Polycon International Ltd. Vs. Additional Commissioner of Commercial Taxes, Zone Ii

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Court : Karnataka

Decided On : Jan-27-2006

Reported in : (2008)13VST470(Karn)

Judge : P. Vishwanatha Shetty and ;N. Kumar, JJ.

Acts : Karnataka Sales Tax Act, 1957 - Sections 12, 12A, 12B, 22A, 28, 28(3), 28(6) and 28(7)

Appeal No. : S.T. No. 12 of 2005

Appellant : Polycon International Ltd.

Respondent : Additional Commissioner of Commercial Taxes, Zone Ii

Advocate for Def. : S. Sujatha, Additional Government Adv.

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

Disposition : Appeal dismissed

Judgement :

P. Vishwanatha Shetty, J.

1. The appellant in this appeal is a registered dealer under the provisions of the Karnataka Sales Tax Act, 1957 (hereinafter referred to as, 'the Act'). In the appeal it has called in question the correctness of the order dated February 11, 2005 made in SMR/KST(BCI)-II/CR. 4, 5 and 6/04-05 by the Additional Commissioner of Commercial Taxes, Zone-II, Gandhinagar, Bangalore, in exercise of power conferred on him under Section 22A of the Act setting aside the order dated September 11, 2003 made in Appeal Nos. KST.AP. 37, 38 and 39/2003-04 by the Deputy Commissioner of Commercial Taxes (Appeal and Audit) (hereinafter referred to as, 'the appellate authority').

2. The facts in brief are as hereunder:

The Commercial Tax Officer (Intelligence)-X, South Zone, on the basis of information gathered through intelligence source and from the circle office that the appellant (hereinafter referred to as, 'the assessee') has misclassified certain PVC goods and paid taxes at lower rates, inspected the business premises of the assessee on March 7, 2003 and collected certain incriminating information against the assessee. Pursuant to the said information collected, the Commercial Tax Officer (Intelligence) made three provisional orders of assessment dated May 31, 2003 under Section 28(6) of the Act for the assessment years 2000-01, 2001-02 and 2002-03. Aggrieved by the said provisional orders of assessment, the assessee filed appeals before the appellate authority. The appellate authority by means of his common order dated September 11, 2003 set aside the provisional orders dated May 31, 2003 made by the Commercial Tax Officer (Intelligence). However, the revisional authority, in exercise of the suo motu power conferred on him under Section 22A of the Act passed the impugned order dated February 11, 2005, a copy of which has been produced at annexure A to this appeal. In the impugned order, the revisional authority has set aside the order dated September 11, 2003 made by the appellate authority referred to above and directed the assessing authority to pass orders under Section 12A or 12 as the case may be, as required under Section 28(7) of the Act. Further in the impugned order, the revisional authority restored the provisional order of assessment made by the Commercial Tax Officer (Intelligence). Aggrieved by the said order this appeal is filed.

3. Sri. Narayana, learned Counsel appearing for the appellant challenging the impugned order made two submissions. Firstly, he submitted that the direction given by the revisional authority to the assessing authority to make an order of reassessment in terms of Sub-section (7) of Section 28 of the Act is erroneous in law inasmuch as it was for the assessing authority in exercise of its power under Section 12A of the Act either to reopen or to reassess the earlier order of assessment in its discretion and therefore, he submits that the direction given in the impugned order that the assessing authority should pass an order under Section 12A or 12 as required under Section 28(7) of the Act is wholly illegal and without the authority of law. Secondly, he submitted that since the observations made by the revisional authority seriously affect the rights of the appellant and the said observations are likely to influence the mind of the assessing authority, the impugned orders of reassessment made by the assessing authority are liable to be set aside.

4. However, Smt. S. Sujatha, learned Additional Government Advocate, while strongly supporting the impugned order, pointed out that the order made by the revisional authority is in consonance with the obligations imposed on the assessing authority under Section 12A of the Act. She further submitted that when a provisional order is made under Sub-section (6) of Section 28 of the Act, the assessing authority to whom the copy of such provisional order of assessment is communicated, is required to complete the assessment or the reassessment, as the case may be, and impose tax or penalty or both for the year to which such provisional assessment relates on the basis of such materials as are before him. She further pointed out that there is absolutely no basis for the apprehension expressed by the learned Counsel for the appellant that the observation made in the course of the impugned order will interfere with the decision of the assessing authority as the said observations are made only for the purpose of disposal of the revision petition by the revisional authority.

5. In the light of the rival submissions advanced by the learned Counsel appearing for the parties, the only question that would arise for consideration in this appeal is as to whether the orders impugned call for interference in this appeal?

6. In our view, there is no merit in this appeal. We are unable to accede to the submission of the learned Counsel for the appellant that the direction given by the revisional authority to the assessing authority to make an order of reassessment in terms of Sub-section (7) of Section 28 of the Act, is erroneous in law. Sub-section (3) of Section 28 of the Act confers power on such officer, if he suspects that any dealer is attempting to evade the payment of any tax, fee or other amount due from him under this Act, he may for reasons to be recorded in writing, seize such accounts, registers, records, etc., belonging to a dealer, etc. Sub-section (6) of Section 28 confers on him the power of examining the accounts, registers, records or other documents seized under Sub-section (3) to make an order of provisional assessment. If conditions set out in the said sections are satisfied notwithstanding the power conferred on the assessing authority under Section 12, 12A or 12B of the Act and without prejudice to the imposition of such tax or penalty or both in the assessment or reassessment, as the case may be, that may be completed by the assessing authority for that year under the said sections, such officer is required to proceed to provisionally assess such turnovers to tax recording reasons for such assessment. On such an order being passed under Sub-section (6) of Section 28, Sub-section (7) of Section 28 of the Act mandates such an officer to forward a copy of the provisional order along with all the documents and materials to the assessing authority. The assessing authority on receipt of such provisional order of assessment is required to make an order of assessment or reassessment, as the case may be and it is also empowered to impose tax or penalty or both for the year to which provisional assessment relates on the basis of such materials as are before him. In this connection it is useful to extract Sub-section (7) of Section 28 of the Act which reads as hereunder:

28(7). Such officer shall (proceed to recover the tax assessed and) send a copy of the provisional assessment order to the assessing authority concerned along with such documents as may be necessary, whereupon the assessing authority shall complete the assessment or reassessment, as the case may be, and impose tax or penalty or both for the year to which such provisional assessment relates on the basis of such materials as are before him.

7. Sub-section (7) of Section 28 of the Act consists of two parts. The first part requires the officer concerned to communicate the provisional order of assessment made by him in terms of Sub-section (6) of Section 28 to the assessing authority. The second part of the said sub-section requires the assessing authority to complete the order of assessment after looking into such provisional order of assessment and all other documents and materials furnished by such an officer and impose the tax or penalty, as the case may be, depending upon the facts and circumstances of each case. From the scheme of Section 28 of the Act, it is clear that the object of the said section is to prevent evasion of tax by the dealers and for the said purpose power of inspection of the business premises, seizure of the documents or summoning of records, etc., is conferred on an officer empowered by the State Government or by the Commissioner. As noticed by us earlier, Sub-section (6) of Section 28 confers power on such an officer to make an order of assessment and such an order of assessment is required to be communicated to the assessing authority along with the concerned documents to enable the assessing authority to make an order of assessment, if assessment order is not completed, and to make an order of reassessment if it has been already completed. From the provisions of Section 28 of the Act it is clear that the said provision is intended to prevent evasion of tax of the dealer and if such an evasion goes to the notice of the authority, effective steps are required to be taken by the empowering officer to prevent the evasion of tax and levy penalty.

8. In this background if the provisional order of assessment is required to be communicated to the assessing authority either to enable him to make an order of assessment and if an order of assessment has already been made to make an order of reassessment, it is not possible to accede to the submission of the learned Counsel for the appellant that the assessing authority cannot look into such provisional order of assessment made while making an order of assessment or reassessment, as the case may be. If such a situation is allowed, in our view, the power conferred on the empowered officer under Section 28 will be totally frustrated. The documents/materials collected by an officer who has made provisional order of assessment under Sub-section (6) of Section 28 of the Act, in our view, are required to be considered by the assessing authority when he proceeds to complete the assessment or reassessment, as the case may be. Sub-

section (7) of Section 28 of the Act not only mandates the officer who has made provisional order of assessment under Sub-section (6) of Section 28 to communicate such provisional order, but it also requires him to send such documents as may be necessary to enable the assessing authority to complete the assessment or reassessment, as the case may be. While interpreting the provision of law, especially, when a provision is made in taxing statute which intends to prevent evasion of tax, the courts will have to give a meaning, which are in furtherance of the objects of the legislation. If so interpreted, we have no hesitation to take the view that when an order made under Sub-section (6) of Section 28 is communicated to the assessing authority, the assessing authority is required to examine the provisional order of assessment and all the documents and materials made available and thereafter make an order of assessment or reassessment, as the case may be. It is no doubt true, while making such an order of assessment or reassessment, the assessing authority is required to exercise its discretion and take an independent view of the matter. But at the same time, we are of the view that the assessing authority is entitled to examine the provisional order and all the documents and materials produced along with that, to make up its mind with regard to the nature of the order of assessment or reassessment which it intends to make. Therefore, in the light of the discussions made above, we are unable to accede to the submission of Sri Narayana that the assessing authority cannot look into the provisional order of assessment made by the Commercial Tax Officer (Intelligence).

9. The only other question that is required to be considered is, whether the observation made by the revisional authority and also the direction issued in the impugned order should be set aside on the ground that the said observation would seriously prejudice the interest of the assessee and takes away the discretion conferred on the assessing authority? In our view, it is not necessary to set aside the observations made in the course of the order impugned and the directions given. We are of the view that the ends of justice would be met if an observation is made clarifying that assessing authority, while reconsidering the matter, should not in any manner be influenced by the observations made by the revisional authority in the course of the order and it is required to take an independent decision in the matter in exercise of the power conferred on it under Section 12A or under Section

12 of the Act. Accordingly it is ordered. Subject to the observations made above, this appeal is liable to be dismissed. Accordingly, the appeal is dismissed. However, no order is made as to costs.