

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

Dated this the 31st day of May, 2016

Before

THE HON'BLE DR JUSTICE VINEET KOTHARI

Writ Petitions 192 – 227 / 2016 c/w

6491 – 6538 / 2016 (T-Res)

WPs 192 - 227/2016

Between

M/s. Ajanta Digital Lab
739/34, 12th Main, 3rd Block
Rajajinagar, Bengaluru – 560 010
by its partner M.V. Nagesh Babu, 47 Yrs Petitioner

(By Sri T N Keshavamurthy, Adv.)

And

- 1 The Comml. Tax Officer (Audit)-2.2
 Room No.504, 5th Floor, A-Block, VTK-2
 80 feet Road, Koramangala
 Bengaluru – 560 047
- 2 The Commr. Of Comml. Taxes
 Gandhinagar, Bengaluru – 560 009
- 3 The State of Karnataka
 Rep. by its Principal Secretary to Govt.,
 Finance Dept., Vidhana Soudha
 Bengaluru – 560 001 Respondents

(By Sri T K Vedamurthy, AGA)

Writ Petitions are filed under Art.226 of the Constitution praying to set aside the impugned re-assessment orders dt.30.11.2015 passed by the R-1 under

Section 39(1) of the Karnataka Value Added Tax Act, 2003 relating to tax periods 2008-09, 2009-10 and 2010-11 as in Annex-A, A1 & A2 respectively as opposed to law and etc.

WPs 6491 – 6538/2016

Between

M/s. Ajanta Digital Lab
739/34, 12th Main, 3rd Block
Rajajinagar, Bengaluru – 560 010.
(by its partner M.V. Nagesh Babu, 47 Yrs)

Petitioner

(By Sri T N Keshavamurthy, Adv.)

And

1 The Comml. Tax Officer (Audit)-2.2
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Rep. by its Principal Secretary
Finance Dept., Vidhana Soudha
Bengaluru – 560 001.

Respondents

(By Sri T K Vedamurthy, AGA)

Writ Petitions are filed under Art.226 of the Constitution praying to set aside the impugned re-assessment orders dt.31.12.2015 passed by the R-1 Commercial Tax Officer (Audit) 2.2, Bengaluru under Sec.39(1) of the Karnataka Value Added Tax 2003 relating to tax periods 2011-12, 2012-13 and 2013-14 as in Annex-A, A1 and A2 respectively, etc.

These Petitions coming on for hearing this day, Court made the following:

ORDER

These petitions are being disposed of by this common order.

2 The petitioners before this Court are assesseees doing business of processing and supplying of photographs, photo prints and photo negatives running their Photo Studios within the State of Karnataka. They are registered under the provisions of the Karnataka Value Added Tax, 2003 (for short KVAT Act, 2003).

3 They contended before the respondent Department that they were not liable to pay any tax under the provisions of the KVAT Act, 2003 because what was provided to the customers was only a service and use of goods in the process viz., use of photograph paper and certain chemicals was only incidental and there was no execution of any Works Contract as such and therefore, question of levy of tax under the earlier provisions of the Karnataka Sales Tax Act or the substituted new law viz., Karnataka Value Added Tax Act, 2003 did not arise in their case.

4 The Division Bench of this Court in the case of ***Pro Lab, Mangalore Vs State of Karnataka 2005 (59) Kar.LJ 410*** (DB) held in favour of the assesseees and struck down the relevant Entry 25 for imposition of tax on such processing and supplying of photographs, photo prints and photo negatives at the rates ranging from 6% to 10% at different points of time.

5 The Revenue took the matter before the Hon'ble Supreme Court where the aforesaid Division Bench judgment of this Court came to be reversed by the Apex Court in the case of ***State of Karnataka Vs Pro Lab & Ors reported in 2015 (81) Kar.LJ 377*** (SC). The relevant observations of the Hon'ble Supreme Court discussing the various case laws on the issue as to whether the said activity amounted to execution of works contract or not, was decided in favour of Revenue by the Hon'ble Supreme Court and the relevant portion of the judgment is quoted below for ready reference.

28 We would like to point out at this stage that the High Court in the impugned judgment has not dealt with the matter in its correct perspective.

The reason given by the High Court in invalidating Entry 25 is that this provision was already held unconstitutional by the said High Court in Keshoram's case against which the SLP was also dismissed and in view of that decision, it was not permissible for the Legislature to re-enact the said entry by applying a different legal principle. According to us, **this was clearly an erroneous approach to deal with the issue and the judgment of the High Court is clearly unsustainable.** The High Court did not even deal with various facets of the issue in their correct perspective, in the light of subsequent judgments of this Court with specific rulings that Rainbow Colour Lab's case is not longer a good law.

29 The impugned judgment of the High Court is accordingly set aside, the present appeal is allowed and as a result thereof, the writ petitions filed by the respondents in the High Court are dismissed **holding that Entry 25 of Sixth Schedule of the Act is constitutionally valid.** There shall, however, be no order as to costs.

The Assessing Authority, accordingly, by the orders impugned in the present batch of petitions, passed assessment orders levying the output tax under the provisions of the VAT Act, 2003 on the said business activity of the petitioner assessees and demands were raised against the assessees. These writ petitions are directed against these assessment orders some of which have been passed prior to the date of the judgment of the Hon'ble Supreme Court on 30.1.2015 and some after the said judgment.

6 Learned counsel for the petitioner assessees fairly submitted that in view of the validity of the relevant Entry 25 having been upheld by the Hon'ble Supreme Court in the aforesaid judgment reversing the Division Bench judgment of this Court, they cannot possibly contend against the levy of output tax itself in the impugned orders passed by the Assessing Authority before this Court. However, the limited grievance which they submitted before this Court is that while imposing the output tax under the provisions of the VAT Act, 2003, the Assessing Authority was also required to consider the case of the petitioner assessees for giving of the

input tax credit admissible in the said Act against the output tax liability to determine the net VAT liability and also the deduction for labour charges from the composite value of works contract, which is exigible to output tax under the provisions of the VAT Act, 2003 was required to be given. They also submitted that such claims of input tax credit and the deductions for determining the net taxable turnover and tax liability could not be earlier raised before the Assessing Authority, while the impugned orders were passed because they were contending all through that they are not at all liable to pay any tax under the provisions of the VAT Act, 2003. They, therefore, submitted that the Assessing Authority should be directed to at least, even now, consider their claim of input tax credit and other deductions, in accordance with law.

7 Learned counsel representing the Revenue however, submitted that while the question of exigibility to tax under the provisions of the VAT Act, 2003 is now beyond the pale of doubt in the case of the petitioner assessee after the aforesaid Supreme Court decision rendered on 30th January,

2015 in the case of **Pro Labs** (supra) reversing the judgment of the Division Bench of this Court, the claim of the petitioner assessee on input tax credit cannot be considered at this stage in view of the fact that some of the assessment orders were made in view of the interim order granted by the Hon'ble Supreme Court in the aforesaid case in **State of Karnataka Vs Pro Lab & Ors** on **19.11.2007** which is quoted below for ready reference.

Hearing of the Civil Appeal is expedited.

Meanwhile, the authorities may make the assessment but no coercive steps will be taken to recover the tax from the respondents (herein).

IA 1 of 2007 is allowed.

Let the applicant M/s R K Colour Lab, in the application be impleaded as respondent to the Appeal.

He urged that if at all the assessee wanted to lay any such claim, they ought to have claimed the same before the Assessing Authority during the course of the assessment proceedings itself and now, even the limitation for rectification of the orders might have lapsed in some of the cases. He also contended that there cannot be said to be any

mistake apparent on the face of the record or the impugned assessment orders which may require rectification in the aforesaid manner. He therefore submitted that the writ petitions deserve dismissal.

8 I have heard the learned counsel at some length and perused the judgment of the Hon'ble Supreme Court cited at the Bar and the impugned assessment orders passed by the Assessing Authority.

9 Since the question of exigibility of tax on the activity of the present petitioner assessee is now beyond the pale of doubt and as rightly submitted by the learned counsel for petitioner assessee that they cannot possibly now contend against the levy of output tax itself in the present cases, the process of assessment for determining the correct tax liability of the petitioner assessee under the provisions of the VAT Act, 2003 cannot be left half way through only. The question of liability to pay tax under the provisions of VAT Act, 2003 has been determined by the Hon'ble Supreme Court finally in the cases of the assessee only now on 30th January, 2015. If

the claim for input tax credit and other deductions from the gross turn over on account of labour charges, etc., could not be made by them during the assessment proceedings which took place while this litigation was pending before the Hon'ble Supreme Court, the assesseees cannot be non-suited to make such claim now, if otherwise it is admissible in accordance with the provisions of law. The impugned orders passed by the Assessing Authority do not reflect any such consideration by the Assessing Authority either on the basis of such claims made before the Assessing Authority or otherwise.

10 Therefore, while the levy of output tax is sustainable on the said activity now held to be a 'works contract' by the Hon'ble Supreme Court, the computation of net tax liability under the provisions of the VAT Act, 2003 has to be done afresh by the Assessing Authority, in accordance with the provisions of the VAT Act, 2003.

11 The different claims of input tax credit, deduction of labour charges, franchise charge, exemption from Entry Tax on the purchases of materials, etc., require determination of

questions of fact based on relevant evidence, returns and claims made or to be made by the petitioner assesseees.

12 Therefore, the cases necessarily call for a remand of the proceedings to the Assessing Authority himself, allowing the petitioner assesseees to make such claims based on relevant evidence in accordance with law and the respondent Assessing Authority is expected to decide such claims of the petitioner assesseees on merits in accordance with law by passing fresh speaking assessment orders in pursuance of the present remand of case made by this Court.

13 Accordingly, these writ petitions are allowed. The assesseees are relegated back to the Assessing Authority. They will have liberty to make appropriate applications before the Assessing Authority along with the claims to be made by them for deductions or input tax credit, file requisite evidence for the same and it is expected of the respondent Authority to pass appropriate fresh speaking assessment orders on merits, in accordance with law within a period of six months from today. The petitioner assesseees may appear,

in the first instance, before the respective Assessing Authority
on **27th June, 2016.**

Sd/-
Judge

an