(2006) 01 KAR CK 0028

In the Karnataka High Court

Case No : Sales Tax Revision Petition No. 12 of 2004

1rashtriya Ispat Nigam Limited, Bangalore — APPELLANT

Vs

State of Karnataka — RESPONDENT

Date of Decision : 06-01-2006

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 5B
Karnataka Sales Tax Rules, 1957 — Rule 6(4)(M)

Citation : (2007) 62 KarLJ 58

Hon'ble Judges : N. Ananda, J;H. L. Dattu, J

Judgement

H.L. Dattu, J.-Petitioner is a company incorporated under the provisions of the Companies Act, 1956. It is also a dealer registered both under the provisions of Karnataka Sales Tax Act, 1957 (''KST Act'' for short) and Central Sales Tax Act, 1956 (''CST Act'' for short).

2. It appears, petitioner-Company had participated in a tender process conducted by M/s. Bharat Petroleum Corporation Limited (''BPCL'' for short). M/s. BPCL had awarded the contract to the petitioner-Company. In turn, the petitioner-Company had entrusted the works contract that was awarded to it by M/s. BPCL to M/s. Diggers India, Mangalore.

3. For the assessment year 1998-1999, petitioner-Company had filed its returns under the provisions of the KST Act. The Assessing Authority by his order dated 20-9-2000 has completed the assessment and while doing so, had levied tax on that part of the turnover which had not been taxed in the hands of the sub-contractor. Apart from that, it had also levied turnover tax under Section 6-B of the Act at the rates prevailing during the relevant point of time.

4. Aggrieved by the quantification made by the Assessing Authority for the assessment year in question, petitioner-Company had unsuccessfully filed appeals before the First Appellate Authority and also before the Karnataka Appellate Tribunal.

5. Aggrieved by the orders passed by the Tribunal dated 13-8-2003, which has confirmed the orders passed by the First Appellate Authority dated 20-2-2001 as well as the Assessing Authority dated 20-9-2000, petitioner-Company is before this Court.

6. The Tribunal is the last fact finding authority. The Tribunal is authorised not only to answer the questions of law but also to answer the disputed facts. After considering the rival contentions canvassed before it, the Tribunal had framed three issues for its consideration and decision. They are:

"(i) Whether the composite contracts, not involving transfer of property in goods are liable to tax?

(ii) Whether the main contractor and the sub-contractor be subjected to turnover tax?

(iii) Whether the profit earned by entrusting the works to a sub-contractor, is liable to tax?"

7. Insofar as the first issue is concerned, the Tribunal has answered it in the negative i.e., in favour of the assessee and against the Revenue. Insofar as the second and third issues are concerned, the Tribunal has answered the same in favour of the Revenue and against the assessee. For answering the second and third issues, the Tribunal has mainly relied on the observations made by the Apex Court in the case of Gannon Dunkerley and Company and Others v State of Rajasthan and Others, 1993(37) Kar. L.J. 279 (SC).

8. While answering second and third issues, the Tribunal has taken into consideration that the petitioner-Company is a main contractor since the contract had been awarded to it by M/s. BPCL and the main contractor in turn has assigned the work to a sub-contractor namely, M/s. Diggers India, Mangalore. The Tribunal is of the view that it is the main contractor, who is liable to pay tax and if for any reason, the sub-contractor has paid the tax on his taxable turnover, that portion of the turnover requires to be excluded from the turnover of the main contractor. Insofar as the turnover tax is concerned, the Tribunal is of the view that the main contractor as well as the sub-contractor are liable to pay turnover tax under Section 6-B of the Act on their turnovers.

9. Sri S. Narayana, learned Counsel appearing for the petitioner-Company vehemently contends before this Court that the petitioner-Company though was awarded contract by M/s. BPCL, had assigned the work to M/s. Diggers India, Mangalore, and because of this transaction, what the petitioner-Company has received is only a profit and therefore, the provisions of Section 5-B of the Act is not attracted to the margin of profit received by the main contractor. Alternatively, it is contended that the entire work that was entrusted by M/s. BPCL to the petitioner-Company was carried out by M/s. Diggers India, Mangalore, and if anybody is liable to pay tax under the Act, it is only M/s. Diggers India, Mangalore, and the profit margin earned by the petitioner-

Company cannot be brought to tax under the provisions of the Karnataka Sales Tax Act. Fortunately, the learned Counsel for the petitioner-Company does not rely on any decision of any superior forum in support of his contentions.

10. Smt. Sujatha, learned Additional Government Advocate ably justifies the impugned order passed by the Karnataka Appellate Tribunal.

11. At the outset, we would like to place it on record that the assessee had not placed any documentary evidence either before the Assessing Authority or before the First Appellate Authority or before the Karnataka Appellate Tribunal, which is the last fact finding authority, for having assigned work to M/s. Diggers India, Mangalore. What was urged and canvassed before all the authorities was that petitioner-Company is a contractor in whose favour the contract had been awarded by M/s. BPCL and it had entrusted the work by way of sub-contract to M/s. Diggers India, Mangalore. Keeping this factual foundation, the Assessing Authority and the last fact finding authorities have come to the conclusion that the principal or the main contractor, who is liable to pay tax under the provisions of the Act. But, for the purpose of computation of tax, if for any reason, the contract has been, awarded to a sub-contractor, that amount requires to be excluded from the taxable turnover of the main contractor. The provisions of Section 5-B of the Act read with Rule 6(4)(m) and (n) of the Karnataka Sales Tax Rules, 1957, throws much light on what we have stated hereinabove. In that view of the matter, in our opinion, the Tribunal was justified in coming to the conclusion that the petitioner is liable to pay turnover tax on that part of the turnover, which has not been taxed in the hands of the sub-contractor.

12. In that view of the matter, we do not see any good grounds to interfere with the impugned orders passed by the Karnataka Appellate Tribunal. Accordingly, the revision petition stands rejected. No order as to costs. Ordered accordingly.