(2007) 09 KAR CK 0043

In the Karnataka High Court

1teekays Interior Solutions Private Limited, Bangalore — APPELLANT

Vs

State of Karnataka — RESPONDENT

Date of Decision : 24-09-2007

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 5B
Karnataka Sales Tax Rules, 1957 — Rule 6(1)(C)

Citation : (2007) 63 KarLJ 297

Hon'ble Judges : Arali Nagaraj, J;V. Gopala Gowda, J

Judgement

V. Gopala Gowda, J.-This petition is filed under Section 23(1) of the Karnataka Sales Tax Act, 1957 against the judgment and order dated 12-1-2007 passed in S.T.A. No. 643 of 2005 on the file of the Karnataka Appellate Tribunal, Bangalore dismissing the appeal by confirming the order of the First Appellate Authority and assessment order for the year 2002-03.

2. The questions of law framed by the assessee are as follows.-

"Whether on the facts and in the circumstances and on the contentions taken, the Tribunal was right in:

(a) holding that the Assessing Authority has rightly rejected the claim for deduction on tax collected;

(b) rejecting the petitioner''s contention that what is taxable under Section 17(6) of the actual consideration for the execution of works contract and not the works contract tax collected and referable thereto;

(c) holding that it is immaterial to enquire as to how the amount of total consideration is made up and whether it includes labour or excise or sales tax or freight and the only relevant point to notice is as to what is the amount received by the dealer as total consideration;

(d) rejecting the petitioner''s contention that what is taxable vide Explanation to Section 17(6) is the turnover relating to amounts paid to registered sub-contractors as consideration for execution of works contract which would obviously include the gross profit margins referable to such portion of the costs which are payments made to the sub-contractors;

(e) holding that since the Explanation provides for deduction of only the actual amounts paid as consideration to sub-contractors, what is deducted out of the total contract consideration is only the actual amount paid to the sub-contractors and nothing else; and

(f) holding that Explanation provides for deduction of only the actual amounts paid as consideration to sub-contractors, when in fact, what is allowable as deduction vide Explanation to Section 17(6) is turnovers relating to amounts paid to sub-contractors".

3. The assessee urged grounds in support of the same and requested the Court to answer the aforesaid questions of law in favour of the assessee.

4. The facts need not be adverted to in this order as the Karnataka Appellate Tribunal in its judgment has narrated the same.

5. The grounds urged by the assessee in support of the questions of law are that what is liable to be taxed under Section 17(6) of the Act is the total consideration for the execution of the works contract and such total consideration cannot be construed to include works contract tax collected. Further, the learned Senior Counsel Sri K.P. Kumar submitted that if the interpretation of the revenue is accepted, it would amount to paying tax on tax. For example, if the consideration for the execution of works contract is Rs. 100/- , the tax thereon has to be Rs. 4/- as provided under Section 17(6) of the Karnataka Sales Tax Act, 1957. However, if, the interpretation of the revenue is accepted, what is being taxed is not Rs. 100/- but Rs. 104/- and the petitioner would be liable to pay tax of Rs. 4.16/-. Therefore, that is not the object of the provisions of the Sales Tax Act. He has further contended that the revenue by levying tax on the gross works contract receipts which is inclusive of tax is restraining the petitioner from collecting the tax on the tax collected. Further, elaborating his submissions, he has contended that what is deductible under the Explanation to Section 17(6) of the KST Act, is the turnovers relating to amounts paid to registered sub-contractors as consideration for execution of works contract and therefore, the petitioner was right in claiming deduction of gross profit margin referable to the consideration paid to the registered sub-contractors and further contended that the word "turnovers" used in the Explanation to Section 17(6) could only be construed to mean the consideration paid to the registered sub-contractors and the gross profit margin referable thereto. Therefore, the learned Senior Counsel submits that the above mentioned questions of law arise for consideration by this Court and requested to answer the same in favour of the assessee.

6. Smt. S. Sujatha, learned Additional Government Advocate sought to justify the order placing reliance on the decision of this Court in the case of Karnataka State Construction Corporation Limited, Bangalore v State of Karnataka,

2003(55) Kar. L.J. 460 (HC) (DB), wherein this Court has interpreted Sections 5-B and 17(6) of the Karnataka Sales Tax Act, 1957 and Rule 8-B of the Karnataka Sales Tax Rules, 1957.

7. This Court in the said decision has held as follows.-

"That the scheme of Section 17(6) of the Karnataka Sales Tax Act, 1957 was to provide an alternative, simplified, convenient and hassle free method of assessment of tax payable by making it optional for the assessee. Once a dealer elects for compositions on the ground that opting for composition is beneficial to him, he cannot, at the end of the assessment year, be permitted to go back on that, either on the ground that portion of a work or some work out of several works in respect of which he has sought composition does not fall within the meaning of works contract under Section 5-B of the Act".

8. Learned Counsel placing reliance on the aforesaid decision of this Court contended that total consideration cannot be construed to include works contract tax collected and that petitioner is not entitled for deduction of tax collected for the purpose of payment of sales tax on the total turnover.

9. Further she has placed reliance on the decision of the Division Bench of this Court in the case of T.H. Venkate Gowda v Commissioner of Commercial Taxes in Karnataka, Bangalore, 2006(61) Kar. L.J. 289 (HC) (DB) and another decision of this Court in the case of Mycon Construction Limited, Bangalore v State of Karnataka and Another, 2002(53) Kar. L.J. 56 (HC) (DB).

10. With reference to the above said rival contentions, we have to examine the questions of law framed in this petition and answer the same together as they are inter-related.

11. We have to accept the case of the assessee for the following reasons:

12. The Karnataka Appellate Tribunal has erroneously interpreted the provisions of Section 5-B read with Section 17(6) of the KST Act for computation of sales tax. For this purpose, Section 17(6) of the Act requires to be extracted which reads thus:

"17. (6)(i) Notwithstanding anything contained in Section 5-B, but subject to such conditions and in such circumstances as may be prescribed, the Assessing Authority of the area may, if a dealer liable to tax under Section 5-B so elects, accept in lieu of the amount of tax payable by him during the year under this Act, by way of composition an amount on the total consideration for the works contracts executed by him in that year in the State in respect of works contract specified in column (2) of the Sixth Schedule at the rate of four per cent.

(ii) Any dealer may apply to the Assessing Authority to be permitted to pay the amount under clause (i), and on being so permitted, he shall pay tax in advance as provided for under Section 12-B and all the provisions of Section 12-B mutatis mutandis shall apply to this sub-section.

(iii) The amount paid under clause (ii), shall be subject to such adjustment as may be necessary on completion of final assessment.

Explanation.-No tax shall be payable under this sub-section on the turnovers relating to amounts paid to sub-contractors as consideration for execution of works contract whether wholly or partly subject to production of proof that such sub-contractor is a registered dealer liable to tax under the Act and that the turnover of such amounts is included in the monthly statements or return of turnover, as the case may be, filed by such sub-contractor".

13. It is also necessary to extract the relevant provision of Section 5-B of the KST Act read with Rule 6(1), clause (a) and sub-rule (4) of the Karnataka Sales Tax Rules, 1957, which provisions reads as under:

"5-B. Levy of tax on transfer of property in goods (whether as goods or in some other form) involved in the execution of works contracts.-Notwithstanding anything contained in sub-section (1) or sub-section (3) or sub-section (3-C) of Section 5, but subject to sub-section (4), (5) or (6) of the said section, every dealer shall pay for each year, a tax under this Act on his taxable turnover of transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract mentioned in column (2) of the Sixth Schedule at the rates specified in the corresponding entries in column (3) of the said Schedule".

6. Determination of total and taxable turnover.-(1) The total turnover of a dealer, for the purposes of the Act, shall be the aggregate of.-

(a) the total amount paid or payable by the dealer as the consideration for the purchase of any of the goods in respect of which tax is leviable at the point of purchase under one or more of the provisions specified hereunder, where such purchase has taken place inside the State.-

x x x x

(4) In determining the taxable turnover, the amount specified in clauses (a) to (p) shall, subject to the conditions specified therein, be deducted from the total taxable turnover of a dealer as determined under clauses (a) to (e) of sub-rule (1)".

14. By a careful reading of the provisions of Section 5-B read with Rule 6(1), clause (a) and sub-rule (4) and also sub-section (6) of Section 17 of the KST Act, what is stated under the above statutory provisions of the Act and Rules is that if the assessee elects the composition of tax, then he is liable to pay tax by way of composition an amount of the total consideration received for the works contracts executed by him in that year.

15. "Total consideration" has to be understood in the proper perspective to give effect to the correct meaning. "Consideration" is not defined in the KST Act. Therefore, the dictionary meaning of the same is found in the Chambers 21st

Century Dictionary is borrowed which reads thus:

""Consideration" - noun, 1. thoughtfulness on behalf of others; 2. careful thought; 3. a fact, circumstance etc., to be taken into account; 4. a payment, reward or recompense. "in consideration of something" a. because of it; b. as payment for it; in return for it. "take something into consideration" to allow for it; to bear it in mind. Under consideration being considered".

16. The phrase used in Section 17(6) will have definite meaning and purpose. Each phrase used in the statutory provision must be given proper meaning to achieve the purpose for which it is used. By using the words "total consideration" which means a payment, reward or recompense etc., for the works executed by the assessee, whatever be the tax collected by the assessee for executing civil works contract, the same shall not be treated as consideration. Therefore, the same shall not be accounted by the revenue for the purpose of payment of sales tax to the Department under the provisions of the Sales Tax Act. The reliance placed on the Division Bench decision of this Court with regard to the collection of sales tax that it shall also be included as total consideration for the purpose of sales tax, therefore, the impugned order passed by the KAT is vitiated on account of erroneous interpretation made with regard to the phrase total consideration as occurred in the provision of Section 17(6) of the Act includes the sales tax amount received from the contractee.

17. For the reasons stated supra, the legal contention urged by the learned Senior Counsel on behalf of the assessee must be accepted by us and the questions of law which are framed in this petition would certainly arise for our consideration and the same are answered in favour of the assessee and the sales tax amount collected by the assessee from the contractee for execution of civil works cannot be taken into account for total turnover and computed for the purpose of payment of sales tax by the assessee.

Accordingly, this petition is allowed.

