

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26<sup>TH</sup> DAY OF FEBRUARY, 2021

**PRESENT**

THE HON'BLE MR. JUSTICE SATISH CHANDRA SHARMA

**AND**

THE HON'BLE MR. JUSTICE V. SRISHANANDA

**STRP NO. 82/2018**

BETWEEN:

THE STATE OF KARNATAKA  
REPRESENTED BY THE SECRETARY  
FINANCE DEPARTMENT  
VIDHANA SOUDHA  
BENGALURU-560001.

...PETITIONER

(BY SRI VIKRAM HUILGOL, AGA.)

AND:

M/S TALLAM APPARELS  
NO.34, KALIDASA ROAD  
GANDHINAGAR  
BANGALORE-560009

... RESPONDENT

(BY SMT. VEENA J. KAMATH, ADV.)

THIS STRP IS FILED UNDER SEC. 65(1) OF THE KARNATAKA VALUE ADDED TAX ACT, 2003 AGAINST THE JUDGMENT DATED 21.8.2017 PASSED IN STA NO.3/2016 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL AT BENGALURU, ALLOWING THE APPEAL SETTING ASIDE THE ORDER DATED 30.10.2015 PASSED IN VAT AP NO.984 TO 989/14-15 ON THE FILE OF THE JOINT COMMISSIONER OF

COMMERCIAL TAXES (APPEALS) SHANTHINAGAR, BENGALURU, DISMISSING THE APPEAL AND UPHOLDING THE RE-ASSESSMENT AND PENALTY ORDER DATED 26.12.2014 PASSED IN NO.218341824 UNDER THE KVAT ACT, 2003 BY THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT-1.7) DVO-1, YESHWANTHPURA, BENGALURU-560 022, FOR THE TAX PERIOD SEPTEMBER 2012 TO MARCH 2013.

THIS STRP HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 18.2.2021, COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY, **V. SRISHANANDA. J.**, DELIVERED THE FOLLOWING:

### **JUDGMENT**

State has filed this Revision Petition questioning the validity of the order passed in STA No.3/2016 dated 21.08.2017 on the file of Karnataka Appellate Tribunal, Bengaluru [hereinafter referred to '**the KAT**' for short].

2. Brief facts which are necessary for disposal of this revision petition are as under:

M/s. Tallam Apparels (hereinafter referred to as '**assessee**' for short) is a dealer registered under the Karnataka Value Added Tax Act, 2003 (hereinafter referred to as '**the Act**' for short) having TIN No.29850733495 engaged in sales of textile and readymade garments from the

registered dealers within the State and sold by charging tax to the buyers, by issuing tax invoices as per Section 29 of the KVAT Act and Rules. In spite of discharge of burden cast under the statute the audit authority passed an order dated 26.12.2014 under Section 39(1) of the Act, rejecting the input tax credit claimed by the appellant. The appellant aggrieved by the order of the Assistant Commissioner of Commercial Taxes Audit, Bengaluru (hereinafter referred to as '**the AA**' for short) has audited the books of accounts and rejected the returns filed by assigning reasons. The appellant being aggrieved by the order of the AA, challenged the same before the Joint Commissioner of Commercial Taxes (Appeals)-1, Shanthinagar, Bengaluru (hereinafter referred to as '**the FAA**' for short) in KVAT Application Nos.984-989/14-15 on several grounds. The **FAA** dismissed the appeal of the assessee.

3. Being not satisfied with the order passed by the FAA dated 30.10.2015, the assessee preferred an appeal before the Karnataka Appellate Tribunal. Before the Karnataka Appellate Tribunal, parties were heard and the Karnataka

Appellate Tribunal by the impugned judgment allowed the appeal of the assessee and set aside the order passed by the FAA and AA dated 30.10.2015 and 21.08.2017. The State is in appeal against the order of the Karnataka Appellate Tribunal in this revision petition.

4. Learned Government Advocate contended that the Tribunal grossly erred in setting aside the order passed by the FAA and the AA. He further emphasize that the scheme of KVAT Act is such that only tax that has been collected and discharged by a selling dealer is eligible to be availed as input tax credit by the purchasing dealer and the Tribunal failed to appreciate the salient features in the scheme of KVAT Act while passing the impugned order. He further contended that the Tribunal grossly erred in considering the provisions of Section 70(1) of the KVAT Act, which clearly states that the burden of proving any claim as to deduction of input tax shall lie on the dealer and in the instant case, the assessee failed to prove that M/s.Taksons, M/s.Jasky Exporters Pvt.Ltd., and M/s. Venus Printers are not a bogus dealer and the purchases effected in the said entity was

genuine purchase. He also contended that the Tribunal erred in not properly appreciating the scope and ambit of Section 70 of the Act and thus, sought for allowing the Revision Petition.

5. He further contended that whether the assessee was entitled for input tax rebate was not at all properly discussed by the Karnataka Appellate Tribunal while passing the impugned order having regard to the materials available on record especially in the form of inspection report and thus sought for allowing the Revision Petition.

6. In support of his contention, learned Government Advocate relied on the judgment reported in (1) **2011 (71) KLJ 10 (DB)** in the case of ***Microqual Techno Pvt. Ltd., Vs. Additional Commissioner of Commercial Taxes*** and (2) **2012 (73) KLJ 450 (DB)** in the case of ***Packwell Industries Vs. State of Karnataka*** and submitted that the order of the Karnataka Appellate Tribunal deserves to be set aside and thus, sought for allowing the Revision Petition.

7. Per contra, Smt. Veena J. Kamath, learned counsel representing the assessee supported the impugned order by submitting that when once the purchase is made by the assessee with proper documentation, the assessee can always claim the input tax based on the value mentioned in the invoice and whether his dealer has paid the tax or not is none of the concern of the assessee and therefore, sought for dismissing the Revision Petition.

8. She further contended that in the instant case, assessee has established that input tax mentioned in the invoices is claimed by the assessee is repaid and emphasizes that the invoice itself contain the details of account payee cheque through which the payment has been made to the above concerns whereby, the assessee discharged the burden cast on it as contemplated under Section 71 of the Act and therefore, the orders passed by the authorities were incorrect orders. The Karnataka Appellate Tribunal appreciated these aspects of the matter in its proper perspective in the impugned order and thus sought for dismissal of the Revision Petition.

9. We have given our anxious consideration to the rival contentions and perused the materials on record.

10. The relevant provisions of Sections 3, 70 and 77(2) of the Act which are necessary for disposal of this Revision Petition are culled out hereunder:

*"3. **Levy of tax.**- (1) The tax shall be levied on every sale of goods in the State by a registered dealer or a dealer liable to be registered, in accordance with the provisions of this Act.*

*(2) The tax shall also be levied, and paid by every registered dealer or a dealer liable to be registered, on the sale of taxable goods to him, for use in the course of his business ,by a person who is not registered under this Act.*

*70. **Burden of proof.**- (1) For the purposes of payment or assessment of tax or any claim to input tax under this Act, the burden of proving that any transaction of a dealer is not liable to tax, or any claim to deduction of input tax is correct, shall lie on such dealer.*

*(2) Where a dealer knowingly issues or produces a false tax invoice, credit or debit note, declaration, certificate or other document with a view to support or make any claim that a transaction of sale or purchase effected by him or any other dealer, is not liable to be taxed, or liable to tax at a lower rate, or that a deduction of input tax is available, the prescribed authority shall, on detecting such issue or production, direct the dealer issuing or producing such document to pay as penalty;*

*(a) in the case of first such detection, three times the tax due in respect of such transaction or claim; and*

*(b) in the case of second or subsequent detection, five times the tax due in respect of such transaction or claim.*

*(3) Before issuing any direction for the payment of the penalty under this Section, the prescribed authority shall give to the dealer the opportunity of showing cause in writing against the imposition of such penalty.*

**77. Penalties relating to seals, electronic tax registers and to unaccounted stocks.-**

*(1) .....*

*(2) Any persons or dealer who is found to be in possession of unaccounted stocks of any taxable goods under the provisions of clause (j) of sub-section (1) of Section 52, after being given in opportunity of showing cause in writing against the imposition of a penalty, shall be liable to a penalty, which shall not be less than the amount of tax leviable or one thousand rupees whichever is higher but which shall not exceed double the amount of tax or five thousand rupees whichever is higher."*

11. In the case on hand, there is no dispute that the assessee produced the true copies of communication certificate, turnover analysis of M/s. Tallam Apparels for the year 2012-13. It is not in dispute that M/s. Tallam Apparels was registered dealer bearing Tin No.29850733495.

12. From perusal of these documents, it can safely be concluded that the transaction is not a bogus transaction or make believe transaction. Since M/s. Tallam Apparels is not a bogus dealer, as is evident from the documents produced by the assessee, dis-allowing of input tax is incorrect. There cannot be any dispute, that burden is cast on the assessee to

establish the transaction to lay a claim for deduction of input tax by production of necessary documents. This Court is of the considered opinion that the assessee has discharged this burden by placing necessary documents referred to supra. The details of the account payee cheques mentioned in the invoice itself demonstrates that the amount is transferred from the assessee to the dealer through the Bank which fact establishes that the transaction is not a bogus transaction.

13. In the case on hand, if M/s. Tallam Apparels has not remitted the tax to the Department, for which assessee cannot be penalized. Therefore, we do not find any justification in interfering with the order of the Karnataka Appellate Tribunal.

14. Under the scheme of the Act, there is no power vested in the authority to proceed against the assessee for non-remittance of tax by his purchaser. This aspect of the matter has been rightly considered by the Karnataka Appellate Tribunal in the right perspective. Therefore, we do not find any infirmity in the impugned order recording a finding that the AA and the FAA were wrong in disallowing

the input tax credit in favour of the assessee for the purchases made from M/s. Tallam Apparrels.

15. In view of the foregoing discussion, no case is made out to interfere with the well reasoned order of the Karnataka Appellate Tribunal.

**Accordingly, the** Sales Tax Revision Petition is dismissed.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

PL\*