

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF JUNE, 2023

PRESENT

THE HON'BLE MR. JUSTICE P.S. DINESH KUMAR

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

S.T.R.P. NO.45 OF 2022

BETWEEN:

THE STATE OF KARNATAKA
THROUGH THE COMMISSIONER OF
COMMERCIAL TAXES
VANIJAYA THERIGE KARYALAYA
P.KALINGARAO ROAD
GANDHINAGAR
BENGALURU-560 009.

...PETITIONER

(BY SHRI. JEEVAN J. NEERALGI, AGA)

AND:

M/S. AISHWARYA FORT
NEAR RTO OFFICE
TURUVANUR ROAD
CHITRADURGA-577 501.

...RESPONDENT

(BY SHRI. K. MALLAHA RAO, ADVOCATE)

THIS STRP IS FILED UNDER SECTION 65(2) OF THE KARNATAKA VALUE ADDED TAX 2003 AGAINST THE JUDGMENT DATED 14.12.2020 PASSED IN STA No.25 TO 36/2012 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL, BENGALURU ALLOWING THE APPEALS, BY SETTING ASIDE THE ORDER DATED 20.10.2011 PASSED IN KVAT AP.169 TO 180/2011-12 ON THE FILE OF THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS) DAVANAGERE DIVISION, DAVANAGERE, PARTLY ALLOWING THE APPEAL BY UPHOLDING THE

RE-ASSESSMENT ORDER DATED 30.04.2011 PASSED BY THE ASSISTANT COMMISSIONER OF COMMERCIAL TAXES (AUDIT I) D.V.O., DAVANAGERE, FOR THE TAX PERIODS OF 2006-2007.

THIS STRP HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 11.04.2023, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, **P.S. DINESH KUMAR J.**, PRONOUNCED THE FOLLOWING:-

ORDER

This Revision Petition by the Revenue, directed against the order dated December 14, 2020 in STA No. 25-36/2012 passed by the KAT¹, Bengaluru, has been admitted to consider following questions of law:

i. Whether on the facts and in the circumstances of the Petitioner's case, the Tribunal was right in law in allowing the respondent's appeals and setting-aside the orders passed by the Assessing Authority as well as the First Appellate Authority?

ii. Whether on the facts and in the circumstances of the Petitioner's case, the Appellate Tribunal was right in law in holding that the Respondent was eligible for exemption from payment of tax payable under the provisions of the KVAT Act 2003 especially in the background where no notifications have been issued in exercise of the powers conferred under Section 5(2) of the KVAT Act 2003 granting exemption?

¹ Karnataka Appellate Tribunal

2. Heard Shri. Jeevan J. Neeralgi, learned AGA for the Revenue and Shri. K. Mallaha Rao, learned Advocate for the Assessee.

3. Briefly stated the facts of the case are, assessee, a tourism hotel unit is a registered dealer under the Karnataka Value Added Tax Act, 2003². It commenced its business in the year 2001. It is engaged in providing boarding and lodging services to its customers. The Government of Karnataka issued a notification³ dated November 12, 1999 under Section 8-A(1) of the Karnataka Sales Act, 1957⁴ exempting sale of food articles and beverages by new tourism units. Assessee has obtained Exemption Certificate dated March 25th, 2003 from the Commissioner of Tourism, Govt. of Karnataka, Bengaluru.

4. Assessee was earlier registered with the Commercial Tax Department under the provisions of the KST

² 'the KVAT Act' for short

³ Notification No. FD 70 CSL 97 (1)

⁴ 'the KST Act' for short

Act and availed tax benefit for F.Ys⁵. 2003-04 and 2004-05. Subsequently assessee got registered under the KVAT Act and availed the benefit of exemption of tax for a period of five years during the KVAT regime.

5. The DCCT⁶ cum AO⁷, Challakere issued a proposition notice⁸ on the ground that after the enactment of the KVAT Act, the exemption granted under the KST Act would apply only to new industrial units and not tourism units. The AO passed a re-assessment order dated April 30, 2011 denying the exemption on the payment of tax on the sale of food and beverages on the ground that there was no exemption notification issued under the KVAT Act.

6. On appeal, the JCCT(A)⁹ partly allowed assessee's appeal and confirmed the denial of exemption from payment under the KVAT Act. On further appeal, the KAT allowed assessee's appeal holding that assessee is eligible for

⁵ Financial Year

⁶ Deputy Commissioner of Commercial Taxes

⁷ Assessing Officer

⁸ Dated March 22, 2010

⁹ Joint Commissioner of Commercial Taxes (Appeals)

exemption from payment of tax in view of the exemption notification issued under the provisions of KST Act. Aggrieved by the said order, Revenue has preferred this petition.

7. Shri. Jeevan J. Neeralgi, for the Revenue, submitted that:

- the Government of Karnataka vide Notification¹⁰ dated 12.11.1999 granted exemption of the tax payable under the provisions of the KST Act in respect of sale of food and non-alcoholic beverages by new tourism units. The said notification having been issued in exercise of powers conferred under the KST Act, the exemption is restricted to the transactions only during the KST regime;
- no such notification has been issued under the KVAT Act extending similar benefit namely, exemption from payment of tax on the sale of food and non-alcoholic beverages by tourism units or hotels;

¹⁰ bearing No. FD 70 CSL 97(1)

- after enactment of the KVAT Act (with effect from 01.04.2005), unless a notification is issued in exercise of the powers conferred under Section 5(2) of the KVAT Act expressly granting the benefit of exemption from payment of tax, the incentives granted under the provisions of the KST Act cannot be made applicable.

8. In support of his contentions, he has placed reliance on *State of Karnataka Vs. Hotel Madhuvan International Private Limited, Bijapur*¹¹ (hereinafter referred to as '*Hotel Madhuvan Case*').

9. With these submissions and above authority, Shri. Jeevan J. Neeralgi prayed for allowing the petition.

10. Opposing the petition, Shri. Mallaha Rao, for the Assessee, submitted that:

- there is no express provision under the KVAT Act to deny the benefits granted to the assessee under the KST Act;

¹¹ Writ Appeal No.212/2007 and Connected matters
Decided on 17.12.2008.

- the JCCT has erred in holding that assessee does not fall under the ambit of industrial unit even after issuing an Exemption Certificate exempting payment of sales tax and permitting the assessee to avail the benefit of exemption.

11. We have carefully considered rival contentions and perused the records.

12. Undisputed facts of the case are, assessee is a tourism hotel unit and commenced its business in the year 2001. It was earlier registered under the KST Act and later under the KVAT Act. Assessee has obtained Exemption Certificate from the Commissioner of Tourism, Government of Karnataka.

13. Revenue's case is, in the absence of any notification issued under the provisions of the KVAT, assessee is not entitled for any exemption.

14. A perusal of Exemption Certificate dated March 25, 2003 makes it is clear that assessee is a registered Tourism Industry and is eligible for 100% tax exemption for a period of 7 years. The relevant portion of the Exemption Certificate reads as follows:

"The unit is located at Chitradurga. "E" category as per G.O.No.ITY 137 TIM 96 Bangalore Dated 4-7-1997 and eligible for 100% Tax Exemption for a period 7 (Seven) years from 27-02-2003. That is the date of going into business as evidence by First Sale Invoice bearing No. 1, Dated 27-2-2003."

(Emphasis supplied)

15. We may record that Government Order No. FD 303 CSL 99, dated January 07, 2000, reads as follows:

"The Government of Karnataka orders discontinuation of sales tax based incentives for new investments as well as for expansion/modernization/diversification, from the first day of January, 2000 under all policies of incentives and concessions issued to the extent it relates to sales taxes. However, this discontinuation will not affect the following cases.

1. The incentives that have been already offered and committed by the Government until the period of eligibility of such incentives are completed; or otherwise decided;"

(Emphasis supplied)

by the above notification, the State Government discontinued sales tax based incentives. However the incentives already offered and committed were saved. By issuing subsequent Notification No. FD 363 CSL 2006, dated July 17, 2007 under the KST Act, it was clarified that the incentives offered earlier would remain unaffected. The relevant portion of the subsequent Notification reads thus:

"In exercise of the powers conferred by the proviso to sub-section (3) of Section 8-A of the Karnataka Sales Tax Act, 1957 (Karnatak Act 25 of 1957), the Government of Karnataka hereby rescinds the Notification No. FD 70 CSL 97 (I), dated 12-11-1999, with effect from the 1st day of January, 2000, subject to the condition that such rescinding of the Notification shall not be applicable to dealers who have made investment in establishing a new tourism units and the incentives offered to whom are unaffected by the Government Order No. FD 303 CSL 99, dated 7-1-2000, as specified in the said Government Order"

(Emphasis supplied)

16. The KAT in the impugned order has examined the above notifications and recorded thus in para 18:

"18. On perusal of the exemption certificate given to the Appellant dated: 25.03.2003, it is clear that 100% tax exemption is given to the Appellant as per the above said Notification No. FD 70/CSL 97 (2) dated: 12.11.1999. However, as per the above said Notification No. FD 363 CSL 2006, Bangalore dated: 17.07.2007 it is clearly mentioned that the Government of Karnataka has rescinded the Notification No. FD 70/CSL 97 (2) dated: 12.11.1999, with effect from 01.01.2000 however it is clearly mentioned that such rescinding shall not applicable to dealers who have made investment in establishing a new tourism units and incentives offered to whom are unaffected by the Government Order No. FD 303 CSL 99, Bangalore, dated: 07.01.2000. Therefore, it is clear that as per the above said GO dated: 07.01.2000 the incentives which has been already offered and committed by the Government for New Tourism Units will not get affected until the period of eligibility of such incentives are completed. As per the exemption certificate dated 25-3-2003 given to the appellant it is clearly mentioned that appellant is registered Tourism Industry and it is registered with Government of Karnataka vide No.DTR/HTL/2000 2001-6162 dated 17/31/3/2001 as a Tourism unit and it is not registered as tourism Industry."

(Emphasis Supplied)

17. On a careful perusal of the above, it is clear that assessee has availed the benefit for 100% sales tax exemption in the year 2003. The KAT has rightly recorded

that the vide Notification dated July 17, 2007, the State Government have clearly stated that rescinding of the Notification dated November 12, 1999 shall not be applicable to the dealers who have made investment in establishment in a new tourism units and the incentives offered and committed by the Government shall not get affected.

18. In support of Revenue's contention, Shri. Neeralgi has placed reliance on *Hotel Madhuvan Case*. Paras 8 and 9 of the judgment read as follows:

"8. In exercise of power under Section 5(2) of the Act the notification dated 18-4-2005 were issued providing exemption under Section 5(2) of the Act in respect of the new industrial units as mentioned in the above notification. The same is in conformity with the provisions of the KVAT Act. The exemption is granted to new industrial units. The phrase "New Industrial Unit" is borrowed from Section 5(2) of the KVAT Act, Hotel is treated as tourism unit.

9. The contention of the appellants is that "tourism unit" is not industrial unit". The contention is tenable and acceptable. To be entitled to the benefit of exemption by the respondents, their units must be industrial unit. This is the statutory requirement under Section 5(2) of the KVAT Act. The learned single Judge has not examined that industrial unit must be registered with the Director of

Industries and Commerce. In the instant case, all the respondents are not registered with the Director of Industries and Commerce. Therefore, they cannot claim exemption benefit under Section 5(2) of the KVAT Act and the notification issued under the provisions of the KVAT Act. The learned single Judge is not justified in holding that hotel is also industry as mentioned in the Government Order, which is an executive order passed only for the limited purpose of extending financial assistance to such industrial units from its financial institutions..."

(Emphasis supplied)

19. In the above case, this Court was examining whether a tourism unit is an industrial unit or not. In the instant case, the issue involved is whether petitioner is entitled for benefit of exemption. Admittedly, assessee has obtained exemption certificate dated March 25, 2003 for a period of seven years with effect from February 27, 2003. Though the State Government issued a Notification on January 07, 2000 discontinuing sales tax based incentives, the same has been clarified vide Notification dated July 17, 2007 to the effect that the notification dated January 07, 2000 shall not affect the dealers who have made investment in establishing new tourism units. This question was not

under consideration in *Hotel Madhuvan Case*. Therefore, the said authority does not lend any support to the contention advanced on behalf of the Revenue.

20. We may further record that even in the notification dated 07.01.2000 it is stated that the discontinuation shall not affect the incentives that have been already offered or committed by the Government until the eligibility of such incentives are completed. The eligibility certificate was valid for 7 years and could not have been rescinded before the period of eligibility expired as it is sovereign assurance.

21. In view of the above discussion, the contention urged by the Revenue that in absence of any specific notification under the KVAT Act, assessee is not entitled for exemption, is untenable. We find no error in the impugned order passed by the KAT.

22. Hence the following:

ORDER

- (a) Revision Petition is ***dismissed***.
- (b) The substantial questions of law are answered in the favour of Assessee and against the Revenue.

No costs.

**Sd/-
JUDGE**



LEGALERA
BY THE PEOPLE. FOR THE PEOPLE. OF THE PEOPLE

**Sd/-
JUDGE**