IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 5TH DAY OF NOVEMBER 2014

PRESENT

THE HON'BLE MR.JUSTICE N. KUMAR

AND

THE HON'BLE MR. JUSTICE B. MANOHAR

STRP NOS. 213 OF 2011 AND 91-112 OF 2012

BETWEEN:

STATE OF KARNATAKA
BY THE SECRETARY,
DEPARTMENT OF FINANCE,
VIDHANA SOUDHA,
BANGALORE-560001

... PETITIONER

(BY SMT. S. SUJATHA, AGA)

AND

M/S. KOTHARI SALES AND AGENCIES
NO.2929, 1B,
GOKULAM MAIN ROAD,
V.V.MOHALLA,
MYSORE.

... RESPONDENT

(BY SRI. HARISH V S, ADV. FOR M/S. DNS LAW HOUSE)

THESE STRPs FILED UNDER SEC.65(1) OF KST ACT, AGAINST THE JUDGMENT DATED:20.04.2011 PASSED IN STA.NO.2392-2414/2010 ON THE FILE OF THE KARNATAKA

APPELLATE TRIBUNAL, BANGALORE, PARTLY ALLOWING THE APPEAL.

THESE STRPs COMING ON FOR FINAL HEARING THIS DAY, N. KUMAR J. DELIVERED THE FOLLOWING:

ORDER

The Revenue has preferred these revision petitions challenging the order passed by the Karnataka Appellate Tribunal which has directed the Assessing Authority to treat the respondent as a registered dealer for the tax period April 2005 to February 2007 and to refund the input tax.

2. The assessee is a registered dealer under the provisions of the Karnataka Value Added Tax Act, 2003 (for short hereinafter referred to as the 'Act'), with R.C.No. 25733606 on the file of the Commercial Tax Officer-II, Mysore. The business premises was located at No.6, Annamma Choultry Complex, D.D.Urs Road, Mysore. Thereafter the place of business was shifted to No. 2929/1B, Gokulam Main Road, Next to Royal

Brigade Apartments, V.V.Mohalla, Mysore. The assessee's business premises during the tax periods April 2005 to March 2006 and April 2006 to February 2007 was not informed to the department. The assessee is engaged in the business of retail sale of air-conditioners, voltage stabilizers and other air-conditioning accessories. He is also carrying on Annual Maintenance Contract to the customers, which includes labour & service and sale of components/parts for the maintenance of air-conditioners. The prescribed authority took up visit audit on 16/1/2010 and called for production of books of accounts from April 2005 to September 2009 for verification. The assessee had not registered himself under the Act. Therefore the Assessing Authority treated the respondent as un-registered dealer and he was assessed to tax under Section 38(7) of the Act and also penalty was levied under Section 73(1) of the Act. Aggrieved by the said order, the assessee preferred an appeal with the First

Appellate Authority, which dismissed the same. It also directed the Assessing Authority to levy interest under Section 36 of the Act. Aggrieved by these two orders, the assessee preferred an appeal to the Tribunal. The Tribunal allowed the appeal in part, affirming the order regarding penalty and interest, but directed the Assessing Authority to treat the respondent as a registered dealer for the tax periods from April 2005 to February 2007 and to refund the input tax, thereafter to compute the penalty and interest for the balance amount and to levy tax in accordance with law. Aggrieved by the said order, the Revenue is in appeal.

3. The learned counsel for the Revenue, assailing the impugned order contends, when admittedly no returns were filed for the period from April 2005 to February 2007 in VAT 100 specifying the input tax and the output tax, the question of giving credit to the input tax would not arise, much less refund of the input tax.

The Tribunal was in error in holding that during the relevant period the assessee cannot be treated as an unregistered dealer and the direction to refund the input tax is contrary to Section 10 of the Act.

4. Per contra, the learned counsel appearing for the assessee submitted, admittedly the assessee was a registered dealer under the Karnataka Sales Tax Act. After coming into force of the Act, there was no obligation on the part of the assessee to file Form No. I. The assessee was given a temporary TIN number under the Act and merely because an application was filed on 28/3/2007 for giving regular number, the authorities were not justified in treating the assessee as an unregistered dealer during the period from April 2005 to February 2007 and therefore the Tribunal was justified in passing the impugned order for refund of tax and therefore he submits, no case of interference is made out.

5. From the aforesaid facts and rival contentions, the question that arise for our consideration in these revision petitions is, *whether the Tribunal was justified in directing refund of input tax?*

6. Output tax, input tax and net tax is provided under Section 10 of the Act, which reads as under:

> ***"10. OUTPUT TAX, INPUT TAX AND NET TAX.-***
> *(1) Output tax in relation to any registered dealer means the tax payable under this Act in respect of any taxable sale of goods made by that dealer in the course of his business, and includes tax payable by a commission agent in respect of taxable sales of goods made on behalf of such dealer subject to issue of a prescribed declaration by such agent.*
>
> *(2) Subject to input tax restrictions specified in Sections 11,12,14, 17 and 18, input tax in relation to any registered dealer means the tax collected or payable under this Act on the sale to him of any goods for use in the course of his business, and includes the tax on the*

sale of goods to his agent who purchases such goods on his behalf subject to the manner as may be prescribed to claim input tax in such cases.

(3) Subject to input tax restrictions specified in Sections 11, 12, 14, 17, 18 and 19, the net tax payable by a registered dealer in respect of each tax period shall be the amount of output tax payable by him in that period less the input tax deductible by him as may be prescribed in that period and shall be accounted for in accordance with the provisions of this Act.

(4) For the purpose of calculating the amount of net tax to be paid or refunded, no deduction for input tax shall be made unless a tax invoice, debit note or credit note, in relation to a sale, has been issued in accordance with Section 29 or Section 30 and is with the registered dealer taking the deduction at the time any return in respect of the sale is furnished, except such tax paid under sub-section (2) of Section 3.

(5) Subject to input tax restrictions specified in Sections 11,12, 14,17, 18 and 19, where under sub-section (3) the input tax deductible by a dealer exceeds the output tax payable by him, the excess amount shall be adjusted or refunded together with interest, as may be prescribed."

7. Sub-section (4) of Section 10 of the Act provides how the net tax to be paid or refunded, is to be calculated. It provides, the first condition to be fulfilled is a tax invoice or a debit note or credit note, in relation to a sale ought to have been issued in accordance with Section 29. Secondly, the return is to be filed as provided under Section 35(1) ie., a return VAT 100 within 20 days or 15 days after the end of preceding month showing the input tax as well as the output tax and the credit which is claimed. However, if there are incorrect statement in the said return, an opportunity is given to such assessee to file a revised return in the prescribed form within a period of 6 months from the

end of the relevant tax period, subject to the permission being granted by the prescribed authority. If return is not filed within the aforesaid time, then the question of calculating the refund would not arise. In the instant case, admittedly the returns for the period from April 2005 to February 2007 were filed only on 16/1/2010. In fact, the reason given for delay in filing such return was, the assessee was a heart patient and he could not file the return in time. The law do not provide for condonation of delay for any such reasons. On the contrary, it prescribes the time limit within which these returns are to be filed, if assessee were to claim refund of input tax. Having regard to the language employed in Section 10(4) of the Act, the issuance of invoice, debit note and credit note in accordance with Section 29, is mandatory and in the said return filed, all the particulars which are necessary for claiming such refund, has to be mentioned and such return has to be filed within the time prescribed. This court had an

occasion to consider the same in the case of **STATE OF KARNATAKA AND M/S. CENTUM INDUSTRIES** IN **STRP NOS. 294/2011 AND 210/2013** decided on **31/07/2014**, where, after referring to Section 10 and 35, at paragraphs 9 and 11, has held as under:

> *"9. From a reading of the aforesaid provision it is clear that, output tax is a tax payable by any dealer on sale of goods made by him in the course of his business. Input tax is a tax collected by the registered dealer or payable under this Act on the sale to him of any goods for use in the course of his business. Sub-section (3) of Section 10 provides for calculating the net tax payable by the registered dealer. It provides that, the net tax payable by a registered dealer in respect of each tax period shall be the amount of output tax payable by him in that period less the input tax deductible by him as may be prescribed in that period and shall be accounted for in accordance with the provisions of this Act. Therefore, it is clear the word "**in that period**" specifies the*

period during which input tax is paid and output tax is payable and the same has to be accounted in accordance with the provisions of the Act. Sub-section (4) makes it clear that, for the purpose of calculating the amount of net tax to be paid or refunded, no deduction for input tax shall be made unless a tax invoice, debit note or credit note, in relation to a sale, has been issued in accordance with Section 29.

11. Sub-section (1) of Section 35 provides for furnishing a return in such form and manner and for payment of tax due on such return within 20 days or 15 days after the end of the preceding month or any other tax period as may be prescribed. Therefore, the statute provides the period within which a return is to be filed under Section 35(1), i.e., within 20 days or 15 days after the end of the preceding month. Sub-section (2) mandates that the tax on any sale or purchase of goods declared in a return furnished shall become payable within 20 days or 15 days as prescribed in sub-section

(1) of Section 35 without the assessee waiting for a notice for payment of such tax. Sub-section (4) of Section 35 provides for filing of a revised return if the assessee discovers any omission or incorrect statement in the returns filed under Section 35(1) of the Act. At the relevant point of time such a revised return had to be filed within 6 months from the end of the relevant tax period. Therefore, the statute provides for filing of a return, claiming input tax rebate within the period prescribed in law. If in the return filed there is any omission or incorrect statement, a provision is made for filing of a revised return within the time prescribed. If the returns are not filed within the said period, then the assessee would not be entitled to the benefit of setting off output tax against the input tax."

8. Therefore the order passed by the Tribunal is contrary to the statutory provisions and cannot be sustained. The question of law is answered in favour of the Revenue and against the assessee. Hence we pass the following order:

The Revision Petitions are allowed.

The impugned order is hereby set aside. The order passed by the Assessing Authority as well as the First Appellate Authority is restored.

SD/-
JUDGE

SD/-
JUDGE

Rd/-