to promote export business of the country and therefore grants certain concessions & exemptions in respect of sale of goods that are exported or intended to be exported. Sub-section (3) grants

¹ 2001 SCC OnLine Kar 778



exemption from tax in respect of last sale of goods provided that some tangible evidentiary material as prescribed in law is produced to prove the intended onward transaction of export.

5. The fact matrix that would fit into the precincts of sub-section (3) of Sec.5 can be illustrated thus: 'A' is the Assessee; 'B' is his buyer and 'C' being the vendee intends to export the goods in question. If 'A' wants to claim exemption/concession from tax, first he has to ensure that there exists an agreement or a purchase order between 'B' and 'C'; further the sale transaction of 'A' is intended to effectuate or has thick nexus with the transaction between 'B' and 'C'. In other words, if the transaction between 'A' and 'B' has nothing to do with the transaction between 'B' and 'C', sub-section (3) is not attracted. Added, this sub-section r/w Rule 12(10)(a) of the Rules coupled with Form-H prescribes the nature of evidentiary material to vouch transactions of the kind. To put it succinctly, mandate of law in this regard is both



substantive & evidentiary. It hardly needs to be stated that the provisions of tax law should be literally construed, subject to all just exceptions.

6. Sub-section (3) of Sec.5 of the Act r/w Rule 12(10(a) of the subject rules, which is much pressed into service by both the sides has been construed by the Co-ordinate Bench in A.R.ASSOCIATES *supra* wherein paragraphs 3 & 4 read as under:

"3. We have carefully assessed the rival contentions and we do find on a perusal of the requirements of section 5(3) of the Central Sales Tax Act read with rule 12(10)(a) of the Central Sales Tax (Registration and Turnover) Rules that it is insufficient for the assessee to merely produce the form H and the bill of lading because the most important evidence that is required to be produced as per the requirements of law is the export agreement. The purpose behind the insistence on this provision is in order to ensure that there was not only in existence a valid agreement for export and an order but also to be able to identify the particular export goods and to establish a link or nexus between those goods and the export agreement. In this background there can be no question of either a waiver or a concession being made in so far as the law postulates certain requirements and the non-fulfilment of those requirements will be fatal to the case of the assessee in question. It is not



sufficient for an assessee to establish that some exports have taken place or that certain goods had been sold to the export house because the law goes a little further in ensuring that the consignment had in fact left the territory of India, being part of an export consignment and it is only when this last ingredient is fulfilled that the privilege of exemption can be granted. We see no ground on which the revisional order can therefore be interfered with.

4. At this stage, the appellants' learned counsel submitted that the appellants did not appear before the revisional authority, that a default had taken place and that they should be afforded an opportunity of appearing before that authority and establishing their case. This request has been opposed by the learned Government Advocate and rightly so. The principle that applies to these proceedings is that production of documents and evidence is timely and is also required to be done at the requisite stage and if this is not done then the law proceeds on the assumption that such evidence is not in existent or not available. Apart from this, we are of the view that any such indulgence would dilate these proceedings in circles for years, and we also need to take into account the time factor and the load both on courts and on authorities if cases are indiscriminately remanded. Undoubtedly, the law does make an exception in those of the instances where very valid and cogent reasons are set out for the default or for those cases where the aggrieved party is able to demonstrate that but for the absence of appearance, the chances of success were almost certain and that it would really be a



miscarriage of justice if the party is not afforded a second opportunity. None of those principles apply to the present case and consequently, we are of the view that no second opportunity can be afforded to the present appellants."

7. Learned AGA is more than justified in contending that sub-section (3) of Sec.5 is a qualified provision to sub-section (1) and that in addition to what it requires, the Assessee has to comply with other requirement prescribed under Rule 12(10)(a) coupled with Form-H. The heavy reliance of learned counsel appearing for the Assessee on the decision of Madras High Court in *V WIN GARMENTS vs. ADDL. DEPUTY COMMERCIAL TAX OFFICER*² does not come to his aid. Paragraph 4 which is loudly read out runs as under:

"According to the learned counsel for the petitioner, though the petitioner has not produced the agreement with foreign buyers, the petitioner has filed form H and other documents in support of his claim and the order of the assessing authority without insisting those documents and by considering the production of agreement with foreign buyers, is unfair and arbitrary and is bad in law. This court finds considerable force in such

² (2011) 42 VST 330 (Mad)



argument advanced on the side of the petitioner. What is required on the part of the petitioner is to prove the factum of the transaction and once he is able to do so with sufficient and satisfactory documents, the value of the same is exempted from tax liability and no rule lays it mandatory to produce the agreement with foreign buyers. That being so, the failure on the part of the assessing authority to consider the documents already produced by the petitioner and to pass appropriate order in the light of the same amounts to non-application of mind and the impugned order, which is the outcome of the same cannot be legally allowed to stand. The learned counsel for the petitioner has also in the course of hearing, produced the copy of the order passed by our High Court dated August 30, 2004 in W. P. No. 24354 of 2004 made in Rolls Appliances (P) Limited v. Commercial Tax Officer and order dated April 5, 2004 in W.A.No.4 of 2003 in South India Hosiery Manufacturers Association v. State of Tamil."

This decision does not refer to the provisions of the Act and the Rules we are considering. It appears to be fact specific. No *ratio decidendi* can be deduced from this decision by applying any conventional methods such as Prof. Eugene Wambaugh's Test or Prof. Upendra Baxi's Test. When no law is discussed, decisions do not possess precedential value, hardly needs to be stated.



In the above circumstances, this petition being devoid of merits is liable to be dismissed and accordingly it is, costs having been made easy.

**Sd/-
(KRISHNA S DIXIT)
JUDGE**

**Sd/-
(RAMACHANDRA D. HUDDAR)
JUDGE**

Snb/
List No.: 1 Sl No.: 35