

Centum Electronics Limited Vs. State of Karnataka

Centum Electronics Limited Vs. State of Karnataka

SooperKanoon Citation : sooperkanoon.com/1195347

Court : Karnataka

Decided On : Nov-05-2015

Judge : Vineet Saran and S.Sujatha

Appeal No. : STRP 56/2014

Appellant : Centum Electronics Limited

Respondent : State of Karnataka

Judgement :

IN THE HIGH COURT OF KARNATAKA AT BENGALURU Dated this the 5th day of November, 2015 Present THE HONBLE MR JUSTICE VINEET SARAN & THE HONBLE MRS JUSTICE S SUJATHA S T R Ps 56 / 2014 & 279 - 324 / 2014 Between Centum Electronics Limited (Earlier Soletron Centum Electronics Ltd) # 44, KHB Industrial Area Yelahanka New Town Bangalore 560 064 By its Company Secy. - Sri Ramu Akkili Petitioner (By Sri K P Kumar, Sr. Counsel a/w Sri V S Arbatti, Adv.) And State of Karnataka - by its Assistant Commissioner of Commercial Taxes (Audit

57) DVO5 Abhaya Complex II Floor, Platform Road Seshadripuram, Bangalore 20 (By Sri K M Shivayogiswamy, AGA) Revisions are filed under S.65(1) of the Karnataka Value Added Tax Act, 2003 praying to set aside the order of Respondent 2 the Karnataka Appellate Tribunal, Bangalore dated 13.8.2013 in STA89to 135/2012, etc. Saran J., delivered the following: Revisions coming on for

hearing this day, Vineet

JUDGMENT

These are forty seven revision petitions filed by the assessee against the order of the Tribunal dated 13.8.2013, whereby the orders of the first appellate authority, as well as the Assessing Authority, have been confirmed. The brief facts of this case are that the petitioner is a company engaged in the business of manufacture and sale of Hybrid Micro Circuits and is a dealer registered under the Karnataka Value Added Tax Act, 2003 (KVAT Act for short) and Central Sales Tax, 1956 (CST Act for short). Under the Information Technology Policy of the State Government, two notifications were issued, both dated 21.8.1997 - one under the Karnataka Sales Tax Act, 1957 (KST Act for short) and the other under the CST Act. Under the policy of the State Government, a tax holiday of ten years was to be granted to Information Technology Units from the date of commencement of commercial 3 production. The petitioner company has admittedly been granted the eligibility certificate under the said Policy and thus, was governed by the said notifications dated 21.8.1997. The procedure for grant of exemption had been provided for in the notifications issued under the KST Act, wherein it had been provided that if an Information Technology Industrial Unit exercising the option for tax exemption, collects any amount by way of tax, it shall forthwith become ineligible for tax exemption. By virtue of Section 9(2) of the CST Act, the procedure under the KST Act was to be adopted for the CST Act also and thus, by the notification of the same date i.e., 21.8.1997 issued under the CST Act, petitioner company was entitled to exemption under the CST Act by following the procedure provided in the KST notification. There is no dispute that the petitioner company was subjected to Karnataka Sales Tax for sales within the State of Karnataka and for Inter-State sales, Central Sales Tax was leviable. The procedure adopted for implementation of the notifications for both the 4 Acts was the same and the petitioner had been granted such exemption under both the Acts, with regard to which also there is no dispute. With effect from 1.4.2005, the KVAT Act, 2003 came into force in place of the KST Act. For continuing the exemption of tax to new industrial units, such as the Unit of the petitioner, two fresh notifications, both dated 18.4.2005, were issued - one under the KVAT Act and the other under CST Act. By the notification issued under the KVAT Act, the net tax payable was to be

paid to the State Government and thereafter refunded to the Unit. From the same, it is clear that the output tax had to be first collected by the assessee and after deducting the input tax paid by the assessee, the net tax was to be deposited by the assessee with the Government, which was to be refunded. This would clearly mean that the provision in the earlier notification dated 21.8.1997 providing for ineligibility of a Unit from exemption in case tax was collected by it, would not be applicable after the issuance of the notifications dated 18.4.2005. 5 By the other notification of the same date i.e., 18.4.2005, issued under the CST Act, with regard to grant of exemption, there was no condition relating to payment or collection of tax by the assessee, after the coming into force of the KVAT Act in place of the KST Act with effect from 1.4.2005, but it was specified that the exemption granted earlier would continue for the remaining unavailed period. There was no specific procedure prescribed under the subsequent notification dated 18.4.2005 issued under the CST Act. There is no dispute with regard to the eligibility of the petitioner for exemption from tax, either under the KST Act or CST Act. The dispute did not arise even after the issuance of the notification dated 18.4.2005, because for the purpose of the KVAT Act as well as CST Act, the assessee started following the procedure as was prescribed in the notification dated 18.4.2005 relating to KVAT Act, (which was the same as prior to 1.4.2005, where the assessee was following the procedure provided in the notification dated 21.8.1997 issued under the KST Act) for the purpose of availing the benefit under the notification issued under the CST Act. 6 For the tax period from 1.4.2005 till 31.3.2007, the assessee collected tax, both in the case of Karnataka Value Added Tax, as well as the Central Sales Tax, and deposited the same with the Government and thereafter claimed refund of the net tax, which was duly allowed to the assessee in both the cases i.e., under the KVAT Act, as well as CST Act. With effect from the tax period 1.4.2007, the benefit of payment of tax and thereafter claiming refund was continued to be allowed to the assessee under the KVAT Act, but was denied to it under the CST Act, primarily on the ground of the condition in the earlier notification dated 21.8.1997 issued under the KST Act, which provided that if the Unit collects any amount by way of tax, it shall become ineligible for exemption. For the tax period after 1.4.2007, though the petitioner assessee continued to deposit the tax so collected under the CST Act, but the refund of net tax was not given to it. The

cases for the tax period from 1.4.2005 to 31.3.2007 were also reopened under the revisional power exercised by the Joint Commissioner 7 under Section 63A of the KVAT Act, which was by a separate order dated 20.10.2008. Consequent to the order passed by the Joint Commissioner under Section 63A of the KVAT Act, a demand was raised from the petitioner assessee to deposit the amount which was refunded to it during the aforesaid period, which was by way of an order passed by the Assessing Officer on 8.4.2009. For the tax period after 1.4.2007, the net tax, which the assessee claimed to be refunded/payable to it, was forfeited. The petitioner assessee, thereafter, filed appeals against the orders requiring it to deposit the refunded tax amount, as well as for non-refund of the net tax which the assessee claimed was payable to it. By a common order dated 28.1.2012, the Assistant Commissioner of Commercial Taxes (Appeals), dismissed the appeals filed by the assessee. Aggrieved by the same, petitioner-assessee filed second appeals before the Tribunal, which have also been dismissed by order dated 13.8.2013. Challenging the said orders, these revision petitions have been filed. 8 We have heard Sri K P Kumar, learned Senior counsel appearing with Sri V S Arbatti, learned counsel for petitioner, as well as Sri K M Shivayogiswamy, learned Government Advocate appearing for the respondent, and perused the record. Although these petitions were admitted on two questions of law, but learned counsel for both the parties have stated that the only question required to be answered in these petitions, would be the following: Whether the Tribunal below is justified in coming to a conclusion that petitioner is not entitled to collect CST and consequently not entitled to the tax refund mechanism as envisaged under Notification No.FD56CSL20051) dated 18.4.2005 issued under the Karnataka Value Added Tax Act, 2003?. The submission of Sri K P Kumar, learned Senior counsel for the appellant, is that exemption was granted from payment of tax, initially both under the KST Act and the CST Act, by notifications dated 21.8.1997 and 9 thereafter, under the KVAT Act and CST Act by notifications dated 18.4.2005. It is contended that the procedure for grant of exemption under the CST Act was that which was provided under the KST Act earlier, and thereafter, under the KVAT Act. It has been submitted that the condition that in case the Unit collects tax, it would become ineligible for grant of exemption as provided in the notification dated 21.8.1997 under the KST Act, was applicable for both i.e., the

Karnataka Sales Tax as well as the Central Sales Tax, up to 2005 and thereafter, with effect from 1.4.2005, when the notification dated 18.4.2005 issued under the KVAT Act itself provided for collection of tax and then claiming refund of the net tax, the said condition that the Unit would be ineligible if it collects tax, no longer remained for Karnataka Value Added Tax as well as Central Sales Tax. It has further been contended that the output, input and net tax was clearly defined and described under Section 10 of the KVAT Act, which was for sales within the State of Karnataka. However, though no Karnataka Value Added Tax was chargeable for inter-State sales or for export, yet under Section 20 of the KVAT Act, 10 provision was made with regard to deduction of input tax on export and inter-State sales. The submission, thus, is that since by virtue of sub- section

(2) of Section 9 of the CST Act, the procedure prescribed for assessment, re-assessment, collection, etc., of Central Sales Tax was to be as per the KVAT Act (earlier KST Act) and in the said Act, the procedure for Inter-State sales had also been provided for, and the notification dated 18.4.2005 issued in the case of KVAT Act was to apply for the purpose of procedure under the Central Sales Tax as well, hence the assessee, after 1.4.2005, paid tax on the raw material purchased by it and thereafter, collected tax in the case of sales within the State, as well as Inter-State sales, and claimed refund of the net tax payable, which was defined and described under the KVAT Act for the purpose of Karnataka Value Added Tax as well as Central Sales Tax. Not only the assessee petitioner understood that the said procedure had to be followed, but it is contended that even the Department accepted the returns of the petitioner assessee for the tax period 1.4.2005 to 11 31.3.2007 and had allowed refund as claimed under the said procedure, both under the KVAT Act as well as CST Act. Learned counsel has thus submitted that the denial of refund of Central Sales Tax after 1.4.2005, merely on the ground that the Unit would become ineligible in case it had collected tax, and solely on the ground that such was the condition in the notification dated 21.8.1997, is wholly unjustified as the procedure for grant of exemption had undergone a change after the issuance of notifications dated 18.4.2005, both for Karnataka Value Added Tax as well as Central Sales Tax. Per contra, Sri K M Shivayogiswamy, learned counsel for respondent has submitted that the condition laid down in the notification of 1997 for denial of exemption, or the Unit becoming ineligible for

exemption, if it collected tax, was to continue even after 1.4.2005, as exemption itself contemplates that there would be no collection or payment of tax. He has, thus, justified the passing of the order of the Tribunal, as well as the authorities below, whereby the petitioner assessee has been directed to deposit the 12 amount of tax refunded to it for the tax period 1.4.2005 to 31.3.2007, and also the order denying the benefit refunded to the assessee after 1.4.2007. The relevant extracts of the two notifications dated 21.8.1997 and the other two notifications dated 18.4.2005 are reproduced below: Notification dated 21.8.1997 under the KST Act Explanation I Explanation II . Explanation III

(1) This notification shall not apply to :- (a) .. (b) .. (c) ..

(2) If an Information Technology Industrial Unit exercising option for tax exemption collects any amount by way of tax, it shall forthwith become ineligible for tax exemption. Notification dated 21.8.1997 under CST Act 13 in In exercise of the powers conferred by Section 19-C of the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957) read with sub-section

(2) of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), the Government of Karnataka, hereby - (i) exempts the tax payable under the said Central Sales Tax Act, 1956 respect of goods manufactured and sold in the course of inter-State trade or commerce by new Information Technology Industrial Units which are eligible and opted for tax exemption under Notification No.FD57CSL971), dated 21.8.1997 subject to the condition that the aggregate of tax exemption availed of, if any, by the units under the said Notification together with quantum of this Notification shall not exceed the ceiling specified in Notification No.FD57CSL971), dated 21.8.1997; or (ii) . tax exemption availed under Notification dated 18.4.2005 under KVAT Act In exercise of the powers conferred by sub-section

(2) of Section 5 of the Karnataka Value Added Tax Act, 2003 (Karnataka Act No.32 of 2004), the Government of Karnataka hereby exempts with effect from the first day of April, 2005, the net tax payable by a new industrial unit under the said Act, on the sale of goods manufactured by it, subject to the following conditions and procedure, namely -

(1) The industrial unit is eligible for tax exemption on sale of goods manufactured by it, under the notification issued by the Government under the provisions of the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957).

(2) The tax exemption extended in this notification shall be limited to the un-availed portion of period and extent of tax exemption extended in the relevant notification and any Government Order and also subject to the overall tax concession originally extended.

(3) The industrial unit shall charge and collect the tax applicable under the said Act, on the sale of goods manufactured by it, and pay the net tax payable along with the return prescribed under the said Act to the jurisdictional authority.

(4) The industrial unit shall be refunded, such net tax paid within thirty five days after the end of the month to which the return relates, if it is furnished within the time specified under Section 35 of the said Act or within fifteen days from the date of filing of the return, if it is filed after the time specified, in the manner prescribed under the said Act by the jurisdictional authority and interest shall be paid for any delay in the refund, as specified under the said Act.

(5) .

(6)

(7)

(8) .

(9) .

(10) .

(11) . Notification dated 18.4.2005 under the CST Act, 1956 Whereas, the Government of Karnataka has issued notifications from time to time providing for exemptions from payment of Central Sales Tax on the sales of the goods manufactured by Industrial Units including mega projects which are covered under different Industrial Policies for different periods and these notifications provide for

exemption subject to the condition that the aggregate of any tax exemption availed by the units under the notifications issued under the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957) together with the quantum of tax exemption availed under the notifications issued under (sub-section

(5) of Sec.8 of the Central Sales Tax Act, 1956) shall not exceed the 16 ceiling mentioned in the notifications issued under the Karnataka Sales Tax Act, 1957. Whereas, Karnataka Sales Tax Act, 1957 has been replaced by Karnataka Value Added Tax Act, 2003 (Karnataka Act 32 of 2004) on many of the goods. Now, therefore, in exercise of the power conferred by sub-section

(5) of Sec.8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956) read with Sec.21 of the General Clauses Act, 1897 (Central Act 10 of 1897) and in partial modification of all the notifications issued on the subject, the Government of Karnataka hereby directs that with effect from 1st April, 2005 the quantum tax exemption granted in all such notifications shall be subject to the condition that the aggregate of any tax exemption availed by the units under such notifications together with the quantum of tax exemption availed under any notification issued under the Karnataka Value Added Tax Act, 2003 shall not exceed the ceiling mentioned in the notifications issued under the Karnataka Sales Tax Act, 1957. The relevant Section 10 sub-clauses

(1) to

(3) and Section 20

(1) of the KVAT Act, 2003, are reproduced below:

17. S:10 Output tax, input tax and net tax (1) Output tax in relation to any registered (2) 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. Subject to input tax restrictions specified in Sections 11,12,14, 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 restriction 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 18 that period less the input tax deductible by him as may be prescribed in that period and relatable to goods purchased during the period immediately preceding five tax periods of such tax period, if input tax of such goods is not claimed in any of such five preceding tax periods and shall be accounted for in accordance with the provisions of this Act. S:20 : Deduction of input tax on exports and inter- State sales and to special economic zone units and developers (1) Tax paid under this Act by any dealer on purchase of inputs in respect of - (a) (b) any goods sold in the course of export out of the territory of India or any goods taxable under the Act, sold in the course of inter-State trade or commerce; shall be deducted as provided under Section 10, subject to such conditions as may be prescribed from output tax payable by such dealer. The relevant sub-section (2) of Section 9 of the CST Act is reproduced below: S:9 Levy and collection of tax and penalties - (1) 19 (2) Subject to the other provisions of this Act and the rules made thereunder, the authorities for the time being empowered to assess, re-assess, collect and enforce payments of any tax under general sales tax law of the appropriate State shall, on behalf of the Government of India, assess, re-assess, collect and enforce payment of tax, including any interest or penalty, payable by a dealer under this Act as if the tax or interest or penalty payable by such a dealer under this Act is a tax or interest or penalty payable under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, refunds, rebates, penalties charging or payment of interest,

compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly:

20. Provided that if in any State or part thereof there is no general sales tax law in force, the Central Government may, by rules made in this behalf make necessary provision for all or any of the matter specified in this sub-section. The sole ground for denying the benefit to the assessee under the CST Act after 1.4.2005 by the authorities below is that it had become ineligible, as it had collected tax and then claimed refund. From a perusal of the two notifications dated 21.8.1997 and the other two notifications dated 18.4.2005, it would be clear that the procedure for grant of exemption had undergone a sea change after 1.4.2005. Earlier it was provided that the tax would neither be collected nor paid by the assessee. After 1.4.2005, a different procedure was provided in the notification dated 18.4.2005 issued under the KVAT Act, which was to be applicable for grant of exemption under the KAVT Act, as well as the CST Act. Earlier also, the procedure provided under the notification issued under the KST Act, was applicable for Central Sales Tax. 21 It is true that in the notification dated 21.8.1997 issued under the KST Act, there was a specific condition that if the Unit (exercising the option for tax exemption) collects any tax, it shall become ineligible for tax exemption. But the same was applicable only up to 1.4.2005. If such condition was to continue after 1.4.2005, then the procedure for grant of exemption, which was provided in the notification dated 18.4.2005 under the KVAT Act, which was that the output tax is to be collected and input tax is to be deducted, and net tax has to be paid, then only the net tax paid would be refunded, would clearly mean that after 1.4.2005, the condition of ineligibility of the unit if it collects tax, had been done away with. The notification providing for such ineligibility was under the KST Act, which was followed in the case of CST Act up to 31.3.2005. When the subsequent notification dated 18.4.2005 (effective from 1.4.2005) issued under the KVAT Act itself provides for collection of tax, and such benefit of exemption is granted for Karnataka Value Added Tax even when the assessee collects tax, then the same 22 cannot be denied to the same assessee under the CST Act, as admittedly, the procedure provided under the general sales tax law of the State (which presently would be KVAT Act), would be applicable for the purpose of Central Sales Tax, but the substantive provisions of the CST Act were to be followed. In view of the

aforesaid, in the facts of the present cases, the finding given by the Tribunal with regard to ineligibility of the assessee/petitioner for being granted exemption only because it had collected tax, cannot be justified in law. Even otherwise, petitioner/assessee has, in good faith, paid the input tax and collected the output tax, both under the KVAT Act, as well as CST Act and thereafter claimed refund of the net tax paid under both the Acts, on the basis that it was eligible for grant of exemption. Such position was accepted by the authorities under both the Acts and refund was actually granted to the assessee, which means that the Department itself had understood the notifications in the same manner as had been understood by the assessee. The subsequent revision 23 by the Joint Commissioner, by invoking the provisions of Section 63A of the KVAT Act, only for the purpose of CST Act on the ground that assessee had collected tax, cannot be justified, in as much as the same benefit had been granted, and is being continued to be granted, to the assessee after 1.4.2005 in the case of KVAT Act. As we have already noted above, the procedure under the KVAT Act was to be followed for Central Sales Tax also and thus, the refund given to the petitioner/assessee was fully justified and ought not to have been reversed. The present is a case where the benefit has been for encouraging new industries. It is settled law that a beneficial legislation or notification, has to be liberally interpreted. While considering a case for grant of exemption, the Apex Court in the case of Associated Cements Company Vs State of Bihar (2004) 137 STC389has, in paragraph 14, observed as under:

24. Literally exemption is freedom from liability, tax or duty. Fiscally it may assume varying shapes, specially, in a growing economy. In fact, an exemption provision is like an exception and on normal principle of construction or interpretation of statutes it is construed strictly either because of legislative intention or on economic justification of inequitable burden of progressive approach of fiscal provisions intended to augment State revenue. But once exception or exemption becomes applicable no rule or principle requires it to be construed strictly. Truly speaking liberal and strict construction of an exemption provision is to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about

applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction. 25 The law is thus clear that once an assessee is found entitled to grant of exemption, the procedure for the same is to be construed liberally in favour of, and for the benefit of the assessee. In the present case, the petitioner is admittedly eligible for grant of exemption. As such, the petitioner cannot be denied the benefit on technical grounds. In light of the foregoing discussion, we answer the question of law in favour of the assessee and against the Revenue. Accordingly, these petitions stand allowed. The Assessing Officer is directed to give effect to this order as expeditiously as possible, preferably within three months from the date of filing of a copy of this order before the respondent. Sd/- Judge Sd/- Judge An

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com