



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF JUNE, 2025

PRESENT

THE HON'BLE MR. JUSTICE S.G.PANDIT

AND

THE HON'BLE MR JUSTICE T.M.NADAF

SALES TAX APPEAL NO. 8 OF 2025

BETWEEN:

M/S. OMKAR LAND DEVELOPERS
REGISTERED UNDER KVAT ACT 2003
HOUSE NO.9-13-67
SAI NAGAR, MAILOOR ROAD
BIDAR-585403
REPRESENTED BY PROPRIETOR
MR.SANTOHS KOTARKI
S/O SRI RAMULU KOTARKI
AGED ABOUT 47 YEARS.

...APPELLANT

(BY SRI. SATHYANARAYANA T. R., ADV.)

AND:

THE ADDITIONAL COMMISSIONER
OF COMMERCIAL TAXES
ZONE -1, KALIDASA ROAD
VANIJAYA THERIGE KARYALAYA
GANDHINAGAR
BENGALURU - 560047.

...RESPONDENT

(BY SRI. ADITYA VIKARAM BHAT, AGA)

THIS APPEAL IS FILED UNDER SECTION 66(1) OF
KARNATAKA VALUE ADDED TAX ACT 2003 AGAINST THE
ORDER DATED 25.11.2024 PASSED IN ADCOM (SMR)-
1/KLB/SMR-18/2023-24 ON THE FILE OF THE ADDITIONAL





**NC: 2025:KHC:21092-DB
STA No. 8 of 2025**

COMMISSIONER OF COMMERCIAL TAXES, (SMR)-I, BENGALURU SETTING ASIDE AND RESTORING THE RE-ASSESSMENT ORDER DATED 24.08.2021 IN APPEAL NO.KVAT/AP-22/2021-22 PASSED BY THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS)-1, KALBURGI DIVISION, KALABURGI FOR THE TAX PERIODS FROM APRIL 2016 TO MARCH-2017.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.G.PANDIT
AND
HON'BLE MR JUSTICE T.M.NADAF

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE S.G.PANDIT)

The above appeal is filed under Section 66(1) of the Karnataka Value Added Tax, 2003 (for short "KVAT Act"), aggrieved by the order dated 25.11.2024 passed in CAS Order No.351440918 AD SMR and revised proceedings dated 24.12.2024 raising the following substantial questions of law:

- 1. Whether validity of jurisdictional power in invoking Section 64(1) of KVAT Act, 2003 in the situation where the matter reached finality under the Scheme KSS, 2021?*
- 2. Validity of disallowance of deduction claimed towards labour and like charges in the presence of*



Books of Account & allowing the standard deduction of 30% as per rule 3(2) of the KVAT Rules 2005 by the respondent and not allowing exemption towards deemed VAT collected amount & gross profit earned towards labour & like charge expenses incurred by the appellant?

3. Validity of disallowance of the deduction claimed towards input tax credit for non-submission of the relevant documentary evidence and the levy of VAT @ 14.5% along with the consequential interest and penalty on the balance liability determined by the ACCT-Kalaburgi?

4. Validity of demanding back the refund claimed amount along with the consequential interest and penalty based on invalid form VAT-156 filed by the then tax consultant for the tax period June-17 by the ACCT-LGSTO-540-Bidar?

2. The brief facts of the case are that:

The Assistant Commissioner of Commercial Taxes (Appeals), Audit-I, the Prescribed Authority initiated assessment proceedings under Section 39 of KVAT Act Against the appellant-assessee who is a Civil Works Contractor, by issuing notice in Form VAT 275 dated



12.01.2021 on various grounds, including the ground that the assessee had claimed deduction towards labour and like charges without producing any Books of Account to prove the claim and also the claim of TDS credit is not acceptable since there was no acknowledgement. The assessee-appellant failed to appear before the Prescribed Authority or to submit any reply or Books of Account for verification. Therefore, the Prescribed Authority confirmed the proposed demand of tax at the rate of 14.5% along with interest and penalty by its order dated 15.03.2021 (Annexure-F). Aggrieved by the same, the assessee preferred an appeal before the Joint Commissioner Commercial Taxes (Appeals), Kalaburgi Division. The First Appellate Authority allowed the appeal partly by order dated 24.08.2021 to the extent of labour and like charges and also claim of ITC and TDS credit on coming to the conclusion that the assessee had maintained Books of Account and other documents to prove the claim. For the balance demand to which the assessee had not objected,



the First Appellate Authority confirmed the demand along with interest and penalty, with an observation that the assessee could opt for Karasamadhana Scheme, 2021 for waiver of penalty and interest.

3. The Karasamadhana Scheme, 2021 was introduced under the Government Order dated 29.03.2021 (Annexure-D) which granted 100% waiver of arrears of interest and penalty. The appellant-assessee filed an application for availing the benefits under Karasamadhana Scheme, 2021 within the time specified therein. The application of the assessee-appellant opting the Karasamadhana Scheme, 2021 was accepted by passing order dated 28.12.2021 confirming waiver of interest and penalty. The assessee-appellant is said to have satisfied the demand on acceptance of his application under Karasamadhana Scheme, 2021. Thereafter, the respondent, in exercise of power under Section 64 of KVAT Act issued notice, on the ground that the order passed by the Appellate Authority is erroneous and prejudicial to the



interest of the revenue. The assessee-appellant objected to the above notice contending that, once the order for waiver of interest and penalty under Karasamadhana Scheme, 2021 has been extended to the assessee-appellant, no proceedings under Section 64(1) of KVAT Act could be initiated. Ignoring the said objection, the respondent-Revisional Authority proceeded to pass the impugned order dated 25.11.2024 by setting aside the appellate order dated 24.08.2021 and restored the re-assessment order dated 15.03.2021, directing issuance of revised demand notice. Aggrieved by the same, the assessee-appellant is before this Court in this appeal.

4. This appeal is admitted today to examine the substantial questions of law raised by the appellant which are extracted above.

5. Heard learned counsel Sri.T.R.Sathyanarayana for appellant-assessee and learned AGA Sri.Aditya Vikram



Bhat for respondent-revenue. Perused the entire appeal papers.

6. Learned counsel for the assessee-appellant would submit that the assessee-appellant availed Karasamadhana Scheme, 2021 which was accepted by passing order on 28.12.2021. It is the specific contention of the appellant that subsequent to acceptance of his application under Karasamadhana Scheme, 2021 and after waiving interest and penalty, the respondent could not have initiated *suo-motu* revisional proceedings under Section 64(1) of KVAT Act. It is submitted that if the revisional authority exercises its power under Section 64(1) of KVAT Act subsequent to extension of benefits of Karasamadhana Scheme, 2021, the purpose and object of the said scheme would be defeated. It is submitted that the assessee-appellant submitted application under Karasamadhana Scheme, 2021, within the time prescribed therein and the authorities accepted the said application and granted 100% waiver of arrears of interest and



penalty. Therefore, he submits that the impugned order passed by the respondent under Section 64(1) of KVAT Act subsequent to granting benefits of Karasamadhana Scheme, 2021 is liable to be set aside.

7. Per contra, learned counsel Sri.Aditya Vikram Bhat for respondent would support the order passed by the respondent and submits that Karasamadhana Scheme, 2021 would not bar the revisional authority from initiating revision proceedings in respect of the orders which are erroneous and prejudicial to the interest of the revenue. Thus, he prayed for dismissal of the appeal.

8. Having heard the learned counsel for the parties and on perusal of the appeal papers, the following point would arise for consideration:

Whether, in the facts and circumstances, the respondent could have exercised jurisdiction under Section 64(1) of KVAT Act and could have issued notice subsequent to acceptance of application filed by the appellant-assessee under Karasamadhana Scheme, 2021.?



9. Answer to the above point would be in the negative for the following reasons:

The facts are not in dispute. Reassessment proceedings were initiated against the assessee-appellant, by issuing notice under Section 39 of KVAT Act by the Prescribed Authority which culminated in order dated 15.03.2021, against which, the assessee-appellant filed an appeal which was partly allowed and for the remaining grounds which were not allowed by the First Appellate Authority, demand was raised along with interest and penalty. In the meanwhile, Karasamadhana Scheme, 2021 was introduced under notification dated 29.03.2021. The assessee-appellant filed application to avail the benefit under Karasamadhana Scheme, 2021 well within the time prescribed under the scheme. It is also to be noted that the time to avail benefits of scheme was extended further in view of lockdown due to COVID-19.

10. A dealer shall not be eligible to avail the benefits of Karasamadhana Scheme, 2021 in terms of clause 5.7 of



the scheme. Clause 5.7 of Karasamadhana Scheme, 2021 reads as follows:

"5.7. The dealer shall not be eligible to avail the benefits of this Scheme in relation to an order giving rise to arrears of tax, penalty and interest where:-

- (a) State has filed an appeal before the Karnataka Appellate Tribunal or the Central Sales Tax Appellate Authority; or*
- (b) State has filed an appeal or revision or any kind of application before the High Court or the Supreme Court; or*
- (c) any competent authority has initiated suomotu revision proceedings as on the date of this Government Order; or*
- (d) any rectification is made after **31.07.2021.***

In terms of the above clause, a dealer, against whom any competent authority has initiated *suo-motu* revision proceedings as on the date of coming into force of Karasamadhana Scheme, 2021, such a dealer would not be eligible to avail benefits of the said Scheme.

11. In the case on hand, the assessee-appellant submitted application under Karasamadhana Scheme,



2021 to avail waiver of 100% arrears of interest and penalty well within the time i.e., 31.10.2021. The application submitted by assessee-appellant was accepted by order dated 28.12.2021 confirming the waiver of interest and penalty. However, notice under Section 64(1) of KVAT Act was issued subsequently on 16.02.2024. The above Clause 5.7 makes it clear that a dealer shall not be eligible to avail benefits of the Karasamadhana Scheme, 2021 if *suo-motu* revision proceedings has already been initiated by the time, the scheme was introduced. In the instant case, no *suo-motu* revision was pending against the assessee-appellant as on the date of notifying the Karasamadhana Scheme, 2021, but *suo-motu* revision was initiated much subsequent to accepting and passing order in favour of the assessee-appellant under Karasamadhana Scheme, 2021.

12. If the revisional authority is permitted to initiate proceedings under Section 64(1) of KVAT Act subsequent to granting benefit under Karasamadhana Scheme, 2021,



the very purpose and object of introducing Karasamadhana Scheme, 2021 would be defeated. When the proceedings against the appellant-assessee for the period from April 2016 to March 2017 has culminated and attained finality under Karasamadhana Scheme, 2021 by passing order dated 28.12.2021, it is unreasonable and arbitrary to invoke revisional power under Section 64 of KVAT Act. When once the assessee-appellant is granted benefit under Karasamadhana Scheme, 2021, the benefit granted cannot be taken away by initiating proceedings under Section 64 of KVAT Act, then introducing Karasamadhana Scheme, 2021 would be otiose and it would defeat the purpose for which Karasamadhana Scheme, 2021 is introduced. To get waiver of arrears of interest and penalty, the assessee-appellant shall have to make payment of full arrears of taxes. When the assessee pays the entire tax arrears, seeking waiver of interest and penalty which is accepted, cannot be deprived by initiating proceedings under Section 64 of KVAT Act.



13. For the reasons recorded above, the substantial question of law No.1 is answered in favour of the assessee-appellant and against the respondent-revenue. In view of answering substantial question of law No.1 in favour of the assessee-appellant, the other substantial questions of law would no more survive for consideration. Accordingly, the appeal is allowed. The order dated 25.11.2024 passed in ADCOM (SMR)-1/KLB/SMR-18/2023-24 on the file of the Additional Commissioner of Commercial Taxes, (SMR)-I, Bengaluru is set aside.

**SD/-
(S.G.PANDIT)
JUDGE**

**SD/-
(T.M.NADAF)
JUDGE**