



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF AUGUST, 2015

PRESENT

THE HON'BLE MR. JUSTICE VINEET SARAN

AND

THE HON'BLE MR. JUSTICE B MANOHAR

WA Nos.1552 & 1571 - 81/2015 (T – RES)

BETWEEN:

M/s Cargotec India Private Limited
No.10-B, 2nd Phase, Peenya
Industrial Area, Bangalore-562 058
(Represented by Shri B K Ramamohan).

.. APPELLANT

(By Sri Shivadass G, Adv.)

AND.

1. State of Karnataka
Through its Principal Secretary
Finance Department
Vidhana Soudha
Bangalore-560 001.
2. The Commissioner of
Commercial Taxes in Karnataka
“Vanijya Therige Karyalaya”
Gandhinagar, Bangalore-560 009.

3. Deputy Commissioner of
Commercial Taxes
(Audit)-6.4, VAT Division-6
3rd Floor, KIADB Building
Peenya II Stage, Peenya
Bangalore-560 058
4. The Manager, Standard
Chartered Bank, Raheja Towers
26/27, M G Road
Bangalore-560 001.
5. Union of India
Through its Finance Secretary
Ministry of Finance, Department of
Revenue, New Delhi-110 001.
6. The Commissioner of Service Tax
Division II, Bangalore-560 001. .. Respondents

(By Sri K M Shivayogiswamy, AGA for R1 to R3,
Sri M C Nagashree, Adv. for R5,
Sri Jeevan J Neeralgi, Adv. for R6)

THESE WAS. ARE FILED UNDER SECTION 4 OF THE
KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE
THE ORDER PASSED IN THE WRIT PETITION
Nos.21490/2015 & 21703 – 21713/2015 DATED 19.05.2015.

THESE WAS COMING ON FOR ADMISSION THIS
DAY, *VINEET SARAN,, J.*, DELIVERED THE FOLLOWING:

J U D G M E N T

The appellant is an assessee under the Karnataka Value Added Tax Act (*for short* 'KVAT Act'). The dispute in these appeals is with regard to the payment of VAT under the said Act on certain items which were not disclosed by the appellant in its return for the year 2010-2011 (assessment period April, 2010 to March, 2011). On 30.1.2015, the Deputy Commissioner of Commercial Taxes issued a re-assessment notice under Section 39(1) of the KVAT Act, read with Sections 72(2) and 36 of the KVAT Act, for payment of further tax on items not disclosed by the appellant, and required the appellant to submit its reply to the said notice within seven days. In response thereto, appellant wrote to respondent No.3 on 6.2.2015 and prayed for 30 days time to submit its reply. When reply was not submitted, an endorsement was issued on 5.3.2015 to submit its reply within three days, to which the appellant responded on 9.3.2015 requesting for one week more time. The appellant still did not submit its reply and on 18.3.2015 requested for further period of one week. Even then, when no reply was filed by the appellant, respondent No.3

passed an order on 8.4.2015 imposing tax liability of Rs.7,55,51,179/- plus penalty of 10% and interest, totaling to Rs.14,27,48,346/-. Challenging the said order, appellant filed Writ Petitions No.21490/2015 and 21703-21713/2015, which have been dismissed by the learned Single Judge of this Court on 19.5.2015 on the ground of availability of statutory alternative appeal, which had not been availed by the appellant. Challenging the said order of the writ court, these appeals have been filed, in which an interim order was passed on 26.5.2015.

2. We heard Sri Shivadass G, learned counsel for the appellant as well as Sri K M Shivayogiswamy, learned Additional Government Advocate appearing for the contesting respondents No.1 to 3 and perused the records.

3. Submission of the learned counsel for the appellant is that respondent No.3 did not have jurisdiction to impose Value Added Tax, as on the same items the appellant had already paid Service Tax. It has been submitted that the service income of the

appellant, which was from across the country, has been subjected to tax by impugned order dated 8.4.2015, which was not permissible in law. It has also been submitted that no adequate opportunity of hearing was given to the appellant, and that even if no reply was submitted by the appellant to the show cause notice, an opportunity of personal hearing ought to have been provided. It is also submitted that the order passed by respondent No.3 is non-speaking order, which does not give any reason for imposing value added tax. It was thus contended that, in such circumstances, where principle of natural justice had not been complied, availability of alternative remedy would not be a bar in filing a writ petition. He has, however, not been able to satisfy the court as to why no reply to the show cause notice had been submitted by the appellant, even though several opportunities had been granted to it and the time prayed by the appellant to submit its reply was given at least on three occasions. However, immediately after passing of the order, a detailed reply was submitted by the appellant before respondent No.3 on 8.5.2015.

4. Sri Shivayogiswamy, learned Additional Government Advocate appearing for the contesting respondent, has, however submitted that sufficient opportunity was given to the appellant before passing the order on 8.4.2015 and thus it cannot be said that principle of natural justice was not complied. He has also submitted that the appellant has right to file an appeal under Section 62 of the KVAT Act before the Appellate Authority, on which ground the writ petition filed against the assessment order has rightly been dismissed by the writ court. He could, however, not justify the passing of the order without giving any reason.

5. It is true that if a party does not reply to the notice given by the Authority within the time specified in the notice, the Authority concerned would be justified in passing an ex parte order. However, while passing such order, the Authority has to give reason why it is imposing tax or how the items would be covered for payment of tax. It cannot be said that merely because no reply to the notice has been given, the assessee would be liable to pay the tax, without giving a finding as to whether tax is liable to be paid on the items subjected to

tax. Although not necessary, but the respondent-Authority could have given an opportunity of personal hearing to the appellant before passing the order.

6. Considering the fact that the order passed by the Assessing Officer does not give any reason for imposing tax and no opportunity of personal hearing was given to the appellant before passing the assessment order, we are of the opinion that in the interest of justice, the order of the Assessing Officer deserves to be set aside. Balancing the equities between the parties, we are setting aside the order dated 8.4.2015 passed by respondent No.3, but on condition that the appellant shall deposit 30% of the total amount payable under the order dated 8.4.2015 within six weeks. If the appellant deposits the said amount within six weeks, the order dated 8.4.2015 shall be deemed to be set aside and a fresh order shall be passed by the Assessing Authority, as expeditiously as possible and in accordance with law, after considering the reply dated 8.5.2015 and any other further reply that may be filed by the appellant and after giving adequate opportunity of hearing to the appellant. On such

deposit of 30% of the amount payable by the appellant under the order dated 8.4.2015, the same shall be kept by respondent No.3 in separate interest bearing account in a bank, which shall be subjected to further order passed by the Assessing Authority. It is made clear that in case no deposit of 30% of the amount, as directed above, is made by the appellant within six weeks from today, this appeal shall stand dismissed and the order dated 8.4.2015 passed by respondent No.3 shall automatically come in force.

Appeal is disposed of in terms as indicated above and the order of the writ Court also stands modified accordingly.

Sd/-
JUDGE

Sd/-
JUDGE