



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

***Dated this the 30<sup>th</sup> day of September, 2015***

Present

***THE HON'BLE MR JUSTICE VINEET SARAN***

&

***THE HON'BLE MR JUSTICE B MANOHAR***

***Sales Tax Appeal 119 / 2012***

***Between***

Yakult Danone India Pvt LTd  
# 102, Gangadhar Chetty Road  
Bangalore 42

By Mr Ejji Amano

General Manager – Sales & Marketing

Appellant

(By Sri Shivdas, Adv.)

***And***

Authority for Clarification & Advance Rulings  
Department of Commercial Taxes  
Commercial Taxes Buildings  
Gandhinagar, Bangalore 9

Respondent

(By Sri K M Shivayogiswamy, AGA)

Appeal is filed under S.66(1) of the Karnataka Value Added Tax Act, 2003 against the revision order dated 21.4.2012 in AR CLR 23/2011-12 before the respondent authority.

Appeal coming on for hearing this day, ***Vineet Saran J.***, delivered the following:

### **JUDGMENT**

Appellant is the manufacturer of a product 'Yakult' which, according to the appellant, is akin to 'lassi' which is a milk product. Hence it is claimed that the appellant would be entitled to the benefit of Entry 19 of the First Schedule of the Karnataka Value Added Tax Act (KVAT Act for short). Appellant approached the 'Authority for Clarification & Advance Rulings' constituted under Section 60 of the KVAT Act seeking clarification as to the rate of tax which would be chargeable on the said product. By the impugned order dated 21.4.2012, the Authority has held that the product in question would be chargeable to tax under Section 4(1)(b)(iii) of the KVAT Act, at the rate of 14%. Challenging the said order of the Authority, this appeal has been filed.

We have heard Sri Shivadas, learned counsel for appellant as well as Sri K M Shivayogiswamy, learned Addl. Government Advocate appearing for the respondent and have perused the record.

Although several grounds have been raised on the merits of the decision taken by the Authority by order dated 21.4.2012, but a preliminary ground has been raised with regard to the constitution of the Authority which has given its ruling. The Authority is constituted under Section 60 of the KVAT Act and the relevant sub-section (1) of Section 60 is reproduced below:

**S.60: Clarification & Advance Rulings –**

*(1) The Commissioner may constitute an ‘Authority for Clarification and Advance Rulings’, consisting of at least three Additional Commissioners, to clarify the rate of tax in respect of any goods or the exigibility to tax of any transaction or eligibility of deduction of input tax or liability of deduction of tax at source under the Act, in respect of any case or class of cases as the Commissioner may specify.*

The said provision clearly mandates that the Authority has to be constituted of at least three Additional Commissioners meaning thereby, that the Authority could consists of more than three Additional Commissioners but not less than three members. The order dated 21.4.2012

which is said to have been passed by the Authority, is only by two members. It is thus contended by learned counsel for appellant that the constitution of the 'Authority for Clarification & Advance Rulings' was not in terms of Section 60(1) of the KVAT Act. It has, thus, been submitted that the order passed by the said Authority consisting of only two members, cannot be said to be an order of proper 'Authority for Clarification & Advance Rulings', and is liable to be set aside on this ground alone.

Sri Shivayogiswamy, learned counsel for respondent has tried to justify the constitution of the Authority which was of only two Additional Commissioners, on the strength of Rule 165 (26-A) of the KVAT Rules, wherein it is provided that if one of the members of the Authority other than the Chairman, is unable to discharge his functions, owing to absence, illness or any other cause or in the event of occurrence of any vacancy in the office of members and the case cannot be adjourned for any reason, the Chairman and the remaining member may function as the Authority. It is thus contended, a two member Authority

would also be properly constituted Authority under Rule 165 (26-A) of the KVAT Rules.

Having heard learned counsel for parties and considering the provisions of the KVAT Act and Rules, we are of the opinion that the constitution of the Authority which has passed the order dated 21.4.2012, was not in accordance with law.

It may, firstly, be stated that the Rules framed under an Act, cannot override the provisions of the Act. The main Section 60(1) of the KVAT Act clearly mandates that the constitution of the Authority would be of at least three Additional Commissioners. It does not give any scope for interpretation that the Authority consisting of less than three members, would still be a properly constituted Authority.

Even if it is presumed that sub-rule (26-A) of Rule 165 was to be taken as a valid Rule, then too it is only in certain contingencies that the Authority, consisting of two

members, could be treated as a valid Authority. However, in the present case, respondent has not placed on record any of such condition being there, because of which only two members had constituted the Authority to decide the matter. In such view also, we are of the opinion that the order dated 21.4.2012 has been passed by an Authority which was not properly constituted under the provisions of the KVAT Act.

Accordingly, the appeal stands allowed. Order dated 21.4.2012 passed by the respondent is quashed. Matter is remanded for being decided afresh by the 'Authority for Clarification & Advance Rulings', properly constituted under Section 60 of the KVAT Act, 2003 consisting of at least three Additional Commissioners. Since the matter relates to the year 2012, we direct that the properly constituted Authority shall hear and decide the matter as expeditiously as possible, but not later than four months from the filing of certified copy of this order before the respondent.

It may be clarified that this Court has not looked into the merits of the claim of the assessee, which shall be gone into by the Authority constituted for deciding the matter.

Sd/-  
**Judge**

Sd/-  
**Judge**

An