Mukand Ltd., Vs. The State of Karnataka

Mukand Ltd., Vs. The State of Karnataka

SooperKanoon Citation : sooperkanoon.com/1194515

Court : Karnataka Dharwad

Decided On : Jan-22-2018

Judge : S.Sujatha and John Michael Cunha

Appeal No. : STRP 100006/2016

Appellant : Mukand Ltd.,

Respondent : The State of Karnataka

Judgement :

R IN THE HIGH COURT OF KARNATAKA DHARWAD BENCH DATED THIS THE22D DAY OF JANUARY, 2018 PRESENT THE HONBLE MRS. JUSTICE S. SUJATHA AND THE HONBLE MR. JUSTICE JOHN MICHAEL CUNHA SALES TAX REVISION PETITION NO.100006/2016 BETWEEN: MUKAND LIMITED, HOSPET ROAD, GINIGERA-583 228, KOPPAL TALUQ, KOPPAL DISTIRICT, REPRESENTED HEREIN BY ITS DEPUTY GENERAL MANGAER (F & A), MR.DEBABRATA DAS, AGE48YEARS. PETITIONER (BY SRIYUTHS T.SURYANARAYANA, H.R.KAMBIYAVAR, VIKRAM HUILGOL, TANMAYEE RAJKUMAR, VEDANTH ANAND AND SANDEEP HUILGOL, ADVS.) AND: THE STATE OF KARNATAKA, REPRESENTED BY THE COMMISSIONER OF COMMERCIAL TAXES, VANIJYA THERIGE KARYALAYA, KALIDASA ROAD, GANDHINAGAR, BANGALORE-560 009. RESPONDENT (BY SRI.M.KUMAR, AGA.) :

2. : THIS STRP FILED U/SEC.65(1) OF THE KARNATAKA VALUE ADDED TAX ACT, 2003, AGAINST THE

ORDER
DATED:30.07.2015 PASSED IN STA NO.1516-1527/2013 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL AT BENGALURU, DISMISSING THE PETITION FILED UNDER SECTION63OF THE KARNATAKA VALUE ADDED TAX ACT, 2003. THIS PETITION COMING ON FOR ADMISSION THIS DAY, S.SUJATHA J., MADE THE FOLLOWING:

ORDER
This revision petition is filed by the assessee under Section 65(1) of the Karnataka Value Added Tax Act, 2003 (for short the Act) relating to the assessment year 2005- 06.

2. The facts in brief are that, the petitioner/assessee is a dealer registered under the provisions of the Act and is engaged in the business of manufacture and sale of steel blooms, billets and rounds. It transpires that during the tax periods April 2005 to March 2006, the petitioner effected purchases of iron ore, scrap, ferro alloys, refractory bricks, gases, etc. for use in the course of its business. In respect of the said purchases, the selling dealers raised tax invoices as prescribed under Section 29 of the Act on the petitioner and it was contended by the assessee that the applicable :

3. : tax amount was collected by the selling dealers under the provisions of the Act on such sales. It was the contention of the petitioner that those goods purchased by it were used in the manufacture of goods and both local and interstate sales of goods of the manufactured goods were effected. Accordingly, input tax credit claim was made by the assessee for the tax periods in question. The Assessing Officer invoking the provisions of Section 39(1) of the Act proposed to disallow the input tax credit amounting to Rs.15,05,332/- claimed by the petitioner on the ground that the said input tax related to purchases effected from seven dealers, whose returns were not traceable. It was the grievance of the petitioner that even before filing the objections to the said notice, the Assessing Officer proceeded to pass a reassessment order confirming its proposal to disallow the input tax credit claimed

by the petitioner. On further appeal before the Joint Commissioner of Commercial Taxes (Appeals), Davangere Division, Davangere, the first appellate authority partly allowed the appeals confirming the denial :

4. : of input tax credit on the ground that the selling dealers have not discharged the tax collected by the petitioner. However, the levy of penalty under Section 72(2) of the Act was set aside. Aggrieved by the same, appeals were preferred before the Karnataka Appellate Tribunal. The Tribunal dismissed the appeals confirming the order of the Assessing Authority and the First Appellate Authority insofar as disallowing the input tax credit claimed by the petitioner on the ground that seven dealers had not paid tax amounting to Rs.15,05,332/- said to have been collected by them from the petitioner. Being aggrieved, the assessee is in revision petition.

3. Learned counsel, Sri.T.Suryanarayana appearing for the petitioner would contend that no provision under the Act authorises the authorities to disallow the input tax credit at the hands of purchasing dealer, wherein the selling dealer has failed to file the sales tax returns and discharge its sales tax liability. Denial of input tax credit is not supported by any statutory provision and is contrary to the provisions of the :

5. : Act. It is contended that input tax credit was supported by valid tax invoices raised by the selling dealers in accordance with the provisions of Section 29 of the Act, the petitioner is entitled to claim input tax credit based on the invoices raised by the selling dealers, the same having been used in the manufacture of goods and being effected with sales both locally and interstate. It is contended that the Assessing Officer while passing the reassessment order has observed that tax invoices are genuine, however, denied the input tax credit only for the reason that VAT- 100 returns for the year 2005-06 of the selling dealers is not forthcoming in Electronics Filing System (EFS).

4. In compliance with the order passed by this Court on 27.02.2017, the respondent State has filed statement of objections on behalf of the respondent. Placing reliance on this statement of objections, the learned counsel for the assessee would contend that the respondent has admitted the input tax credit

claim allowable in respect of the selling dealer Nos.1 to 3 except for the month of August-2005 in respect of M/s. High-tech :

6. : industrial gases, whereas, the same is disallowed in respect of the other four dealers. As far as dealer No.4 is concerned, it is observed that invoices are dated November-2005, hence the input tax credit claimed after four months is not allowable. No reasons are assigned as far as selling dealers No.5 and 6 are concerned.

5. The learned counsel for the assessee has placed a memo on record along with the returns in Form VAT-100 filed by M/s. Dalini Enterprises (selling dealer No.7) for the tax period April 2005 to March 2006 and the relevant bank statements. Based on the said returns, learned counsel would point out that major portion of the input tax credit claimed was for the purchases made from the said selling dealer No.7 who has filed the monthly returns for the tax period 2005-06 and remitted tax to the treasury which is manifest from the statement of accounts of the selling dealers. On these grounds, the learned counsel seeks to set aside the order impugned herein, by allowing the revision petition. :

7. :

6. Learned AGA appearing for the respondent would emphasize that the burden lies on the assessee to prove that the tax collected was deposited by the selling dealers to the Government. Reliance is placed on Section 70 of the Act to contend that, for the purposes of any claim to input tax under the Act, the burden of proving that any transaction of a dealer is not liable to tax, or any claim to deduction of input tax is correct, shall lie on such dealer. It is pointed out that in pursuance of the directions issued by this Court, the department has examined the matter in detail and on verification it was found that some of the selling dealers had filed the returns, hence it is decided to extend the benefit of input tax credit as claimed in respect of selling dealer Nos.1 to 3 and the same is denied in respect of selling dealer Nos.4 to 7, as mentioned in the table appended to Para No.3 of the statement of objections. It is submitted that the dispute has been reduced to Rs.6,14,200/- as against Rs.15,05,332/-. The learned AGA would submit that the returns filed by the selling dealers No.4 to 7 has not been :

8. : traced to locate the factual position as regards the payment of tax made by these dealers as the relevant period in question is beyond eight years. Thus, it is submitted that the authorities are justified in rejecting the claim of input tax credit in respect of selling dealer Nos.4 to 7, since no relevant material was placed on record by the assessee to prove the tax being remitted to the Government by the selling dealers.

7. We have given our anxious consideration to the arguments advanced by the learned counsel for the respective parties and carefully perused the material on record.

8. The question involved herein mainly relates to the denial of input tax credit claimed by the assessee for the reason that no VAT-100 returns were filed by the selling dealers for the relevant period in question. To answer the issue involved in this revision petition, it is apt to consider the statement of objections filed by the respondent. Table in para No.3 is extracted hereunder: Sl No 1 2 3 :

9. : Party Name TIN Number Month ITC Output as Per Returns Remarks B.VRAJLAL AND CO2917020926 Feb-06 66612 66724 ITC Claim allowable Mar-06 4740 4740 ITC Claim allowable Total 71352 71464 B.K.AUTO CENTER2932098291 May-05 2375 80760 ITC Claim allowable 29320098291 Jul-05 18790 138231 ITC Claim allowable 29320098291 Jan-06 3733 264005 ITC Claim allowable Total 24898 482996 HI-TECH INDUSTRIA L GASES2978052351 May-05 3003 4220 ITC Claim allowable Jun-05 1035 3347 ITC Claim allowable Total 4 ACE REFRACTO RIES5Jul-05 1035 4299 ITC Claim allowable Aug-05 5175 5128 ITC Claim Not allowable Sep-05 Oct-05 2070 3002 3103 ITC Claim allowable 3166 ITC Claim allowable Nov-05 3595 4065 ITC Claim allowable Dec-05 3106 4155 ITC Claim allowable Jan-06 1035 2097 ITC Claim allowable Feb-06 2070 4378 ITC Claim allowable Mar-06 2070 6586 ITC Claim allowable 27196 14969 29700454266 Feb-06 53834 261670 Invoices are dated Nov-2005. Hence the ITC is claimed after 4 months. Total 53834 261670 NAVODAYA TRADING CO2915087694 Jun-05 855 NIL Jul-05 9443 NIL Aug-05 37794 NIL Oct-05 5125 4577 Nov-05 45572 NIL Dec-05 1650 1056 Jan-06 2475 264 ITC Claim Not Allowable ITC Claim Not Allowable ITC Claim Not Allowable ITC Claim Not

Allowable ITC Claim Not Allowable ITC Claim Not Allowable ITC Claim Not Allowable Total 102914 5897 6 7 :

10. : ES ELECTRONI CS (INDIA)P2956007388 JAN-05 58839 35667 ITC Claim Not Allowable Total 58839 35667 DALINI ENTERPRIS ES2978039173 Apr-05 122493 May-05 142747 Jun-05 108175 Jul-05 137027 Aug-05 91735 Sep-05 53096 Oct-05 80980 Nov-05 116473 Dec-05 45206 Jan-06 108696 Feb-06 44579 Mar-06 115392 Total 1166599 The case has been de-registered in 2007. Returns are not traced & ITC Claim Not Allowable Thus, it is categorically admitted that in respect of selling dealer Nos.1 to 3, assessee is entitled to the input tax credit; as regards the selling dealer No.7 is concerned, now the assessee has filed the income tax returns filed by the said dealer along with bank statements, which prima facie shows that the selling dealer has remitted the collected tax from the assessee. The assessee has utilized the goods purchased from the selling dealers for the manufacture of goods and effected local and interstate sales. :

11. :

9. The Tribunal mainly relied upon the judgment of this Court in the case of State of Karnataka Vs. Centum Industries Private Limited, Bangalore [2014 (80) Kar.L.J.65]. to confirm the orders of the authorities. The said judgment of Centum (supra) was held in a different context, wherein the issue was failure to claim input tax credit in the tax periods in which purchases were effected and the claim made in the subsequent periods. In that context, it was held by the co-ordinate bench of this Court that the claim cannot be made subsequently, but in the instant case, the issue involved is altogether different. The main ground for denying the input tax credit is that the VAT-100 returns filed by the selling dealers are not traceable under EFS. It is not in dispute that the returns/invoices filed by the assessee are genuine and the same are accounted in his books of accounts. Even if we assume the burden of proof lies on the asseessee to establish the proof of the tax deposited by his selling dealer, the same is not contemplated under Section 70 of the Act, as contended by the learned AGA. :

12. : What is contemplated under Section 70 of the Act is, for the purposes of payment or assessment of tax or any claim to input tax under the Act, the burden

of proving that any transaction of a dealer is not liable to tax, or any claim to deduction of input tax is correct, shall lie on such dealer. Be that as it may, it is not relevant to consider the issue on this aspect at present.

10. The limited ground on which we have to examine the issue on hand is, whether the respondent was justified in denying input tax credit benefits to the assessee, on the ground that the VAT-100 returns filed by the selling dealers are not traceable under EFS. It is trite that the revenue can be at a loss in allowing the input tax credit to a dealer, who deals with a bogus transaction, for example, a selling dealer who is not in existence or a de- registered dealer, in such circumstances, it is not in doubt that unless the purchasing dealer establishes the genuineness of the invoices issued by the selling dealer, no input tax credit can be allowed but that is not the case in the present set of facts. The Assessing Officer while :

13. : passing reassessment order has categorically observed that the invoices are genuine and in view of the material placed before this Court with respect to the selling dealer No.7, the matter requires reconsideration by the Assessing Officer. Even as regards the selling dealer Nos.4 to 6, no reasons are assigned by the respondent for denying the input tax credit. It is also trite that no input tax credit can be disallowed on the premise that the selling dealer is de-registered subsequent to the relevant tax periods. The cause shown for disallowance with respect to selling dealer No.7 is that the said concern has been de-registered in 2007, returns are not traced and input tax credit claim is not allowable. The same is contrary to the returns now made available before this Court. The tax period involved in the present case is relating to 2005-06, if any de- registration is made subsequently, the same would not disentitle the purchasing dealer to claim input tax credit for the tax period of 2005-06.

11. In the circumstances, based on the objections filed by the respondent as aforesaid, the factual aspects :

14. : requires reconsideration. Hence, we allow this revision petition and set-aside the order impugned herein. The matter is remanded to the Assessing Officer to reconsider the issue afresh in the light of the observations made aforesaid, and

pass appropriate orders in accordance with law in an expedite manner. Sd/- JUDGE Sd/- JUDGE Sh/JTR