

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 05TH DAY OF JUNE 2015

BEFORE

THE HON'BLE MR. JUSTICE B.MANOHAR

W.P. No.72328 & W.P.Nos.72395-397/2012(T-RES)

BETWEEN:

Weir BDK Valves,
A Unit of Weir India Private Limited.,
(Formerly B.D.K. Engineering Industries Limited)
No.47/48, Gokul Road,
Hubli – 580 030,
Represented herein by its
Head – Finance and Accounts,
Mr.Lokesh Bhatia.

... Petitioner

(By Sri.T.Suryanarayana, Adv. for M/s.King and Partridge, Advs)

AND:

1. The Assistant Commissioner of
Commercial Taxes (Audit – 1) ,
D.C. Compound,
Dharwad.
2. The Assistant Commissioner of
Commercial Taxes (Audit), Kumta.

3. The Assistant Commissioner of Commercial Taxes (Audit – 3)
Navanagar,
Hubli – 580 025.
4. The Commissioner of Commercial Taxes (Karnataka)
Vanijya Therige Karyalaya,
Gandhinagar,
Bangalore – 560 009.
5. The Joint Commissioner of Commercial Taxes (Appeals),
Dharwad Division, Hubli,
Vanijya Therige Bhavan,
Navrang, P.B.Road,
Hubli – 580 025.Respondents

(By Sri.M.Kumar, AGA for Respondents)

These Writ Petitions are filed under Article 226 of the Constitution of India, praying to

(I) Quashing the Assessment Order dated 25.05.2011 (Annexure – E) passed U/Sec.9(2) of the CST Act R/w Sec.29(1), 36, 72(2) of the KVAT Act for the Assessment year 2008-09.

(II) Quashing the demand notices dated 25.05.2011 (Annexure F – 1 to F4) issued by the 1st Respondent for the periods April 2008 to June 2008, July 2008 to

September 2008, October 2008 to December 2008 and January 2009 to March 2009 respectively.

(III) Quashing of the endorsement dated 27.07.2011 (Annexure – K) issued by the 2nd Respondent.

(IV) Quashing of the Notice dated 11.10.2012 (Annexure – S) issued U/Sec.14 of the KST' Act by the 3rd Respondent.

(V) Directing the respondents to consider the statutory forms submitted by the petitioner till date and grant the benefit of concessional rate of tax and exemption to the extent of the Forms submitted and pass orders in accordance with law.

These Writ Petitions coming on for Preliminary Hearing in 'B' group and having reserved for Judgment on 25-04-2015, this day, the Court pronounced the following:

ORDER

Petitioner in these writ petitions has sought for quashing the assessment order dated 25-05-2011 and also subsequent demand notices as per Annexures-F1 to F4 and also order dated 18-10-2012 passed by

the Joint Commissioner of Commercial Taxes (Appeals) rejecting the appeals filed by the petitioner and also notice dated 11-10-2012 issued by the 3rd respondent under Section 14 of the Karnataka Sales Tax Act (hereinafter referred to as 'the KST Act' for short) and for other reliefs.

2. The petitioner is a unit of Weir India Private Limited which is a subsidiary of Weir Holding BV, Netherlands and is engaged in the business of manufacture, sale and distribution of industrial valves and providing engineering services. The Weir India Private Limited, acquired the business of BDK Engineering Industries Limited, which was registered under the provisions of Karnataka Value Added Tax Act (for short 'the KVAT Act') bearing Tin No.29970002631 under a business transfer agreement executed between the parties by way of a slump sale on 11-10-2010. Upon such acquisition, the said business acquired from BDK Engineering Industries Limited was identified as a separate unit by name 'Weir BDK Valves'. The said unit was registered under the provisions of KVAT Act.

3. The return for the assessment year 2008-09 in respect of each quarter of relevant assessment year i.e. from April 2008 to June 2008, July 2008 to September 2008, October 2008 to December 2008, January 2009 to March 2009, taken up for assessment and notice under Section 9(2) of Central Sales Tax Act, 1956 (hereinafter referred to as 'the CST Act' for short) was issued on 17-02-2011 calling upon the petitioner to produce account books, tax invoices, sale bills and other relevant records for the assessment. In response to the said notice, the petitioner through his letter dated 22-3-2011 produced 'C' Forms and 'H' Forms and requested time to collect the balance 'C' Forms and 'H' Forms from their customers. On the basis of the said documents, the Assessing Authority issued proposition notice under Section 9(2) of CST Act read with Sections 35, 36 and 72 (2) of KVAT Act, 2003 calling upon the petitioner to file their objection to the proposal within 7 days from the date of receipt of the said notice. The petitioner filed objections to the said proposition notice and contended that the proposing to levy a higher rate of tax on the turnover not covered by the statutory forms

and raise a demand for tax, interest and penalty is contrary to law. There is lot of mistakes in the pre-assessment notice. Along with the objections, the petitioner also furnished 'C' Forms covering the turnover of Rs.3,33,106/-, undertook to furnish 'C' Forms and the accounts. The Assessing Authority after considering the objections to the pre-assessment notice, passed the assessment order on 25-05-2011 for each quarter of the assessment year 2008-09, calling upon the petitioner to pay the balance tax of Rs.2,04,22,286/-. Further, the demand notices were also issued as per Annexures-F1 to F4. Immediately on receipt of the said demand notices, the petitioner addressed a letter dated 01-06-2011 to rectify the mistakes in the assessment order on 25-05-2011 invoking Section 69 of the KVAT Act. In the said letter, the petitioner has contended that, they are claiming refund of Rs.3,56,15,297/-, hence the question of demanding tax from the petitioner does not arise. The Inter-State transaction is covered by the statutory forms i.e. 'C' Forms and 'H' Forms and the petitioner is entitled for concessional rate of tax. Thereafter, on 23-06-2011, one

more letter was addressed to the Assessing Authority producing 38 'C' Forms, covering a turnover for the assessment year 2008-09 and also 'H' Forms covering turnover of Rs.1,92,020/-. In pursuance of the said letter, the Assessing Authority issued an endorsement dated 03-07-2011 calling upon the petitioner to appear before the Assessing Authority within 7 days from the date of receipt of the notice with supporting documents. The said notice was received by the assessee on 19-07-2011. Since the petitioner failed to appear before the Assessing Authority, the Assessing Authority by its order dated 27-07-2011 rejected the letter for rectification of the assessment order dated 25-05-2011. Thereafter, the petitioner submitted 'C' Forms and requested the Assessing Authority to take into consideration the 'C' Forms and impose tax on concessional rate of tax. The Assessing Authority by its endorsement dated 26-09-2012 called upon the petitioner to pay the balance tax as per the assessment order dated 25-05-2011 failing which, coercive action will be taken. Being aggrieved by the said endorsement dated 26-09-2012 and also assessment order dated 25-05-2011, the petitioner preferred appeals

before the Joint Commissioner of Commercial Taxes (Appeals), Dharwad Division, Hubli (the 'First Appellate Authority' for short) in appeal Nos.AP/CST/32-35/2012-13. The First Appellate Authority after considering the matter in detail found that the appeals filed by the petitioner are barred by limitation and the appeals are preferred beyond the period of 180 days, the First Appellate Authority has no power to condone the delay. Accordingly dismissed the appeals. Being aggrieved by the said order, the petitioner preferred these writ petitions challenging the assessment order and also the demand notices issued by the respondents.

4. During the pendency of the writ petitions, the petitioner also filed an application seeking for quashing the order passed by the First Appellate Authority rejecting the appeals filed by the petitioner.

5. Sri.K.P.Kumar, learned Senior Counsel appearing for M/s.King and Partridge contended that the assessment order dated 25-05-2011, levying tax at the higher rate on account of non-submission of statutory forms is not sustainable. Though the petitioner has produced all

relevant Forms subsequent to the assessment order, it is the duty of the Assessing Authority to take into consideration the same and pass necessary re-assessment order. The Assessing Authority has not taken into consideration Circular No.9/2006-07 dated 07-06-2006 issued by the Commissioner of Commercial Taxes. The said Circular is binding on the Assessing Authority. The Circular No.9/2006-07 dated 07-06-2006 makes it clear that if the statutory forms are filed subsequent to completion of assessment, then the Assessing Authority should consider the same by reopening assessment under Section 9(2) of the CST Act read with Section 39 of the KVAT Act. In the Circular, it was made clear that the Circular Instruction dated 07-06-2006 shall be adhered to, strictly by all officers. In the instant case, though 'C' Forms and 'H' Forms are produced subsequent to the assessment, as per the Circular dated 7-6-2006, duty casts upon the Assessing Authority to take into consideration the statutory forms filed subsequent to the completion of assessment by reopening the assessment under Section 9(2) of the CST Act read with Section 39 of the KVAT Act. The

Assessing Authority acted contrary to the circular dated 7-6-2006 issued by the Commissioner. Further, as per Rule 12(7) of Central Sales Tax (Registration and Turnover) Rules, 1957 the assessing officer may on the application made to him, extend the time to file statutory forms. If the Prescribed authority is satisfied that the person concerned was prevented by sufficient cause from furnishing such statutory forms within the aforesaid time, the authority may allow furnishing the said Forms within such further time. In the instant case, though the petitioner has sought time to collect the statutory forms from their customers, the Assessing Authority has not given any opportunity to produce the same. Though the petitioner appeared before the authorities in pursuance of the notice of rectification of the assessment order, the officers were not available on 25-07-2011 and 26-07-2011. No opportunity has been given to point out the mistakes in the assessment order. Subsequently, the petitioner produced 'C' Forms covering turnover of Rs.4,26,56,949/- and also 'H' Forms covering Rs.1,92,020/- and that was not taken into consideration. These statutory forms can be produced at the appellate stage also. The

non-consideration of the statutory forms is contrary to law. If all the statutory forms produced by the petitioner are taken into consideration, the petitioner is entitled for refund of Rs.3,56,15,297/-. The Appellate Authority without taking into consideration the reasons assigned for condoning the delay in filing the appeal dismissed the same, which is contrary to law. The reason assigned by the petitioner is a bonafide reason that they have to collect the Forms from his customers. Apart from that, they had acquired the business of BDK Engineering Industries on 11-10-2010. Within four months of acquisition of that industry, the assessment was taken up for the assessment year 2008-09. The writ petitions filed by the petitioner are maintainable since sufficient opportunity has not been given to the petitioner to produce the statutory forms. Hence, sought for quashing the assessment order dated 25-05-2011 and remit the matter to the Assessing Authority for the limited purpose of looking into 'C' Forms and 'H' Forms produced by the petitioner and pass fresh assessment order. In support of his contention, he relied upon the judgment reported in (2005) 142 STC 01

(STATE OF HIMACHAL PRADESH v/s. GUJARAT AMBUJA CEMENT); (2001) 121 STC 273 (MAHESHWARI FIREWORKS INDUSTRIES v/s COMMERCIAL TAX OFFICER AND OTHERS); (1970) 78 ITR 26 (L HIRDAY NARAIN v/s INCOME-TAX OFFICER, A WARD, BAREILLY).

6. On the other hand, Sri.M.Kumar, learned Additional Government Advocate appearing for the respondents submitted that the writ petition filed by the petitioner is not maintainable before this Court. The petitioner has got an alternative remedy under the KVAT Act, without exhausting the said remedy, the petitioner cannot maintain the present writ petition. Apart from that though the opportunity has been given to the petitioner to produce the statutory C Forms and H Forms, the petitioner has failed to produce the same. Further in the absence of statutory forms, the provisional assessment order has been passed calling upon the petitioner to file objections to the said proposition notice. The petitioner has failed to file objections to the said proposition notice nor produced any C Forms, accordingly, the Assessing Authority passed the

order. Even in rectification proceedings also, though the petitioner was called upon to produce 'C' Forms and 'H' Forms, the petitioner has failed to produce the same. Accordingly, the Assessing Authority rejected the rectification application.

7. The Circular dated 7-6-2006 makes it clear that –

“If the required statutory forms are not filed or not fully filed within 3 months from the end of the quarter to which such returns relates or till further extended time, if any, then the assessing authorities shall proceed to assess the dealer rejecting the claim of concessional rate of tax/exemption, after issuing proposition notice and after providing reasonable opportunity of being heard to the dealer in this regard, without, however, calling for books of accounts.”

In support of his contention, he relied upon the judgment reported in AIR 1966 SC 142 (SALES TAX OFFICER, JODHPUR AND ANOTHER v/s SHIV RATHAN G. MOHATTA). In the instant case, sufficient opportunity has been given to the petitioner to produce

statutory forms, despite the same, the petitioner has failed to produce the same. Accordingly, the Assessing Authority has passed the order. Hence, sought for dismissal of the writ petitions.

8. I have carefully considered the arguments addressed by the learned counsel for the parties, perused the impugned assessment order and other relevant records.

9. The returns filed by the BDK Engineering Industries Limited for the assessment year 2008-09 in respect of each quarter was taken up for verification. In the meantime, the said BDK Engineering Industries was taken over by the petitioner-company. The notice was issued to the petitioner to produce the necessary account books, tax invoices, sale bills, declarations and certificates. In pursuance of the said notice, some of the 'C' Forms and 'H' Forms were produced and sought for some more time to collect the balance C Forms from their customers. On the basis of the 'C' Forms and 'H' Forms furnished by the petitioner, pre-assessment notice was issued under Section 9(2) of CST Act read with

Sections 35, 36 and 72(2) of KVAT on 26-03-2011 calling upon the petitioner to file their objections to the pre-assessment notice. However, the petitioner failed to file their objections though time was granted. In view of that the Assessing Authority passed by the assessment order on 25-05-2011 and issued demand notices. Thereafter, the petitioner filed an application for rectification of the assessment order under Section 69 of KVAT Act contending that the assessment order and imposing interest and penalty is contrary to law. In response to the said application seeking for rectification of the assessment order, an endorsement was issued on 3-7-2011 calling upon the petitioner to appear before the authorities within a period of 7 days with supporting documents. In spite of giving opportunity, no documents were produced, accordingly, the rectification application was rejected by the Assessing Authority on 27-07-2011. Thereafter, it appears that the petitioner had produced some more 'C' Forms and 'H' Forms covering taxable turnover of more Rs.4,80,00,000/- and odd. The main grievance of the petitioner is that within four months of acquisition of business of

the BDK Engineering, the assessment proceedings was taken place. He has to get the 'C' Forms and 'H' Forms from their customers, which consumes some more time. In spite of the request made by the petitioner for extension of time, the Assessing Authority has not considered the same. Hence, he relied upon the Circular No.9/2006-07 dated 7-6-2006 issued by the Commissioner for Commercial Taxes, wherein the clause (e) and (f) read thus:

(e) If the required statutory forms are not filed or not fully filed within 3 months from the end of the quarter to which such returns relate or till further extended time, if any, then the assessing authorities shall proceed to assess the dealer rejecting the claim of concessional rate of tax/exemption, after issuing the proposition notice and after providing reasonable opportunity of being heard to the dealer in this regard, without, however, calling for books of accounts.

(f) If the statutory forms are filed subsequent to completion of assessment as per sub-para (e) above, then the assessing authorities should consider the same by re-opening the assessments U/s 9(2) of the CST Act read with Section 39 of the KVAT Act. This power should be exercised only for this limited purpose. In this regard, the attention of the officers are drawn to the observations made by the

*Hon'ble Madras High Court in the case of State of Tamil Nadu
V/s Arulmurugan and Company 51 STC 381 as under:*

“..... Where the assessing authority is satisfied, in a given case, about the existence of sufficient cause, it must necessarily be followed up by appropriate action, such as re-opening the assessment already completed. Perhaps the requisite corrective action can be taken by invoking the assessing authority's statutory power of rectification of mistakes. Even otherwise, the implementation, in appropriate cases, of the power to allow further time cannot be withheld on the excuse that there is no express provision either in the statute or in the statutory rules for reopening the assessment. When the power is there and the facts are there demanding its exercise, the implementation must be done as a matter of course, on the doctrine of implied or ancillary powers.”

Further, he also relied upon Rule 12(7) of the Central Sales Taxes (Registration and Turnover) Rules 1957 and contended that the declaration Forms can be filed at subsequent point of time and not necessarily along with the returns. In support of his contention he relied upon the judgment of the Hon'ble Supreme Court in AMBUJA CEMENT LIMITED case referred to above. Relevant portion of paragraph 40 of the said judgment reads as under:

“It is to be noted that under rule 12(7) of the Central Sales Tax (Registration and Turnover) Rules 1957 (in short, “the

Registration Rules”) the declaration form can be filed at a subsequent point of time and not necessarily along with returns. On an application being made before the assessing officer the extension can be granted. The object of the Rule is to ensure that the assessee is not denied a benefit which is available to it under law on a technical plea. The assessing officer is empowered to grant time. That means that the provisions requiring filing of declaration forms along with the return is a directory provision and not a mandatory provision. In a given case even the declaration forms can be filed before the appellate authority as an appeal is continuation of the assessment proceedings. In a given case, if the appellate authority is satisfied that assessee was prevented by reasonable and sufficient cause which disabled him to file the forms in time, it can be accepted. It can also be accepted as additional evidence in support of the claim for deduction.”

10. The judgment relied upon by the petitioner fully supports the case of the petitioner. The assessment for the year 2008-09 was taken up by the Assessing Authority after issuing notice. At the relevant point of time, the petitioner could not collect the entire statutory ‘C’ Forms and ‘H’ Forms and requested some more time to produce the same. However, the Assessing Authority proceeded

to issue pre-assessment notice and thereafter passed the assessment order. In the returns itself, the petitioner had claimed refund of a sum of Rs.3,56,15,297/-. The opportunity ought to have been given to the petitioner to produce the 'C' Forms and 'H' Forms. The benefit available under the law cannot be denied on technical ground. The transaction is inter-state transaction. On production of statutory forms issued by the competent authorities, the petitioner is entitled to pay the lesser tax. In the instant case, for non-production of statutory forms, the Assessing Authority levied a higher rate of tax on the turnover, for which, the statutory forms were not produced. Even on belated production of statutory forms, the statutory authority is bound to take into consideration the same and give the benefit of reduction of the tax. The circular dated 7-6-2006 issued by the Commissioner makes it clear that the Assessing Authority should consider the statutory forms which were produced belatedly i.e. subsequent to the completion of the

assessment by reopening the assessment. Further, Rule 12(7) of the CST Rules also provide for the same. The statutory forms can also be filed before the First Appellate Authority. In the instant case, the First Appellate Authority without going into the merits of the case dismissed the appeal on the ground that it is barred by limitation. The First Appellate Authority has not considered the case of the petitioner in proper perspective. In view of that, I am of the opinion that the matter requires to be considered by the Assessing Authority by reopening the same only to the limited extent to look into the statutory forms produced by the petitioner. If one more opportunity is given to the petitioner, it will not cause any hardship to the respondents. Apart from that the petitioner has already paid 50% of the amount claimed by the respondents. Hence, I am of the view that in order to give one more opportunity to the petitioner, the assessment order dated 25-05-2011, subsequent demand notices and the order passed by the Appellate Authority are required to be quashed.

11. Accordingly, I pass the following:

ORDER

The writ petitions are allowed. The assessment order dated 25-05-2011, the demand notices and the order passed by the Appellate Authority are quashed.

The matter is remanded to the Assessing Authority to reconsider the same afresh taking into consideration the statutory forms produced by the petitioner.

The amount paid in pursuance of the demand notice issued by the respondents shall be refunded or adjusted only after the assessment order is passed.

Sd/-
Judge

mpk/-*