Jeevan Diesels Vs. Additional Commissioner of Commercial Taxes

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Court : Karnataka

Decided On : Jan-04-2001

Reported in : AIR2001Kant233; [2001]122STC436(Kar)

Judge : M.F. Saldanha and ;D.V. Shylendra Kumar, JJ.

Acts : Karnataka Sales Tax Act, 1957 - Sections 21

Appeal No. : S.T.A. No. 67 of 1997

Appellant : Jeevan Diesels

Respondent : Additional Commissioner of Commercial Taxes

Advocate for Def. : Anand, Addl. Govt. Adv.

Advocate for Pet/Ap. : S. Narayana, Adv.

Judgement :

Saldanha, J.

1. We have heard the learned counsel on both sides in this appeal and we refrain from elucidating either the facts or recording any findings because of the fact that the essential controversy revolves around the question as to whether the order of remand which was passed by the appellate authority was justified or not. The appellant before us had effectively succeeded before the appellate authority to the

extent that the order of the Assessing Authority had been set aside for the reason that the appellate authority, after due consideration of the merits, came to the conclusion that the case warranted a fuller and complete consideration. One of the aspects was that the additional material that was sought to be relied upon by the authority was required to be taken into consideration and this was the reason why the appellate authority directed the assessing authority to reconsider the case on merits and pass fresh orders. The Revisional Authority, in the meanwhile, issued notice and has effectively proceeded to decide the entire case on merits and it is against this order that the present appeal has been preferred.

2. After hearing the learned Counsel on both sides, we are of the view that the preliminary objection canvassed by the appellant's learned Counsel namely that in the facts and circumstances of the present case, the powers exercised by the Revisional Authority were premature and unjustified, will have to be upheld. What has been pointed out is that the proceeding has not been finally concluded or decided in so far as it has been remanded for a de novo consideration and decision by the appellate authority and that the Revisional Authority has not indicated a single word as to why and under What circumstances this remand is incorrect. The Revisional Authority has straightway proceeded to enter into the merits of the ease, which in our considered view was the function of the assessing authority after the remand order was given effect to. We have also considered the subsidiary aspect namely the question as to whether any prejudice was caused to the revenue or for that matter, whether any loss of revenue has occurred.

The question has to be answered in the negative for the simple reason that the entire issue was absolutely open after the remand order was passed and if the assessing authority came to the conclusion that a certain quantum of tax is payable or that certain penalty is leviable, it is open to the assessing authority to record such a finding. Under these circumstances, the exercise of powers by the Revisional Authority does appear to be untenable.

3. The learned Government Advocate sought to point out that if the Provisional Authority has gone into the case on merits, that this Court ought not to interfere because it would be virtually a parallel situation as to what has happened when

the case was to be decided de novo by the assessing authority. His submission therefore is that if the appellants are aggrieved on merits, that they should agitate that aspect of the matter and not only confine their challenge to the procedural propriety aspect. We are not inclined to accept the submission for only one reason namely that it would be incorrect to equate the revisional authority with the original assessing authority and furthermore, if one looks at the ultimate decision of the revisional authority, it is seen that the order of the assessing authority has been confirmed. In other words, the original order is sought to be given effect to without taking into consideration the aspect of reconsidering the case in the light of the additional material. The real fault that arises is not inconsequential and it needs to be demonstrated that in the event of either of the parties being aggrieved by the order passed by the assessing authority, then the right of appeal is provided for, whereas from the order passed by the revisional authority, the appeal before the appellate authority is obliterated.

4. Viewed at from any angle, procedurally, the exercise of power at the stage it was done is unjustified. The order of the revisional authority is accordingly set aside. The appellate order is restored and the same shall be given effect to. We clarify that the entire matter is left open and the assessing authority who shall reconsider the case on merits and pass orders according to law. The appeal succeeds to this extent and stands disposed of. No order as to costs.