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Court : Karnataka

Decided On : Apr-20-2009

Reported in : (2009)25VST375(Karn)

Judge : D.V. Shylendra Kumar, J.

Acts : [Karnataka Value Added Tax Act, 2003](#) - Sections 38, 38(1), 39 and 39(1)

Appeal No. : Writ Petition Nos. 11244 to 11253 of 2009

Appellant : Classic Developers

Respondent : Deputy Commissioner of Commercial Taxes and ors.

Advocate for Def. : K.M. Shivayogiswamy, High Court Government Pleader

Advocate for Pet/Ap. : Surenderanath, Adv. for Vasani Associates

Disposition : Petition dismissed

Judgement :

ORDER

D.V. Shylendra Kumar, J.

1. Writ petitions by an assessee who is assessable to tax under the [Karnataka Value Added Tax Act, 2003](#).

2. The petitioner is aggrieved by the reassessment orders passed under Section 39 of the Karnataka Value Added Tax Act for the period from April 1, 2005 to March 31, 2006 for each of the month, copy of the order is produced as annexure C, dated January 20, 2009 and consequential demand notice annexures D to D9.

3. The submission of Mr. Surenderanath, learned Counsel appearing for the petitioner, is that in respect of the returns filed by the petitioner for the relevant period, the assessing authority had, while not accepted the returns, passed an assessment order in terms of the provisions of Section 38(1) of the Act for the year 2005-06, as per the orders at annexures B to B11, that much later the petitioner had been issued with the notice to reopen the concluded assessment by issue of notice under Section 39(1) of the Act and that too by respondent No. 2 who is not the assessing authority, that notwithstanding the serious objections filed by the petitioner, the second respondent has concluded by re-assessing and re-computing the liability of the petitioner for the very period as per the order at annexure C and has issued the consequential demand notices, that the order apart from being bad on merits as the premise on which the second respondent has re-determined the liability is a postulate which is not free from doubt and even as indicated by the Supreme Court in the case of Larsen & Toubro Limited v. State of Karnataka reported in [2008] 17 VST 460, but more importantly the second respondent lacks jurisdiction to pass such an order as he is not the assessing authority and the order being one lacking in jurisdiction it should be quashed and the respondents be directed to pass orders only in accordance with law.

4. So far as the arguments of lack of jurisdiction is concerned, it proceeds on the instant the reassessment order under Section 39(1) of the Act can be passed by a prescribed authority who has reason to believe that any return furnished, etc., is not correct or proper ; that unless the Commissioner has passed orders conferring such jurisdiction for reassessment under Section 39 of the Act on the first respondent as well as the second respondent, they cannot pass orders of reassessment ; that in the present case, respondent Nos. 1 and 2 are not the regular assessing authorities ; that in spite of this, the first respondent having already passed the assessment order, it is now not open to respondent No. 2 to reopen the same ; that it is only for the first respondent having reopened once

earlier if at all to pass further orders and not by respondent No. 2 ; that respondent No. 2 cannot pass further reassessment orders, etc.

5. It is on such premise, the impugned orders are sought to be attacked, contending that the orders are lacking in jurisdiction.

6. When the learned Counsel for the petitioner submits that both respondent Nos. 1 and 2 are conferred with powers to pass orders under Sections 38 and 39 of the Act, then it is not as though the second respondent lacks jurisdiction to pass an order under Section 39 of the Act just because the first respondent had passed an order under Section 38 of the Act. It is not as though there is lack of jurisdiction in respondent No. 2 to pass such an order.

7. Prima facie, it is not necessary to go into the question of merits of the order passed by respondent No. 2. Ultimately consequence of such order is re-determination of the liability of the petitioner under the provisions of the Act. It is open to the petitioner to pursue his remedy as per the Act by filing appeals as provided under the statute and to seek his relief.

8. These writ petitions being prima facie examined only for the purpose of ascertaining any patent lack of jurisdiction on the part of the second respondent and therefore any observation incidentally on the merits of the order is not to be construed as an order passed, but is only for the purpose of examining the question as to whether the matter is to be examined in writ jurisdiction by-passing the appeal remedy or to relegate the petitioner to the statutory remedy.

9. Therefore, it is made clear that it is open to the petitioner to raise all contentions before the appellate authority including the question of jurisdiction.

10. These writ petitions are not entertained and are dismissed.