

State of Karnataka Vs. M/s. Centum Industries Private Limited

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Court : Karnataka

Decided On : Jul-31-2014

Judge : N. Kumar & B. Manohar

Appeal No. : STRP Nos. 294 of 2011 & 210 of 2013

Appellant : State of Karnataka

Respondent : M/s. Centum Industries Private Limited

Judgement :

(Prayer: These STRPs are filed under Section 65 (1) of the KST Act, against the judgment dated 25.7.2011 passed in STA No. 2649 and 2650/2010 on the file of the Karnataka Appellate Tribunal, Bangalore, allowing the appeal.)

1. The revenue has preferred these Revision Petitions challenging the order passed by the Karnataka Appellate Tribunal holding that the authorities were not justified in denying the input tax credit on the principle that once tax has been paid, the party should not be asked to pay tax again and accordingly allowed the input tax credit.

2. The assessee is a private limited Company engaged in manufacture, sales, supply and service of electrical and electronic components such as communication modules, subsystems, components including plastic, sheet metal, machined parts, etc., The assessee is registered as a dealer under the provisions of the Karnataka Value Added Tax Act, 2003 (for short hereinafter referred to as 'the Act') and also

under the Central Sales Tax Act, 1956 with TIN No. 29770214201. During the audit it was noticed that the assessee Company has claimed input tax rebate in respect of local registered purchases. They calculated VAT at 4% and 12.5% separately in the invoices as local sales as applicable. In respect of Central Sales Tax, the assessee has charged and collected at 4% against 'C' form/ 'D' Form and 12.5% without statutory form separately in the invoices. In the monthly returns filed in respect of the period of February 2007, the claim of input tax of Rs.2,43,306/- was rejected on the ground that the said claim was not pertaining to the tax for the period February 2007. It was held that the assessee has to claim input tax rebate in the respective period of purchases effected and also on the ground that the assessee had not filed revised returns within 6 months as provided under Section 35(4) of the Act.

3. Aggrieved by the said order, the assessee preferred an appeal. The first Appellate Authority affirmed the order of the assessing authority and held that as the input tax claims have not been claimed, the returns filed during succeeding month of purchase and the input tax credit has been claimed after 6 months from the date of the purchase, i.e., in the returns filed for the month of February 2007, the appeal came to be dismissed.

4. Aggrieved by the said order, the assessee preferred an appeal to the Karnataka Appellate Tribunal. The Tribunal held that, the input tax is a statutory promise made to the dealer buying the goods from the registered dealer by paying the tax mentioned in the tax invoice. There is nothing in the law stipulating that if input tax is not claimed during the month succeeding the month in which purchase is effected, the dealer would forfeit the claim to input tax and, therefore, the Tribunal held that the lower authorities were not justified in denying the input tax credit. Accordingly, it allowed the appeal and granted the input tax credit. Aggrieved by the said order, the revenue is in appeal.

5. Smt. S. Sujatha, the learned Government Advocate, assailing the impugned order contended that, the statute prescribes the time within which a return is to be filed. If there is an omission to claim input tax rebate in such return, a revised return is to be filed within 6 months putting forth such claim. However, if no such

revised return is filed within the time prescribed, in a return filed for the subsequent period a claim for input tax for the earlier period cannot be put forth. The Tribunal was not justified in holding that there is nothing in law stipulating that input tax is not claimed during the month succeeding the month in which the purchase is effected, the dealer would forfeit the claim to input tax and, therefore, she submits the impugned order is to be set aside and the order passed by the lower authorities is to be restored.

6. Per contra, the learned counsel for the assessee, supporting the impugned order contended that, in law there is no prohibition for putting forth such claim beyond the period prescribed in the statute. Therefore, the order passed by the Tribunal is just and does not call for any interference.

7. In the light of the aforesaid facts and the rival contentions, the question of law that arise for our consideration in these revision petitions is, Whether the assessee is entitled to claim input tax rebate beyond the period of 6 months in a return filed for the said period on the ground that he has omitted to put forth the claim in the return filed for the relevant period?

8. Section 10 of the Act refers to out put tax, input tax and net tax. During the relevant tax period it reads as under: -

"10. Output tax, input tax and net tax.-

(1) Output tax in relation to any registered dealer means the tax payable under this Act in respect of any taxable sale of goods made by that dealer in the course of his business, and includes tax payable by a commission agent in respect of taxable sales of goods made on behalf of such dealer subject to issue of a prescribed declaration by such agent.

(2) Subject to input tax restrictions specified in Sections 11,12,14, 17 and 18, input tax in relation to any registered dealer means the tax collected or payable under this Act on the sale to him of any goods for use in the course of his business, and includes the tax on the sale of goods to his agent who purchases such goods on his behalf subject to the manner as may be prescribed to claim input tax in such

cases. (3) Subject to input tax restrictions specified in Sections 11, 12, 14, 17, 18 and 19, the net tax payable by a registered dealer in respect of each tax period shall be the amount of output tax payable by him in that period less the input tax deductible by him as may be prescribed in that period and shall be accounted for in accordance with the provisions of this Act.

(4) For the purpose of calculating the amount of net tax to be paid or refunded, no deduction for input tax shall be made unless a tax invoice, debit note or credit note, in relation to a sale, has been issued in accordance with Section 29 or Section 30 and is with the registered dealer taking the deduction at the time any return in respect of the sale is furnished, except such tax paid under sub-section (2) of Section 3. (5) Subject to input tax restrictions specified in Sections 11,12, 14,17, 18 and 19, where under sub-section (3) the input tax deductible by a dealer exceeds the output tax payable by him, the excess amount shall be adjusted or refunded together with interest, as may be prescribed."

9. From a reading of the aforesaid provision it is clear that, output tax is a tax payable by any dealer on sale of goods made by him in the course of his business. Input tax is a tax collected by the registered dealer or payable under this Act on the sale to him of any goods for use in the course of his business. Sub-section (3) of Section 10 provides for calculating the net tax payable by the registered dealer. It provides that, the net tax payable by a registered dealer in respect of each tax period shall be the amount of output tax payable by him in that period less the input tax deductible by him as may be prescribed in that period and shall be accounted for in accordance with the provisions of this Act. Therefore, it is clear the word "in that period" specifies the period during which input tax is paid and output tax is payable and the same has to be accounted in accordance with the provisions of the Act. Sub-section (4) makes it clear that, for the purpose of calculating the amount of net tax to be paid or refunded, no deduction for input tax shall be made unless a tax invoice, debit note or credit note, in relation to a sale, has been issued in accordance with Section 29.

10. The Act prescribes in Chapter V provision for administration and collection of tax. Section 35 speaks about returns. During the relevant tax period, it reads as

under:-

"35. Returns.-

(1) Subject to sub-sections (2) to (4), every registered dealer, and the Central Government, a State Government, a statutory body and a local authority liable to pay tax collected under sub-section (2) of Section 9, shall furnish a return in such form and manner, including electronic methods, and shall pay the tax due on such return within twenty days or fifteen days after the end of the preceding month or any other tax period as may be prescribed:

Provided that the specified class of dealers as may be notified by the Commissioner shall furnish particulars for preparation of the return in the prescribed form or submit the return in the prescribed form, electronically through internet in the manner specified in the said notification: Provided further that the specified class of dealers as may be notified by the Commissioner shall pay tax payable on the basis of the return, by electronic remittance through internet in the manner specified in the said notification. (2) The tax on any sale or purchase of goods declared in a return furnished shall become payable at the expiry of the period specified in sub-section (1) without requiring issue of a notice for payment of such tax.

(3) Subject to such terms and conditions as may be specified, the prescribed authority may require any registered dealer.-

(a) to furnish a return for such periods, or

(b) to furnish separate branch returns where the registered dealer has more than one place of business.

(4) If any dealer having furnished a return under this Act, other than a return furnished under sub-section (3) of Section 38, discovers any omission or incorrect statement therein, other than as a result of an inspection or receipt of any other information or evidence by the prescribed authority, he shall furnish a revised return within six months from the end of the relevant tax period except when such revised return is on issue of a debit note under Section 30, subject to sub-section

(2) of Section 72".

11. Sub-section (1) of Section 35 provides for furnishing a return in such form and manner and for payment of tax due on such return within 20 days or 15 days after the end of the preceding month or any other tax period as may be prescribed. Therefore, the statute provides the period within which a return is to be filed under Section 35(1), i.e., within 20 days or 15 days after the end of the preceding month. Sub-section (2) mandates that the tax on any sale or purchase of goods declared in a return furnished shall become payable within 20 days or 15 days as prescribed in sub-section (1) of Section 35 without the assessee waiting for a notice for payment of such tax. Sub-section (4) of Section 35 provides for filing of a revised return if the assessee discovers any omission or incorrect statement in the returns filed under Section 35(1) of the Act. At the relevant point of time such a revised return had to be filed within 6 months from the end of the relevant tax period. Therefore, the statute provides for filing of a return, claiming input tax rebate within the period prescribed in law. If in the return filed there is any omission or incorrect statement, a provision is made for filing of a revised return within the time prescribed. If the returns are not filed within the said period, then the assessee would not be entitled to the benefit of setting off output tax against the input tax.

12. It is contended on behalf of the assessee that, once input tax has been paid, by virtue of Section 10 the assessee is entitled to the rebate of the tax against the output tax notwithstanding the fact that such a claim is not put forth in the returns filed within the aforesaid period. He is entitled to claim such rebate even after the said period, as no period of limitation is prescribed. Once payment of input tax is admitted, the assessee is entitled to the benefit of setting off the input tax against the output tax. If the said interpretation were to be accepted it would render the period prescribed under the Act meaningless. When in the statute a specific period is prescribed for filing of the return under Section 35(1) of the Act and when a provision is made under Section 35(4) of the Act for filing of a revised return again prescribing a time limit, when in sub-section (3) of Section 10 it is categorically stated that the input tax shall be accounted in accordance with the provisions of this Act, the assessee would not be entitled to the benefit conferred on him under

sub-section (4) of Section 10, if it is not accounted for.

13. Reliance was placed on a judgment of this Court in the case of STATE OF KARNATAKA vs K.BOND POLYMERS PRIVATE LIMITED [2013 66 VST 369](KAR) where this Court dealing with sub-section (3) of Section 30 of the Act held that, once the tax is paid under the Act, the assessee is entitled to the benefit of the input tax. The delay in putting forth the claim for refund did not in any way affect his right to claim the said amount, which was legitimately due to him under the Act. That was a judgment rendered in connection with a claim for refund. It dealt with credit and debit notes. It has no application to a case of setting off input tax against output tax under Section 10 of the Act.

14. In the instant case, the assessee paid input tax for the month of June 2006. In the returns filed in July 2006 he did not put forth any claim. He also did not file any revised return within 6 months putting forth the said claim. That is the period prescribed under law under Section 35 (1) and 35 (4) of the Act. It is only in the return filed in the month of February 2007, after the expiry of the aforesaid period, he put forth the said claim. Therefore, the assessing authority as well as the first Appellate Authority rightly held that the claim for input tax rebate put forth for the first time in February 2007 for the period of June 2006 cannot be allowed. However, the Tribunal without reference to the statutory provisions proceeds on the assumption that allowing input tax is a statutory promise made to the dealer buying the goods from the registered dealer by paying that tax mentioned in the tax invoice. There is nothing in law stipulating that if input tax is not claimed during the month succeeding the month in which purchase is effected, the dealer would forfeit his claim to claim input tax. In coming to the said conclusion, the Tribunal has not applied its mind to sub-section (3) of Section 10 which is the provision which determines the net tax payable by a registered dealer in respect of each tax period in arriving at tax liability the amount of output tax payable by the assessee in that period less the input tax deductible by him as may be prescribed in that period and accounted for in accordance with the provisions of the Act. If the assessee is not putting forth a claim for input tax deduction in the return filed in July 2006 nor as he put forth such a claim in a revised claim which he could have filed within 6 months there from his right to claim input deduction is lost. He cannot

for the first time in the returns filed in February 2007 put forth a claim for input tax deduction as the said return was not related to the tax period during which the input tax was paid. In that view of the matter, the Tribunal has not applied its mind to the aforesaid provision and ignoring the mandate of law has allowed the said deduction erroneously. Therefore, the said finding recorded by the Tribunal cannot be sustained and accordingly it is hereby set aside. The question of law raised is answered in favour of the revenue and against the assessee.

15. The other question of law answered by the Tribunal concerning the CST is not entertained by this Court as it is purely a question of fact and rightly decided by the Tribunal.

Ordered accordingly.

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