

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 25<sup>TH</sup> DAY OF JUNE, 2013

BEFORE

**THE HON'BLE MR. JUSTICE ARAVIND KUMAR**

WRIT PETITION Nos.24127-138/2013 (T-RES)

**BETWEEN:**

Wipro Limited  
A company incorporated under  
The Companies Act, 1956,  
Having its registered office at  
No.76-P-80-P, Sarjapur Road,  
Doddakannalli,  
Bangalore-560 020

And branch office at  
No.146, K.R.S. Road,  
Mysore 570 016  
Represented by its Regional Finance  
& Accounts Manager  
Sri B.C. Shashidhara

...Petitioner

(By Sri V.S.Arbatti, Advocate)

**AND:**

1. The State of Karnataka  
Represented by its  
Principal Secretary  
Finance Department,  
Government of Karnataka,  
Vidhana Soudha,  
Bangalore – 560 001

2. The Deputy Commissioner of  
Commercial Taxes  
(Audit & Recovery)-3,  
Sheshadri Building,  
Dewan's Road,  
Mysore – 570 016

...Respondents

(By Sri Shivayogiswamy, AGA)

THESE WRIT PETITIONS ARE FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA WITH A PRAYER TO QUASH THE REASSESSMENT ORDER DATED 06.05.2013 AT ANNEXURE-S AND THE DEMAND NOTICE DATED 10.05.2013 AT ANNEXURE-T1 AND T2 PASSED AND ISSUED BY R2.

THESE PETITIONS COMING ON FOR PRELIMINARY HEARING THIS DAY THE COURT MADE THE FOLLOWING:

**ORDER**

Petitioner is seeking for quashing of reassessment order dated 06.05.2013, Annexure-S, demand notices dated 10.05.2013 issued by second respondent as per Annexures-T1 and T2 and for a direction to the second respondent to issue the order dated 27.01.2012 passed by the Commissioner of Commercial Taxes, Bangalore.

2. Heard Sri V.S.Arbatti, learned counsel appearing for petitioner and Sri.K.M.Shivayogiswamy, learned Additional Government Advocate appearing for respondent. Perused the case papers and also the original records made available by learned Additional Government Advocate.

3. Petitioner is engaged in the business of computer hardware and software and is registered under the Karnataka Value Added Tax, 2003 (hereinafter referred to as "KVAT Act" for short), and Central Sales Tax, 1956 (hereinafter referred to as "CST Act" for short) for the assessment year 2010-11. Returns was filed as required under the KVAT Act. By notice dated 06.03.2012, Annexure-B, second respondent called upon the petitioner to produce documents, books of accounts and registers and same is said to have been furnished by reply dated 17.05.2012, Annexure-C and subsequently, some more documents are also furnished by petitioner on

08.10.2012 vide Annexure-D. Thereafter, proposition notice dated 18.10.2012 came to be issued as per Annexure-F for which time was sought for by petitioner to file reply as per Annexure-G. By communication dated 02.11.2012 petitioner sought for the copy of order Nos.19214804, 16214805 and 13214806 dated 27.01.2012 referred to in the proposition notice dated 18.10.2012, Annexure-F, contending interalia that it is a crucial document, since it invests second respondent with the jurisdiction and power to initiate reassessment proceedings under Section 39(1) of the KVAT Act and Section 9(2) of the CST Act.

4. An endorsement came to be issued to petitioner on 03.11.2012 rejecting the request which was assailed before this Court in W.P.No.45153/2012 by the petitioner. By order dated 06.11.2012, said writ petition came to be disposed of with a direction to the petitioner to approach second respondent to collect the order copy (dated 27.01.2012) sought for by petitioner. By said order this Court also granted two weeks time to

the petitioner from 07.11.2012 to file its reply to the proposition notice. A reply is said to have been received by the petitioner from the Office of second respondent on 06.11.2012, Annexure-L, on 07.11.2012, enclosing computerized copy of the work order issued by the Commissioner of Commercial Taxes, Bangalore. Petitioner by its letter dated 08.11.2012, Annexure-M, informed second respondent that communication dated 06.11.2012 does not indicate that work order dated 27.01.2012 having been furnished and reiterating its request sought for copy of the work order Nos.19214804, 16214805 and 13214806 dated 27.01.2012 dated 27.01.2012. Petitioner contends that till date there is no reply and said work order has not been furnished to petitioner. Petitioner contends that it has received a communication from 1<sup>st</sup> respondent, whereunder the details of assignments issued in the case of petitioner has been indicated as per Annexure-R and thereafter, an order came to be passed on 06.05.2013, Annexure-S, affirming the demand made in

the proposition notice and demand notices came to be raised thereunder on 10.05.2013 vide Annexures-T1 and T2.

5. The contentions raised by Sri V.S.Arbatti, learned counsel for petitioner can be crystallized as under:

(1) Directions issued by this Court in W.P.No.45153/2012 on 06.11.2012 has not been complied by second respondent.

(2) Work order dated 27.01.2012 which is referred to in the proposition notice and which forms the basis for commencing the reassessment proceedings is not furnished to the petitioner.

(3) Alleged work order dated 27.01.2012, copy of which is furnished to petitioner along with communication dated 06.11.2012, Annexure-L, itself is not a work order and it does not invest second respondent with jurisdiction to initiate reassessment proceedings.

- (4) Said assignment note does not indicate, in any manner, whatsoever that second respondent has been invested with the jurisdiction under Section 39(1) of the KVAT Act and Section 9(2) of the CST Act to carryout reassessment proceedings and at the most, it would indicate that it is for the purposes of verifying the taxability under KVAT Act and CST Act with reference to the annual report of the petitioner for the year 2010-11.
- (5) Without authority of law second respondent has initiated reassessment proceedings and as such, it is without jurisdiction, consequentially affirmation of proposition notice by reassessment order dated 06.05.2013, Annexure-S, and the demand notices at Annexures-T1 and T2 is also without jurisdiction and liable to be set aside.
- (6) Notice dated 06.03.2012, Annexure-B issued in Form No.275, as per Rule 35 is traceable to substantive section namely Section 52 of the KVAT Act and it does not invest the said authority

namely second respondent with the power to conduct reassessment proceedings.

On these grounds, he seeks for grant of prayer made in the writ petition.

6. In support of his submissions, that authorization, if any, issued in favour of an Officer to carryout reassessment proceedings by the Commissioner should be precise and for a specific purpose and it should indicate application of mind by the Commissioner to invest such authority with the power to carry out reassessment, he has relied upon the following judgments:

**1. (2010) 29 VST 494 (Karn):**

R.C.INDIA v. STATE OF KARNATAKA

**2. (2012) 55 VST 401 (Karn):**

MODEL BUCKET & ATTACHMENTS PVT. LTD. v. DEPUTY COMMISSIONER OF COMMERCIAL TAXES (DM), HUBLI.

7. He would elaborate his submission by contending that assignment note dated 27.01.2012,



which has been referred to in the proposition notice and furnished to petitioner as an annexure to communication dated 06.11.2012, Annexure-L, is for the purpose of audit and it would not take within its sweep the reassessment proceedings and they are to be construed as separate, independent and distinct proceedings. He relies upon the judgment of this Court in the case of Model Bucket & Attachments Pvt. Ltd. vs. Deputy Commissioner of Commercial Taxes (DM), Hubli reported in (2012) 55 VST 401 (Karn) in this regard.

8. Per contra, Sri Shivayogiswamy, learned Additional Government Advocate appearing for respondents having produced the original records, would justify the action of respondents and contends that under Section 39(1) of the KVAT Act, the Commissioner is empowered to vest such Officers to conduct reassessment proceedings and draws the attention of the Court to note sheet available on record particularly page 1, whereunder the Divisional VAT Officer, Mysore, had recommended 794 cases for

reassessment under Section 39(1) of the KVAT Act for issuing assignments and said file having been processed through ACCT (I & C) would indicate that at page 29 approval having given by the Commissioner and pursuant to same, an order came to be passed by the Commissioner on 06.02.2012, which was approved on 10.01.2012 by the Commissioner and thereafter order dated 06.02.2012 came to be issued and he contends that reference in the proposition notice, Annexure-B is relating to assignment note issued pursuant to approval made by the Commissioner on 10.01.2012. Hence, he contends that mere non omission of furnishing the order dated 06.02.2012 or the reference made in the proposition notice with regard to assignment note dated 27.02.2012 itself would not wipeout the order of reassessment passed by second respondent on 06.05.2013, Annexure-S, which is well within his jurisdiction and as such, the contention of petitioner is liable to be rejected and prays for dismissal of the writ petition.

9. Sri Shivayogiswamy, learned Additional Government Advocate for respondents would also draw the attention of the Court to Annexure-R produced by petitioner themselves, which relates to the very same petitioner for the assessment year 2006-07 which would indicate that order passed in the present petition on 06.02.2012 is similar to the order dated 25.11.2011 which also came to be passed under Section 39(1) of the KVAT Act.

10. In reply Sri Arbatti, learned counsel for petitioner would contend that there is no reference to the audit mentioned in the enclosure to order dated 25.11.2011 and it was this precise order which was required to be passed investing second respondent with a power to conduct reassessment proceedings and under the guise of issuing an assignment note for conducting the audit, reassessment proceedings cannot be conducted.

11. Having heard the learned counsels appearing for the parties and on perusal of the impugned order, as also the original files made available by the learned Additional Government Advocate appearing for respondents, I have examined and scrutinized the original file which would indicate that the Divisional VAT Officer, Mysore, has made a note for issuing of assignment for reassessment under Section 39(1) by furnishing the requisite details. The assignment for reassessment selected by the audit Office of Divisional VAT Officer, Mysore, has been verified and recommended by the Divisional VAT Officer, Mysore. The list came to be submitted for approval and the said list contains the names of 794 registered dealers. Petitioner is at serial No.777. The reason for such recommendation has been enumerated in the column as **“VERIFY TAX LIABILITY UNDER KVAT AND CST ACT WITH THEIR ANNUAL RETURN”**. The Officer who has been invested with the power to conduct the said proceedings has been noted as Deputy

Commissioner of Commercial Taxes (Audit and Rec.) – 3, Mysore. Said note came to be put up for approval by Commissioner and note sheet at page 29 would indicate that same has been approved on 10.01.2012 by the Commissioner.

12. Section 39(1) of the KVAT Act confers power for reassessment and to levy tax, penalty and interest thereof, which requires to be made by the authority prescribed under the Act. Sub Section (24) of Section 2 defines the prescribed authority to mean an Officer of Commercial Taxes Department, authorised by the Government or the Commissioner to perform such functions as may be assigned to him. Section 61 of the KVAT Act vests the jurisdiction of the Officers who would perform their functions in respect of such areas or of such dealers or classes of dealers or such cases or classes of cases, as the Commissioner may direct. In other words, Commissioner has to expressly and specifically make an assignment for authorizing Officer to make a reassessment under Section 39 of the KVAT

Act of a dealer. A Division Bench of this Court in the case of R.C.India v. State of Karnataka referred to supra has held after verifying the original records made available by the learned Additional Government Advocate that original authorization is only an order of internal notes of the Joint Commissioner of Commercial Taxes (Admn.) DVO, Bangalore, with the intimation of assignment of the audit with respect to the assessee. It was also held by this Court that authorization in favour of an Officer by the Commissioner in terms of Section 38(7) of the Act for the purpose of passing the best judgment assessment order (therein – in the said case) on the person who is carrying the business without getting himself registered as a dealer should be precise, for the specific purpose and should be passed by the Commissioner himself and on verification of original records, it was found to be otherwise namely the original authorization which was relied upon by the Revenue was only an internal notes of the Joint Commissioner and based on that note reassessment

proceedings were conducted. It was also found that the original order enabling the order of Commissioner was conspicuously absent. The proposition which came to be laid down by the Division Bench is: statutory authorities act as a statutory functionaries and quasi-judicial authorities and a dealer on whom the order is passed is not an adversary in a litigation with the Revenue and the Commercial Tax Department as rivals to ensure that the proper revenue is realized to the State, it can only be in accordance with law and not dehors the statutory provisions.

13. The proposition notice in question – Annexure-F dated 18.03.2012 came to be issued by second respondent since there was a reference to assignment note No.19214804, 16214805 & 13214806 dated 27.01.2012. Petitioner herein submitted a representation dated 02.11.2012 to the second respondent requesting for a copy of the same and on account of rejection of his prayer, petitioner had

approached this Court in W.P.No.45153/2012 which came to be disposed of on 06.11.2012 by granting an opportunity to the petitioner to approach the second respondent on next day i.e., 07.11.2012 to collect the copy of said order dated 27.01.2012.

14. Thereafter a communication has been issued by second respondent to the petitioner which is dated 06.11.2012 and it came to be served on petitioner on 07.11.2012 vide Annexure-L whereunder the computer generated assignment note referred to herein above came to be forwarded. A perusal of the said assignment notes would indicate that for the assessment year 2010-11 second respondent has been assigned to verify the tax liability of the petitioner company under KVAT, CST and KTEG Act with their annual reports. It would be appropriate to deal with the contention raised by learned counsel namely, said assignment notes do not indicate that there is any authorisation issued by the Commissioner to second respondent to carry out re-



assessment or even otherwise, said assignment relates to the power to be exercised by second respondent for the purpose of Section 52 namely for production and inspection of documents and it has to stop at it and it cannot be further proceeded for conducting or making re-assessment proceedings under Section 39 since there is no such authorisation issued by jurisdictional Commissioner to petitioner. The original records made available by the learned Government Advocate would clearly indicate that for the purpose of issuing assignment notes for re-assessment under Section 39 through e-mode method, an exercise has been conducted on the basis of selection made by audit officers of DVO, Mysore as recommended by Joint Commissioner of Commercial Tax, DVO, Mysore, approval of the Commissioner was sought for. Records would indicate at Sl.No.777 the name of petitioner – dealer is reflected whereunder reason assigned is **“to verify taxability under KVAT & CST with their Annual”**. The said request came to be considered and

approved by the Commissioner on 10.01.2012 as “ಅನುಮೋದಿಸಿದೆ” (Approved). The Commissioner while examining all the proposal forwarded for his approval has found that insofar as Sl.Nos.1 to 24 of the list related to the same period and it has been assigned twice to same officer and as such said dealers against whom re-assessment was recommended came to be rejected. Commissioner has also found that in respect of the assessment year 2011-12, three dealers who had still time to submit the revised returns had been included in the said list and their cases have also been recommended for reassessment and selected by the audit officers of DVO, Mysore and as such it came to be rejected by the Commissioner. Hence, contention of Mr.Arabatti, learned Counsel appearing for the petitioner that there is no application of mind by Commissioner while granting sanction or approval by referring only to assignment notes, a copy of which has been furnished to the assessee cannot be accepted. When the original records would clearly indicate that

Commissioner has examined the proposal for reassessment by rejecting some of the files and by accepting other files for being re-assessed by the officers so designated by him, it cannot be construed that there is no application of mind. There is no mechanical acceptance of the proposal made by the audit officers, DVO Mysore. Hence, only on the ground that petitioner had been furnished with assignment note along with communication dated 06.01.2012 – Annexure-F would not alter or change the factual position as could be seen from the original records. Commissioner has examined the records, applied his mind, arrived at the conclusion to assign the files of petitioner to second respondent for conducting reassessment proceedings. The Commissioner, who is the prescribed authority in exercise of powers vested under Section 39(1) in the instant case, has authorised the second respondent to make re-assessment of the petitioner company. The preamble to the note which has ultimately culminated

in the consent or approval of the Commissioner dated

6.2.2012 (found in original file) would read as under:

“The request for issuing assignment for re-assessment under Section 39 is made through a mode by the DVO-Mysore in a format furnishing the required details. The assignments for re-assessment selected by the audit officers of the DVO-Mysore has been verified and recommended by the JCCT, DVO-Mysore. Assignments will have to be issued through efs, comprehensive Audit System. The following list is submitted for the CCT’s perusal and approval.”

The brief reasons assigned in the reasons column of assignment notes bearing numbers 19214804, 16214805 and 13214806 would not change the contours or the nature of re-assessment that is required to be done by the second respondent-authorities and as approved by the jurisdictional Commissioner for commercial taxes. In fact, the approval dated 10.01.2012 made by the Commissioner has culminated in an order being passed by him on 06.02.2012 not only authorizing the officers mentioned in the list submitted by the DVO Mysore but also other formations. List of

dealers whose assessment was ordered for reassessment as found in the original records contains list of 1,462 dealers which is appended to order dated 6.2.2012.

15. As already noticed herein above and at the cost of repetition, judgment of Division Bench of this Court in R.C.INDIA referred to herein supra and strongly relied upon by learned Counsel appearing for petitioner would not be of any assistance for the reason that in the said case, Division Bench had found that on scrutiny of original records being made available by learned Government Advocate that there was no such authorisation issued by the Commissioner. It has been held as under:

“13. In the instant case, we find that the so-called original authorisation which is placed before the Court, notwithstanding the claim to this effect is **only an order internal notes of the Joint Commissioner of Commercial Taxes (Admn) DVO-3, Bangalore** with the intimation of assignment for audit in respect of the appellant. Though this note is

only quoting the order of the Commissioner dated December 6, 2007 for the purpose of assigning the respondent the power and function to audit the accounts of the appellant-dealer for the period April 1, 2005 **onwards the original enabling order of the Commissioner is conspicuously absent.**

16. Though Addl. Government Advocate had been directed to place original records from the office of Commissioner of Commercial Tax, records produced before the Court related to the investigation report of Additional Commissioner and photo copy of order sheet of Commissioner of Commercial Tax and this was sought to be relied upon by the learned Government Advocate to defend the action of State to contend that same has to be construed as approval by Commissioner. However, Division Bench found that it is only a proposal which appears to have been communicated from the Deputy Commissioner and the note indicating that Commissioner has agreed with that was held to be not in terms of sub-section (7) of Section

38 of the Act. However, in the instant case, list of dealers are noted by the audit officers came to be verified by the Commissioner of Commercial Taxes when forwarded for his approval for re-assessment to be made under Section 39 of the Act, came to be examined by him and after rejecting the audit officers recommendations for reassessment in respect of few dealers who were said to have been included in the list twice, Commissioner has granted sanction or approval in respect of others. Hence, said judgment would not be applicable to the facts on hand.

17. In the case of WINDSOR GARDEN PVT. LTD relied upon by the learned counsel appearing for petitioner as it can be seen that argument was sought to be put forth by learned AGA in the said case that audit includes re-assessment which was negated by co-ordinate Bench of this Court. We are not placed in such factual position insofar as the present case. Merely because petitioner has been furnished with an assignment note which would indicate in the column

“audit – reason” same cannot be a ground to conclude or hold that Commissioner in the instant case had authorised second respondent only to conduct audit and not re-assessment. Records would indicate that Commissioner has given his consent for re-assessment in the instant case and as such principles enunciated in WINDSOR GARDEN PVT. LTD’s case would not be applicable to the facts on hand.

18. Insofar as MODEL BUCKET AND ATTACHMENTS PVT LTD referred to supra relied upon by the learned counsel appearing for petitioner, it would not detain this Court for long to hold that it would be not applicable to the facts on hand inasmuch as, undisputedly there was no express authorisation in the said case. In the said case learned AGA relied upon a e-mail print out to contend that Commissioner had issued authorisation. However, there was no material placed by the Revenue to substantiate or support its claim that there has been due compliance of Section 39 of the KVAT Rule read with Rule 1 & 2 of KVAT Rules. In



that view of the matter, said judgment would not come to the rescue of learned counsel appearing for petitioners.

19. This Court would not be in a position to examine the correctness or otherwise of the order passed by second respondent dated 06.05.2013 -- Annexure-S under extraordinary jurisdiction for the simple ground that petitioner has an alternate remedy available under Section 62 of KVAT Act, 2003 namely it is an appealable order. Since petitioner has been prosecuting its claim challenging said order before this Court under a bonafide impression that second respondent did not have jurisdiction to pass order of re-assessment, time spent by the petitioner before this Court should be excluded for the purpose of reckoning the limitation in the event of petitioner were to file an appeal before jurisdictional appellate authority. Hence, I am of the view that ends of justice would be met if petitioner is granted two weeks from today to file an appeal before jurisdictional appellate authority.

20. Hence, for the reasons stated herein above, I pass the following:

ORDER

- (i) Writ petitions are hereby dismissed.
- (ii) Dismissal of writ petitions would not come in the way of petitioner filing an appeal before jurisdictional appellate authority within an outer limit of two weeks from today and in the event of such an appeal being filed before appellate authority it shall examine the appeal on merits and in accordance with law without insisting for application for condonation of delay being filed.
- (iii) Registry is directed to return the original records to Additional AGA or Office of Advocate General under due

acknowledgement forthwith and make  
necessary entry in the order sheet.

(iv) No costs.

**Sd/-  
JUDGE**

DR/sp