
(2008) 01 KAR CK 0010

Karnataka High Court

Case No: Writ Petition No. 12452 of 2007

Hindustan Unilever
Limited

APPELLANT

Vs

Deputy Commissioner
of Commercial Taxes
(Transition 1) and
Another

RESPONDENT

Date of Decision: Jan. 3, 2008

Acts Referred:

- Karnataka Sales Tax Act, 1957 - Section 12 (2)

Citation: (2010) 27 VST 139

Hon'ble Judges: N.K. Patil, J

Bench: Single Bench

Advocate: R.V. Prasad, for Vasan Associates, for the Appellant; Niloufer Akbar, A.G.A., for the Respondent

Judgement

@JUDGMENTTAG-ORDER

N.K. Patil, J.

In the instant case, the petitioner is assailing the correctness of the assessment order dated July 20, 2007 and consequential notice of demand dated July 30, 2007 passed by the first respondent u/s 12(2) of the Act for the assessment year 1995-96, in so far as it relates to the denial of the sales tax exemption on the sales of tea manufactured by the petitioner at its Dharwad unit vide annexures A and B.

2. The undisputed facts of the case are that the petitioner has filed an appeal before the appellate authority assailing the correctness of the order of assessment dated March 15, 2003 passed by the first respondent in Appeal No. KST. AP. No. 12/2003-04 before the second respondent. The second respondent by its order dated April 30, 2004 has allowed the appeal and set aside the order of assessment dated March 15, 2003 and the matter

was remitted back to the first respondent with a direction to pass an order for assessment in accordance with law. In the light of the observations made in the order dated April 30, 2004 passed by the second respondent, the first respondent instead of considering the directions issued by the appellate authority, without conducting proper enquiry and without affording an opportunity to the petitioner proceeded to pass the impugned assessment order. Therefore, the petitioner is constrained to approach this Court by presenting this writ petition seeking appropriate reliefs as stated supra.

3. Having heard the learned Counsel appearing for both the parties and after perusal of the impugned assessment order passed by the first respondent vide annexure A, it emerges that the first respondent has committed grave error and material irregularity in proceeding to pass an order without conducting proper enquiry and without compliance with the directions issued by the appellate authority dated April 30, 2004 passed in Appeal No. KST. AP. No. 12/2003-04, wherein, the appellate authority has specifically directed that the impugned assessment order shall be considered for the assessment years 1995-96 and 1998-99. The Full Bench of the Tribunal has passed the order dated December 27, 2003 regarding the amount of sales tax exemption to new industrial unit in terms of Government notification dated June 19, 1991 and specifically directed to take a decision in accordance with law. In the light of the confirmation of the order passed by the Full Bench of the Tribunal in a revision petition filed before the Division Bench of this Court Deputy Commissioner of Commercial Taxes (Vigilance), Bangalore v. Hindustan Lever Limited (Lipton Division), Bangalore reported in [2007] 10 VST 330 AP : [2007] 62 Kar. L.J. 257 at annexure C, and in spite of a specific direction issued to dispose of the matter in the light of the observations made by the Tribunal, the assessing authority has not complied with the directions and also without following the judgment of the Division Bench of this Court as referred above, has passed the order, except making reference that the Deputy Commissioner of Commercial Taxes (Transition 1) has preferred an SLP before the Supreme court and the said matter is pending adjudication. If that is so, the said authority might have decided the matter on the merits and proceeded to pass the order. Without conducting proper enquiry and without affording proper opportunity to the petitioner and in gross violation of the principles of natural justice, the impugned order has been passed, which cannot be sustainable by any stretch of imagination.

4. In the light of the facts and circumstances of the case stated above, the writ petition is allowed in part. The impugned assessment order passed by the first respondent dated July 20, 2007 and consequential notice of demand dated July 30, 2007 issued by the first respondent are hereby set aside. The matter stands remitted back to the first respondent only in so far as it relates to the denial of sales tax exemption on the sales of tea manufactured by the petitioner at its Dharwad unit with a direction to the first respondent to reconsider the matter afresh, take appropriate decision in accordance with law and in the light of the directions issued by the appellate authority dated April 30, 2004 passed in Appeal No. KST. AP. No. 12/2003-04 and also in the light of the judgment of the Division Bench of this Court in Deputy Commissioner of Commercial Taxes (Vigilance), Bangalore

v. Hindustan Lever Limited (Lipton Division), Bangalore reported in [2007] 10 VST 330 SC : [2007] 62 Kar. L.J. 257 (HC) (DB) and dispose of the matter after affording reasonable opportunity to the petitioner, as expeditiously as possible, at any rate, within a period of four months from the date of receipt of this order.