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The Joint Commissioner of vs M/S Alupro Building Systems Pvt Ltd

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Court : Karnataka

Decided On : Mar-20-2025

Judge : V Kameswar Rao,S Rachaiah

Appeal No. : WA/4325/2016

Appellant : The Joint Commissioner of

Respondent : M/S Alupro Building Systems Pvt Ltd

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF MARCH, 2025 PRESENT THE HON'BLE MR JUSTICE V KAMESWAR RAO AND THE HON'BLE MR JUSTICE S RACHAIAH BETWEEN:

1. THE JOINT COMMISSIONER OF COMMERCIAL TAXES (ADMN.), DVO-1, 2ND FLOOR, TTMC, BMTC, YESHWANTHPURA, BANGALORE - 560 022.

2. THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES, (AUDIT)-1.5, 7TH FLOOR, ROOM NO. 712, GANDHINAGAR,

BANGALORE - 560 009.

3. THE ASSISTANT COMMISSIONER OF COMMERCIAL TAXES, LVO-020, DVO-1, VISWESWARAIAH TOWER, DR. AMBEDKAR VEEDHI, BANGALORE - 560 001. APPELLANTS

(BY SRI. ADITYA VIKRAM BHAT, AGA) AND: M/S ALUPRO BUILDING SYSTEMS PVT. LTD., # 89, DOBASPET INDUSTRIAL AREA, NELAMANGALA TALUK, BANGALORE RURAL DISTRICT, BANGALORE - 562 123. RESPONDENT (BY SRI. K.M.SHIVAYOGISWAMY, ADVOCATE) -2- THIS WRIT APPEAL IS FILED U/S 4 OF THE KARNATAKA

HIGH COURT ACT, 1961 PRAYING TO SET ASIDE THE ORDER

PASSED IN THE WRIT PETITION 14969/2015 & 57759- THIS WRIT APPEAL HAVING BEEN RESERVED FOR

JUDGMENT ON 15.10.2024, COMING ON FOR

PRONOUNCEMENT THIS DAY, V KAMESWAR RAO J., DELIVERED THE FOLLOWING: CORAM: THE HON'BLE MR JUSTICE V KAMESWAR RAO AND THE HON'BLE MR JUSTICE S RACHAIAH

CAV JUDGMENT

(PER: THE HON'BLE MR JUSTICE V KAMESWAR RAO)

The challenge in this intra-court appeal is to an order

dated 17.12.2015 passed by the learned Single Judge in WPs No.14969 and 57759-57805 of 2015, whereby the learned Single Judge has allowed the petitions filed by the respondent herein by stating in paragraph No.5 as under:

5. It is further pointed out by the learned counsel for the petitioner that even in terms of Section 63-A(3) of the Act, the Joint Commissioner was

required to pass the order within a period of one year from the date of initiation of proceedings or calling for the records under the Act. It may be noticed, on the face of it, that the order has been passed beyond the period of one year and therefore, respondent No.1 was acting without jurisdiction. The -3-

learned Additional Government Advocate would not dispute this position. Therefore, on that short point, the impugned order is liable to be set aside. If the authorities, under the Act, have the power to revise the order and make amendments, if any illegality is found in the order, it would be open for the authorities to exercise power conferred under the Act, if it is so permitted. Therefore, there is no prejudice caused to the revenue by this order. Accordingly, the petitions are allowed. The impugned

order bearing No.JCCT(Adm)/DVO-1/SMR/CR-

passed by the Joint Commissioner of Commercial Taxes (Admn), DVO-1, Bangalore, is quashed. The

order directing refund of amount in favour of the

petitioner remains in tact.

2. The facts to be noted from the record are, the

respondent is a dealer registered under the then provisions of the then Karnataka Value Added Tax Act, 2003 (the Act for short). The Assessing Officer attached to the appellants has concluded re-assessment under Section 39(1) of the Act for the years 2006-07 to 2009-10 inter alia recording a finding that respondent-assessee is entitled to refund of Rs.1,06,95,125/-. Upon receipt of re-

assessment order, the respondent-assessee had, on -4- 06.04.2012 and 11.06.2012, requested the LVO-20 to issue refund as per the re-assessment order.

3. It was the case of the appellants that, upon receipt of the said request, the LVO-20 recommended for refund of tax and sent the same to the Joint Commissioner for approval on 19.06.2012. The respondent-assessee again requested the Joint Commissioner by its request letter dated 21.08.2012 to give effect to the recommendation made by the LVO-20 vide letter dated 19.06.2012. The Joint Commissioner after receipt of letter dated 21.08.2012, directed the Assessing Officer to submit assessment record on 20.10.2012.

4. Accordingly, the Assessing Officer on 19.11.2012, intimated the Joint Commissioner that the assessment records sent to Joint Commissioner (Appeals) and immediately after receipt of the records, the same will be submitted to the Joint Commissioner. Accordingly, on 12.12.2012, the appeal filed by the respondent was -5- dismissed and the records were sent to Joint Commissioner on 23.01.2013.

5. After receipt of the assessment records, the Joint

Commissioner intimated the respondent to produce certain documents vide his endorsement dated 11.03.2013. After receipt of the said endorsement, the respondent-assessee partially fulfilled the requirement of endorsement dated 17.10.2013 and subsequently the required information was furnished. Accordingly, the Joint Commissioner has approved to issue refund in favour of the respondent-assessee by his letter dated 04.04.2014. Accordingly, the same was sent to LVO-20.

6. Since the LVO-20 found that it was not a fit case for refund, he returned the refund file on 21.04.2014 to initiate further action in accordance with law. It is a case that, the Joint Commissioner of Commercial Taxes (DVO-1) has initiated suo motu revision under Section 63-A of the Act vide notice dated 10.07.2014. After receipt of the reply, the Joint Commissioner (DVO-1) has -6-

concluded the revisional proceedings under Section 63-A of the Act on 21.02.2015. Being aggrieved by the same, the respondent had preferred the writ petition inter alia questioning the legality of the order passed by the Revisional Authority before the learned Single Judge in the aforesaid writ petitions, which

came to be allowed.

Submissions:

7. The submission of Sri. Aditya Vikram Bhat,

learned AGA for the appellants is that, the very object of initiating suo motu revision by the Joint Commissioner is that the respondent-assessee is illegally collecting higher rate of tax contrary to entry No.4 to VI Schedule, eventhough the respondent is not permitted under law or collecting higher rate of tax from its customer collected

and not remitted to the State Treasury. It is his submission that, the conclusion drawn by the learned Single Judge that the revisional proceedings were initiated on 11.03.2013 and final order came to be passed on 21.02.2015 is untenable for the reason that the endorsement dated 11.03.2013 is entirely different as that -7- was in respect of refund. According to him, the actual revisional proceedings commenced when he received a letter from LVO-20 on 21.04.2014 and issued a revisional notice under Section 63-A of the Act on 11.07.2014, pursuant to a decision taken in the file on 25.04.2014 and the order came to be concluded on 21.02.2015. Therefore, the revisional order passed by the Joint Commissioner is well within one year as envisaged under sub-section (3) of Section 63-A of the Act.

8. The date of receipt of records for the purpose of

refund or the date of issue of endorsement to submit certain documents for the purpose of verification of claim of refund cannot be considered as the date of initiation of suo motu proceedings.

9. According to him, sub-section (3) of Section 63-A clearly envisages that the Joint Commissioner shall pass

order under the Act within a period of one year from the

initiation of proceedings or calling for the records under this Section as the case may be. Therefore, calling for -8- records or receipt of records for the purpose of

verification and approval of claim of refund cannot be considered as initiation of suo motu proceedings under Section 63-A. Therefore according to him, the impugned order is liable to be set aside. In support of his submissions, he has relied upon the following circulars of Commissioner of Commercial Taxes: i. Circular No.45/1994-95, dated 02.03.1995; ii. Circular No.7/2011-12, dated 08.06.2011; iii. Circular No.14/2014-15, dated 05.09.2014. He has also relied upon the judgment of the Supreme Court in the case of Entry Tax Officer, Bangalore and Ors. -Vs.- Chandanmal Champalal & Co. and Ors. [(1994) 4 SCC 463].

10. On the other hand, the case of the respondent is

primarily that, appellant No.1 has no authority or jurisdiction to issue notice under Section 47(3) read with Section 63-A of the Act, proposing to forfeit the excess tax amount paid by the respondent as per the re-assessment

order passed by appellant No.2 under Section 39(1) of the

Act. According to him, as per Section 47(3) of the Act, forfeiture order is to be made by the prescribed authority. He further stated, the impugned order in the writ petition passed by the appellants-Authority is barred by limitation. Section 63-A(3) of the Act provides that the Joint Commissioner of Commercial Taxes shall pass order under this section within a period of one year from the date of initiation of proceedings or calling for the records as the case may be.

11. The date of calling for the connected records for review and examination is the date of initiation of the suo motu revision proceedings. By letter dated 06.09.2012,

while requesting the appellants-Authority to issue necessary direction to LVO-20 to refund the excess tax amount, the respondent has made specific contention with regard to inclusion of tax made by the dealer in the sale price, if any, does not amount to collection of excess tax by the dealer from his customers, by relying upon the

judgment of this Court in the case of The Deputy

Commissioner of Commercial Taxes (Vigilance) -Vs.- - 10 - M/s Hindustan Lever Ltd. (Lipton Division) [2007

(62) Kar.L.J. 257 (HC) (DB)].

12. According to him, the respondent has also stated

in the said letter that if excess collection of tax at 8.5% is in contravention of Section 47 of the Act, the Audit Officer would have definitely forfeited the amount under Section 47 of the Act. On the basis of the respondents letter dated 06.09.2012 and with an intention to initiate suo motu revision proceedings and to pass order under Section 47 of the Act, the appellants have perused the audit orders and the corresponding records and came to

conclusion that it is necessary to verify the copies of

agreements, works orders and sales invoices/RA Bills in

respect of the respondents business transactions in order

to ascertain the legality of the audit orders passed and accordingly, issued an endorsement dated 11.03.2013. Hence, the date of issue of endorsement after perusal of the audit orders and corresponding records is the date of initiation of the suo motu revision proceedings. As such, endorsement dated 11.03.2013 is the date of initiation of

- 11 - revision proceedings and consequently from the date of calling for records/initiation of revision proceedings, revision order is to be made within a period of one year as per sub-section (3) of Section 63-A of the Act. He stated that, the notice issued on 10.07.2014 is in continuation of the endorsement dated 11.03.2013 issued by the appellants. In view of the fact that revision order has not been passed within a period of one year from the date of first notice dated 11.03.2013, the same has been rightly set aside by the learned Single Judge.

13. It may be stated here that, the counsel for the respondent had also made submissions on the merits of the decision dated 21.02.2015, whereby the

Revisional Authority has concluded the revisional proceedings. In support of his submissions, he has relied upon the following judgments:

a. Judgment of the Supreme Court in the case of Income Tax Officer, Ward No.16(2) -Vs.- Techspan India Private Limited and Anr. [(2018) 6 SCC 685]; b. Judgments of this Court in the cases of: - 12 -

i. Milestone Aluminium Company Pvt. Limited -Vs.- The C

decided on 02.11.2010]; ii. M/s. Satyanarayana Engineering Works, Davanagere -Vs.- Assistant Commissioner of Commercial Taxes, Davanagere and Ors. [1998 (45) Kar.L.J. 566 (HC) (DB)]; iii. M/s. Keshawa Trading Co. -Vs.- Commissioner of Commercial Taxes [ILR 1985 Kar 2132]; iv. Hindustan Lever Limited (Lipton Division) (supra);

v. S. Subba Rao -Vs.- Commissioner of

decided on 29.09.1966]; vi. M/s. Keshawa Trading Co. -Vs.- Commissioner of Commercial Taxes [WP No.13992/1981 and connected matters, decided on 11.06.1985]; c. Judgment of Customs Excise and Gold (Control) Appellate Tribunal in the case of Himatsingka Seide Ltd. -Vs.- Commissioner of Customs, Bangalore [LAWS(CE)-2005-3-131] . - 13 - Analysis:

14. Having heard the learned counsel for the parties,

at the outset we may state, the learned Single Judge has decided the writ petition on the issue, whether the revisional order was within the time period of one year or not and nothing more. We have reproduced the relevant

facts which are required to be taken into consideration

while deciding the issue which fell for consideration. The impugned order does not reflect the facts as highlighted

by us in this order. In other words, the impugned order

does not reflect the aforesaid facts having been considered by the learned Single Judge while passing the impugned order. Having said that, it is to be seen that, on the basis of the facts narrated above, the order dated 21.02.2015 was within the period of one year from the date of initiation of proceedings or calling for the records under Section 63-A of the Act.

15. The conclusion drawn by the learned Single Judge is that, the order was passed beyond one year and therefore, the appellant No.1 was acting without - 14 -

jurisdiction. What is sought to be urged by the respondent is that the limitation of one year would start from 11.03.2013, which is the date of endorsement after the perusal of audit orders and as such, the date of institution of suo motu proceedings. Whereas, the case of the appellants is, the date of 11.03.2013 follows the fact that on 21.08.2012, the assessee had made a request to the Joint Commissioner to implement the recommendation made by LVO-20 vide letter dated 19.06.2012. It was in this background that a letter dated 20.10.2012 was written by the Joint Commissioner to the Assessing Officer to submit assessment records. The Assessing Officer vide letter dated 19.11.2012, intimated the Joint Commissioner that original assessment records were submitted to the Joint Commissioner (Appeals). It was on 12.12.2012, the Joint Commissioner (Appeals) rejected the appeal filed by the assessee. It is pursuant thereto that the Joint Commissioner received the records on 23.01.2013. The Joint Commissioner had asked for certain documents from the assessee vide his - 15 - endorsement dated 11.03.2013, the contents of which are reproduced as under:

> ENDORSEMENT Ref: 1) Order under Section 39(1) of the KVAT Act, 2003, dated 06.02.2012 for the tax periods 2008-07 to 2009-10. 2) Common orders under Section 9(2) of the CST Act, 1956 dated 06.02.2013 for the tax periods 2007-08, 2008-09 and 2009-10. 3) Notice of excess payments in Form VAT 185 dated 06.02.2012. 4) Letter of the authorized signatory of the dealer dated 11.04.2012 addressed to the ACCT, LVO-020, Bangalore. 5) Common orders under Section 9(2) of the CST Act, 1956 read with Section 69 of the KVAT Act, 2003 dated

31,05.2012 for the tax period 2006-07, 2007-08 and 2008-09 and 2009-10. 6) Revised notice of excess payments in Form VAT 185 dated 31.05.2012. 7) Letter of the authorized signatory of the dealer dated 09.06.2012 addressed to the ACCT, LVO-020, Bangalore. 8) Letter of the authorized signatory of the dealer dated 14.06.2012 to the Addressed to the ACCT, LVO-020, Bangalore. 9) Letter of the ACCT, LVO-020, Bangalore dated 19.06.2012. 10) Letter of the authorized signatory of the dealer dated 21.08.2012. - 16 -

On passing of audit orders at references (1) &

(5) above, and in pursuance of the issuance of

demand notice in Form 185 dated 31.05.2012 (ref 6), authorized signatory of the dealer has requested the LVO-020, Bangalore, for issue of refund of Rs.1,06,95,125/- vide letter dated 09.06.2012 (ref 7). Accordingly, the ACCT, LVO-020, Bangalore vide letter dated 19.06.2012 (ref 9), has requested this office to accord permission to issue refund. On perusal of the audit orders and corresponding records, it is felt necessary that the copies of Agreements, Work Orders and Sales Invoices/R A Bills, in respect of the dealer's business transactions, are to be verified, in order to ascertain the legality of the audit.orders passed and the refund claim thereon. Hence, the dealer is instructed to furnish the aforesaid details, at the earliest.

16. So, what has been considered by the Joint

Commissioner in terms of endorsement dated 11.03.2013 was, the issue of refund to the respondent-assessee. In the meantime, a writ petition was filed by the respondent- assessee before this Court which was finally decided on 11.07.2014, whereby direction was issued by this Court to - 17 -

refund the amount of Rs.1,06,89,301/- along with interest at 6% p.a. in accordance with Section 50 of the Act within a period of two weeks to the respondent. It is necessary to state here, this Court while deciding the writ petition, had made an

observation with regard to the fact that the reason that revisional orders are awaited from the Commissioner of Commercial Tax is not a relevant ground or reason to withhold the refund, particularly when it is not shown that the Commissioner of Commercial Tax has already initiated revisional proceedings under the Act. This observation of the Court is relevant as it was only on

10.07.2014 that a notice was issued by the Joint Commissioner under Section 47(3) read with Section 63-A of the Act. The said notice is the starting point of initiation of proceedings under sub-section (3) of Section

63-A of the Act, which finally culminated in the order

dated 21.02.2015. So in that sense, the revisional proceeding culminated within one year of its initiation i.e., the date of issuance of notice on 10.07.2014. The learned Single Judge while passing the impugned order, has not - 18 - considered the aforesaid facts or at least, not referred to the aforesaid facts in support of his conclusion. Surely his

conclusion is clearly untenable. Having said that, the writ

petition, wherein the impugned order has been passed, has been filed with the following prayers:

> a) Writ of Certiorari or directions in the nature of Certiorari to quash the impugned order passed by the 1st respondent bearing No.JCCT(Adm) DVO-1/SMR/CR-09/2014-15 dated 21.02.2015 under the provisions of the KVAT Act in relation to the assessment periods April 2006 to March 2010 vide Annexure "L" b) Writ of Mandamus or directions in the nature of Mandamus directing the respondent authorities not to initiate further proceeding pursuant to the impugned order passed thereto vide Annexure "L c) Issue such other writ or order as deemed fit in the circumstances of the case in the interest of justice and equity.

17. In effect, the respondent had challenged the

order dated 21.02.2015 on merits of the conclusion

arrived at by the Joint Commissioner in the revisional proceedings. As the learned Single Judge has allowed the writ petition only on the ground that the order has been - 19 -

passed beyond one year and as such, without jurisdiction, and has set aside the order without going to the merits of the assessment order dated 21.02.2015, we are of the view that the impugned order of the learned Single Judge to that extent needs to be set aside. Though submissions have been made by the counsel for the parties on the merits of the assessment order by relying on judgments, we are of the view, as the same have not been considered by the learned Single Judge in the impugned order, it shall be appropriate that the writ petition is revived on the board of the learned Single Judge for a decision on the merits of the assessment order dated 21.02.2015 after hearing the counsel for the parties.

18. Accordingly, the impugned order dated

17.12.2015 passed by the learned Single Judge in WPs No.14969 and 57759-57805 of 2015 is set aside; the writ appeal is allowed; the writ petitions are revived on the board of the learned Single Judge with a request to the learned Single Judge to hear the counsel for the parties on the merits of the challenge to the order dated

- 20 - 21.02.2015 and decide the writ petition in accordance with law. Liberty is given to the respondent to file an application in the writ petitions along with this order for revival/hearing of the writ petitions. Sd/- (V KAMESWAR RAO) JUDGE Sd/- (S RACHAIAH) JUDGE PA

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