

**First Leasing Company of India Ltd. Vs. Assistant Commissioner of Commerical Taxes**

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**Court :** Karnataka

**Decided On :** Jan-06-2009

**Reported in :** (2009)26VST460(Karn)

**Judge :** N.K. Patil, J.

**Acts :** [Karnataka Sales Tax Act, 1957](#) - Sections 12 and 12C(8); [Central Sales Tax Act, 1956](#)

**Appeal No. :** Writ Petition No. 239 of 2009

**Appellant :** First Leasing Company of India Ltd.

**Respondent :** Assistant Commissioner of Commerical Taxes

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

**Advocate for Pet/Ap. :** Kumar, Sr. Counsel for; King and Partridge

**Judgement :**

ORDER

**N.K. Patil, J.**

1. The petitioner in this petition has sought for quashing the assessment order dated August 18, 2007, vide annexure C1 passed by the respondent under Section 12 of the [Karnataka Sales Tax Act, 1957](#) for the assessment year 2004-05 and to quash the demand notice dated August 18, 2007, vide annexure C2 issued by the respondent.

2. The only grievance of the petitioner in the instant writ petition is that, the petitioner being a dealer registered under the provisions of the [Karnataka Sales Tax Act, 1957](#), has filed its annual return for the assessment year 2004-05 on May 26, 2005, by declaring a total turnover of Rs. 4,08,76,657.92 and a taxable turnover of Rs. 69,20,409.84 thus claiming exemption in respect of a turnover of Rs. 3,39,50,248.05. Be that as it may, the Government of Karnataka has issued a notification dated March 31, 2006, under Section 12C(8) of the Karnataka Sales Tax Act notifying that, the assessment of all the dealers in respect of any year up to the year ending March 31, 2005, which has not been completed shall be deemed to have been made on the basis of the returns submitted by the dealer concerned and without requiring the presence of the dealer or production of books of account by the dealer. Instead of considering the returns of the petitioner in pursuance of the Government notification dated March 31, 2006 and extending the benefit as per the said notification, the respondent has proceeded to pass the impugned assessment order dated August 18, 2007 which is served upon the petitioner on December 10, 2008 and issued the consequential demand notice, as referred above. Being aggrieved by the impugned assessment order and the consequential demand notice, the petitioner herein felt necessitated to present the instant writ petition, seeking appropriate reliefs as stated supra.

3. I have heard learned Senior Counsel appearing for the petitioner and learned Government Pleader appearing for the respondent.

4. The matter was heard for quite some time during the morning session and was thereafter adjourned to the afternoon session at 2.30 P.M. at the request of learned Government Pleader appearing for the respondent to enable him to call upon the concerned assessing officer who passed the impugned assessment order and take necessary instructions.

5. The learned Government Pleader appearing for the respondent on instruction from the concerned officer who is present before the court submitted that, mistake has crept in while passing the impugned assessment order and in issuing the impugned demand notice is due to pressure of work and the same is not intentional or deliberate.

6. In the light of the submission made by learned Government Pleader on instruction from the officer who is present before the court, it is not in dispute that, there is some lapse apparent on the face of the impugned order of assessment and serving the same after lapse of more than a year and issuing the demand notice. Such order cannot be sustained under the relevant provisions of the Karnataka Sales Tax Act and the [Central Sales Tax Act, 1956](#). Therefore, in view of the admission of the said lapse on the part of the respondent by the learned Government Pleader on instruction from the said officer, without going into further merits and demerits of this case, to meet the ends of justice and to safeguard the interest of both parties, it would suffice for this Court if appropriate direction is issued to the respondent.

7. In the light of the facts and circumstances of the case, the writ petition filed by the petitioner is disposed of as follows:

(i) The writ petition filed by the petitioner is allowed in part;

(ii) The order impugned passed by the respondent dated August 18, 2007, vide annexure C1 and the consequential demand notice dated August 18, 2007, vide annexure C2 are hereby set aside;

(iii) Matter stands remitted back to the respondent for reconsideration of the matter afresh and to take appropriate decision, in accordance with law and in the light of the Government notification dated March 31, 2006, bearing No. FD 116.CSL. 2006(3) or as per the relevant provisions of the Karnataka Sales Tax Act and dispose of the same as expeditiously as possible, at the any rate, within a period of two months from the date of receipt of a copy of this order.

8. The learned Government Pleader is permitted to file memo of appearance on behalf of respondent within three weeks from today.

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