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**IN THE HIGH COURT OF KARNATAKA  
DHARWAD BENCH**

**DATED THIS THE 7<sup>TH</sup> DAY OF SEPTEMBER, 2018**

**PRESENT**

**THE HON'BLE MR.JUSTICE B.VEERAPPA**

**AND**

**THE HON'BLE MR.JUSTICE H.T. NARENDRA PRASAD**

**SALE TAX APPEAL No.513 OF 2013 [T-RES ]**

**BETWEEN:**

M/S. GHODAWAT PAN MASALA  
PRODUCTS (I) PVT. LTD.,  
5 & 6 RAGHAVENDRA COLONY,  
KHASBAG, BELGAUM.  
A LIMITED COMPANY REP. BY ITS  
DIRECTOR,  
R.V. BELGAUMKAR,  
AGED ABOUT 52 YEARS,  
S/O: LATE SRI VISHNUTRITH  
V. BELGAUMKAR.

... APPELLANT

(BY SRI.M.THIRUMALESH AND  
SRI.H.R.KAMBIYAVAR, ADVOCATES)

**AND:**

1.ADDL. COMMISSIONER OF COMMERCIAL  
TAXES, ZONE II,  
VANIYA THERIGE KARYALAYA,  
6TH FLOOR,GANDHINAGAR,  
BANGALORE-560 009.

2.JOINT COMMISSIONER OF  
COMMERCIAL TAXES (APPEALS)  
BELGAUM DIVISION,  
5TH FLOOR, SOMOULYA SOUDHA,  
CLUB ROAD, BELGAUM.

3. ASSISTANT COMMISSIONER OF  
COMMERCIAL TAXES

: 2 :

(ENFORCEMENT)-21, SOUTH ZONE,  
VANIJYA THERIGE KARYALAYA-2,  
RANENDRA NAGAR, KORAMANGALA,  
BANGALORE-560 047. ... RESPONDENTS

(BY SMT. VEENA HEGDE, AGA)

THIS APPEAL IS FILED U/SEC.66(1) OF THE KVAT ACT 2003, AGAINST THE ORDER DTD:31.08.2013, PASSED IN SMR/KVAT/BG/APP/CR-07/201314 ON THE FILE OF THE ADDL. COMMISSIONER OF COMMERCIAL TAXES, ZONE-II, BANGALORE, THE ORDER OF THE FIRST APPELLATE AUTHORITY IS SET ASIDE. THE PENALTY ORDER DTD:30.01.2013 PASSED U/S. 77(2) OF THE KVAT ACT 2003 IS RESTORED.

THIS APPEAL IS COMING ON FOR *FINAL HEARING*, THIS DAY, *B.VEERAPPA J*, DELIVERED THE FOLLOWING:

### **JUDGMENT**

The present appeal is filed by the assessee against the Revisional Order passed by the Addl. Commissioner of Commercial Taxes, Zone II, Bangalore-09, dated 31.08.2013 in SMR/KVAT/BG/APP/CR-07/201314 under the provision of Section 66(1) of the KVAT Act, 2003.

2. It is the case of the appellant that, assessee is a Private Limited Company incorporated under the Companies Act, 1956 and a dealer, registered under the Karnataka Value Added Tax Act, 2003 and the Central Sales Tax Act, 1956 (hereinafter referred to as KVAT Act, 2003 and CST Act, 1956 for brevity).

3. The appellant carried on a business of manufacture of Tobacco products known as Gutkha and Pan Masala. The raw materials used in manufacture of Gutkha are mainly Supari, Tobacco, Kattha, Kimam, Lime, Glycerin, Perfume, Menthol and Cardamom; and packing materials like paper lamination, outer packets and bags. The manufacturing unit was operating with 20 packing machines to manufacture different brands of Gutkha and Pan Masasla namely Star Gutkha, Star Premium Gutha, Star Pan Masala, Singam Gutkha, Star Biggi Pan Masala, Star Biggi Gutkha etc. These finished products are transferred to appellant's Belgaum Depot and from there, it is dispatched to various stockiest and distributors.

4. It is the further case of the appellant that on 30.01.2013, the appellant's manufacturing unit was inspected by the Inspecting Authority-Respondent No.3. On verification, an excess of stock of Star Gutkha in bulk kept in 67 barrels each of 50 KGs are found out, which could not be related to the book figures, produced by the appellant. The total volume of such excess Gutkha was worked out at Rs.3,350/- KGs., and when converted in to bags, it was worked out 812 bags. The value of such bags was worked out at Rs.40,60,000/- at MRP

value at the rate of Rs.5,000/- per bag. After deducting 25% towards VAT entry tax and profit of Rs.10,15,000/-, the net value of 812 bags was arrived at Rs.30,45,000/- and on the same day reply statement was filed by the Managing Director of the appellant's Company in their own letter head, but without following the required procedure, the Inspecting Authority issued notice under Section 77(2) of the KVAT Act, 2003 proposing levy penalty of Rs.10,35,300/- for unaccounted stock.

5. Being aggrieved by the said order of the Inspecting Authority, appellant preferred an appeal before the Appellate Authority-Respondent No.2, the Appellate Authority set aside the order of Inspecting Authority. The Revisional Authority-Respondent No.1 invoked revisional proceedings against the appellant by allowing the Revision. Thus, appellant is before this Court by challenging the order passed by the Revisional Authority-Respondent No.1.

6. Heard Sri.M.Tirumalesh, learned counsel for the appellant and Smt. Veena Hegde, learned counsel for the respondents.

7. The substantial question of law framed by this Court in this appeal is as under:

“Whether the Inspecting Authority was justified in invoking the provision of Section 77 (2) of KVAT Act, 2003 and Sub Section 1(J) of Section 52 of KVAT Act, 2003, under the facts and circumstances of the case?”

8. The learned counsel for the appellant vehemently contended that the impugned order passed by the Revisional Authority is erroneous and contrary to the material on record and cannot be sustained. He further contended that, the Inspecting Authority was passed punishment order without affording reasonable opportunity of being heard to the assessee and thereby violated the principles of natural justice. Therefore, the penalty order is liable to be set aside. He further contended that the Inspecting Authority accompanied by team of the Officers of the Commercial Tax, Belgaum had conducted inspection of the factory premises, on verification, an excess stock of Star Gutkha in bulk kept in 67 barrels each of 50 KGs were found out, which could not be related to the book figures, produced by the dealer. The total volume of such excess Gutkha was worked out at Rs.3,350 KGs and when converted

into bags, it was worked out 812 bags. The value of such bags was worked out at Rs.40,60,000/- at MRP value at the rate of Rs.5,000/- per bag. After deducting 25% towards VAT Entry Tax and profit of Rs.10,15,000/-, the net value of 812 bags was arrived at Rs.30,45,000/- and on the same day, reply statement was filed by the Managing Director of the appellant Company in their own letter head, but without following the required procedure, the Inspecting Authority issued notice under Section 77(2) of the KVAT Act, 2003, proposing levy penalty of Rs.10,35,300/- for unaccounted stock found in the factory premises, and at the end of the day, the Inspecting Authority forced one of the Directors of the Company on the spot to admit the unaccounted quantity and value of Gutkha at present in the factory premises and collected the fine amount of Rs.10,35,300/- as penalty.

9. He further contended that, in view of the dictum of this Court in the case of K.M.Puttaswamy (Deceased by Legal Representative) V/s. Commercial Tax Officer (Intelligence), Mysore Circle, Mysore LAWS(KAR) 1986 6 20, STC 1988 68 241, it was held that as per the show cause notice, seven days time should be given to the dealer to

furnish his reply and when on the very day of issue of show cause notice, completes the proceedings by the Inspecting Authority is arbitrary and cannot be sustainable in law and the Inspecting Authority, who passed penalty order is in a printed format and there is no application of mind. Therefore, the same cannot be sustained.

10. He would further contended that the Inspecting Authority has collected the penalty of Rs.10,35,300/- on the same day, before filing objections to unaccountable stock found in the factory premises and adopted wrong method of stock taking, which is against the instructions of the Adml. Commissioner of Commercial Taxes, Bengaluru and therefore, he sought to allow the appeal by setting aside the order passed by the Revisional Authority.

11. In support of his contentions, the learned counsel relied upon the following judgments:

- 1) K.M.Puttaswamy (Deceased by Legal Representative) V/s. Commercial Tax Officer (Intelligence), Mysore Circle, Mysore reported in LAWS(KAR) 1986 6 20, STC 1988 68 241.

- 2) Life Line Devices V/s. Commercial Tax Officer Narayanaguda Hyderabad, reported in Laws(APH) 2000 4 6, STC 2000 119 52.
- 3) Priyanka Wines V/s. Assistant Commissioner (C.T) (Intelligence), Abids Division reported in (1998) 110 STC 73.

12. Per *Contra*, Smt.Veena Hegde, learned AGA sought to justify the impugned order passed by the Revisional Authority and produced the original records and contended that contemplated notice was issued on 30.01.2013 by the Addl. Commissioner of Commercial Taxes (Enforcement) South Zone, Bangalore-47, proposing penalty of Rs.10,35,300/- under the provision of Section 77(2) of KVAT Act, 2003 and the Director of the Company was given seven days time to offer his explanation/objections for the excess unaccountable stock found in the factory premises. The appellant made a statement in their own letter head, signed on the same day and admitted that the contents of the statement as true and correct and also admitted that the notice issued under the provisions of Section 77(2) of KVAT Act, 2003 in a categorical term stating that "I am willing to pay the penalty and also paid the penalty vide cheque



bearing No.862234 of HDFC Bank, Sangli, Maharashtra, dated 30.01.2013, for Rs.10,35,300/- issued in favour of the Additional Commissioner of Commercial Taxes (Enforcement), Bangalore.” The appellant having paid the penalty, had filed appeal before the Appellate Authority. The Appellate Authority without considering the material on record allowed the appeal erroneously. The same is recalled by the Revisional Authority under the provision of Section 64(1) of the KVAT Act, 2003 and therefore, there is no substantial question of law involved in this appeal and sought to dismiss the appeal.

13. We have given our anxious consideration to the arguments advanced by the learned counsel for the parties to the *lis* and perused the material on record including the original records produced by the learned counsel for the respondents carefully.

14. It is an undisputed fact that the appellant's company is carrying business of the manufacturing of Tobacco products in the name and style of M/s. Ghodawat Pan Masala Products(I) Pvt., Ltd., and on 30.01.2013, the Assistant Commissioner of Commercial Tax (Enforcement) 21, South

Zone, Bangalore-47 inspected the appellant's factory premises, on verification of Books of Accounts, the Inspecting Authority have taken physical stock of raw materials and packing materials, semi finished and finished products and the same has been recorded in separate sheets and compared with the stock as per the books of accounts and the Inspecting Authority found out the excess stock of 67 barrels each of 50 KGs, totaling 3350 Kgs, in the form of unpacked semi finished Gutkha. The Inspecting Authority has valued the same at Rs.30,45,000/- based on the market value of finished goods less margin and entry tax and collected penalty twice the rate under Section 77(2) of KVAT Act, 2003 as unaccounted stock held by the appellant and issued levy of penalty of Rs.10,35,300/-. The appellant on the same day made statement before the Inspecting Authority in its own letter head, dated 30.01.2013, admitted in a categorical terms by stating that " *I am willing to pay the penalty*", the relevant portion reads as under:

*"With the assistants of the my staff working in the factory you have noted down the physical stock of raw materials, packing materials, semi finished products and finished products. The details are separately recorded and the same is compared with*

the stock as per the books of accounts. As per the verification it is found that there is excess stock of Star Gutkha (ready in 67 barrels each of 50 kg.) The total volume of the excess Gutkha is 3350 Kgs. Converted in to Bags of 812 Bags of Stars Gutkha, The appro. MRP value per bag of Gutkha is Rs.5,000/-. Thus the total MRP value of 812 bags works out to 40,60,000/-. After deducting 25% towards VAT entry Tax and profit of Rs.10,15,000/-. The net Value of 812 bags Rs.30,45,000/-. I have not furnished any records or explanation for the excess stock of Gutkha of 3350 Kgs. (Gutkha ready on barrels) you have also explained that the holding of excess stock of goods without the support of any documents is liable for penalty twice the rate of tax as prescribed under Section 77(2) of the KVAT Act, 2003. The penalty amount is worked out Rs.10,35,300/- in this connection you have issued a notice and penalty order under Section 77(2) proposing to levy penalty of Rs.10,35,300/-. I am willing to pay the penalty. Since the cheque signing authority is not available today the cheque will be furnished to you tomorrow. The contest of the above statement is true and correct and I have retained the copy of statement for records purpose.”

For: Ghodawat Panmasala Products(I) Pvt. Ltc.,  
Sd/-  
Director/30.01.2013

Subsequently, the cheque bearing No.862234 dated 30.01.2013 was also issued in favour of the Addl.

Commissioner of Commercial Taxes (Enforcement) South Zone, Bangalor for Rs.10,35,300/-.

15. The things stood thus, very strangely although, the admission made before the Inspecting Authority in writing regarding payment of penalty levied, the appellant filed the appeal before the Appellate Authority under the provisions of Section 62(2) of the KVAT Act, 2003, mainly on the ground that levying penalty under Section 77(2) of KVAT Act, 2003 is not sustainable in law as the Inspecting Authority has wrongly taken the physical stocks without actually weighing nor counting the stocks held and the stock taken was on approximate basis and moreover, the Inspecting Authority without allowing the appellant to submit his explanation/objections, passed the order which was in a preprinted/typed format, wherein the Inspecting Authority put the name and address of the appellant and there was no unaccountable stock found in the factory premises and the appellant maintained all goods dealt by the Company correctly.

16. When the Appellate Authority call for records, absolutely no reference was made about the consideration

of records with regard to the statement made by the appellant before the Inspecting Authority and the stock found by the Inspecting Authority was correct and the appellant was also ready and willing to pay the penalty levied without any reasonable objections and penalty amount was also paid vide cheque bearing No.862234 of HDFC Bank, Sangli, Maharashtra, dated 30.01.2013, for Rs.10,35,300/- drawn in favour of the Additional Commissioner of Commercial Taxes (Enforcement), Bangalore. The Appellate Authority has not taken into consideration the material on record and passed the order by allowing the appeal filed by the appellant by setting aside the order of the Inspecting Authority. The Appellate Authority has not taken into consideration the materials on record while passing the order, which are not supported by the facts and figures, sound reasoning or legal provisions, but based on the vague and general presumptions and mis-application of the case Laws, the Appellate Authority allowed the appeal filed by the appellant. Hence, the Appellate Authority has not exercised the power under proper perspective as contemplated under the provisions of Section 62(6) of the KVAT Act, 2003.

17. The Revisional Authority exercised power under the provisions of Section 64(1) of the KVAT Act, 2003 and initiated *suo moto* revisional proceedings and call for records, and examined the records as contemplated and recorded a categorical finding by setting aside the order passed by the Appellate Authority and restored the penalty order dated 30.01.2013 passed by the Inspecting Authority.

18. The material on record clearly depicts that though the Inspecting Authority issued notice under the provision of Section 77(2) of the KVAT Act, 2003, the appellant who was present at the time of spot inspection did not rise any objections with regard to unaccountable stock found in the premises of the factory and also did not provide any circumstantial reasons for the same and rightly paid the levied penalty vide the cheque bearing No.862234 of HDFC Bank, Sangli, Maharashtra, dated 30.01.2013, for Rs.10,35,300/- issued in favour of the Additional Commissioner of Commercial Taxes (Enforcement), Bangalore. Once the appellant issued cheque for entire amount, the appeal before the appellate authority was not maintainable in view of the law of estoppel, it was unethical

for the appellant to file appeal. Our view is fortified by the dictum of the Full Bench of this Court in the case of *M/s. S.V.Bagi V/s. State of Karnataka*, reported in *ILR 1992 KAR 1123* at paras 12 to 15 held as under:

12. Now we turn to analyse section 31. It says that the prescribed authority may accept from any person who has committed or is reasonably suspected of having committed an offence punishable under the Act, by way of composition of such offence, an amount, in respect of which the parameters are laid down in clauses (a) and (b). The section, therefore, contemplates the composition of an offence whether it has been committed or is reasonably suspected of having been committed an offence may pay, pay, and the prescribed authority, may accept by way of composition for such offence an amount as therein stated. The phraseology used suggests that the offer to compound must come from such person. There is no compulsion upon him to make such offer. He can make it if he is assured of the possibility of being found guilty of the offence and upon satisfying himself that what he offers is within the prescribed parameters and that he to whom he makes the offer is the prescribed authority for the purpose. Once the offer is made it is for the prescribed authority to determine whether the offence should be compounded and, if so, whether it should be compounded for the amount offered. No doubt, it would be open to the prescribed authority to suggest such other sum as in its view would be appropriate, in which case it would be for such person to agree to pay such other sum or not. In our view, the process of compounding is completed only when the money that is agreed upon actually changes hands. If this be the correct view, as we think it is, with great respect to the learned Judge who decided Nanjappa's case [supra], there can never be a situation where the person who has committed or reasonably suspected of having committed an offence under the Act can be aggrieved. The fact that he has made the payment would indicate beyond any doubt that he was a willing party to the compounding and he cannot object thereto. It is, therefore, difficult to see how an appeal can be filed against an order of compounding.

13. Since we are, in effect, reversing the judgment in Nanjappa's case, we must add that until the process of compounding is completed by payment of the agreed

*compounding fee, the sales tax authorities would be entitled to lodge a prosecution, but not to recover the composition fee by coercive process.*

*14. For the purpose of this judgment, we have proceeded upon the basis that an "order" of compounding is required to be made under section 31. Even so, no appeal can lie thereagainst under section 20 because the appellant cannot object thereto. The order is, in fact, in his favour, made to save him "the disgrace and ignominy of a prosecution".*

*15. In result, we hold that a person in respect of whom an order of compounding is made is not entitled to challenge the order under any circumstances by invoking the appellate provisions of section 20 of the Act.*

19. The Appellate Authority without verifying the original records, proceeded to pass erroneous order. Therefore, penalty imposed under Section 77(2) of KVAT Act, 2003 is in accordance with law. In view of the aforesaid reasons, the Revisional Authority rightly initiated *Suo moto* proceedings under the provisions of Section 64(1) of the KVAT Act, 2003. After careful perusal of the entire material on record, we are satisfied with the order passed by the Revisional Authority, the same is in accordance with law. Accordingly, the substantial question of law raised in the present appeal has to be answered in affirmative holding that the Inspecting Authority was justified in invoking the provisions of Section 77(2) of KVAT Act, 2003 and Sub Section 1(J) of Section 52 of KVAT Act, 2003.



20. The Addl. Commissioner of Commercial Taxes, Bangalore restored the penalty order, dated 30.01.2013, passed by the Inspecting Authority under the provisions of Section 77(2) of the KVAT Act, 2003 and Sub Section 1(J) of Section 52 of KVAT Act, 2003, levying penalty of Rs.10,35,300/- is in accordance with law and therefore, the appeal is devoid of any merits.

21. In so far as the *dictums* relied-upon by the learned counsel for the appellant is concerned, we have no quarrel with the Law laid down in the said *dictums* to the circumstances of the said cases and have no application to the facts and circumstances of the present case.

22. We are aware of the fact that as soon as notice issued under Section 77(2) of KVAT Act, 2003, immediately seven days time has to be given, but in the present case, notice issued under Section 77(2) of KVAT Act, 2003 to the appellant and he did not filed any objection, nor disputed the contents of the notice and the appellant was ready and willing to pay the penalty and accordingly, paid the penalty levied. Therefore, the contention raised by the learned counsel for the appellant that, there is no proper verification

and absolutely, there was no unaccountable stock in the factory premises cannot be accepted.

23. In view of the aforesaid reasons, the appellant has not made out any ground to interfere with the impugned order passed by the Revisional Authority by this Court in exercise of power under the provisions of Section 66(1) of the Karnataka Value Added Tax Act, 2003.

Accordingly, the appeal is dismissed.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

VB