(2008) 03 KAR CK 0024

In the Karnataka High Court

Case No : Writ Petition No. 10309 of 2007 (ENTRY TAX) connected with Writ Petition No. 13048 of 2007 (ENTRY TAX)

Afcons Infrastructure Limited, Mumbai — APPELLANT

Vs

Government of Karnataka, Infrastructure Development Department, Bangalore and Others — RESPONDENT

Date of Decision : 17-03-2008

Acts Referred:

Constitution of India, 1950 — Article 166(3), 226
Karnataka Government (Transaction of Business) Rules, 1977 — Rule 33(1)
Karnataka Tax on Entry of Goods Act, 1979 — Section 11A

Citation : (2008) 65 KarLJ 105

Hon'ble Judges : N. K. Patil, J

Judgement

1. These two writ petitions are taken up for final disposal, with consent of both the Counsels for parties.

2. Petitioners seeking to declare them as entitled for exemption from payment of entry tax on machines, equipments, capital goods and construction materials procured for implementation of the project until completion of the project work, further assailing the correctness of the modified certificate dated 28-3-2007, bearing No. IDD 174 IDM 2003, passed by the first respondent, vide Annexure-J, and in the second case seeking a direction directing the respondents 1 to 3 to issue a certificate in their favour granting the State entry tax exemption for the project from 30-6-2001 to 31-12-2005 in terms of the directions of the Hon''ble Finance Minister contained in the file noting at Serial Nos. 139 and 140, and further seeking a direction to the respondents 1 to 3 and 5 to refund the entire amount of money towards State entry tax collected by them from the petitioners in respect of the period from 30-6-2004 onwards, presented the instant writ petitions.

3. I have heard the learned Counsel for the petitioners and learned Additional Government Advocate for respondents 1 to 3 in first petition and for respondents 1 to 3 and 5 in the second petition and learned Counsel for the fourth respondent.

4. The undisputed facts of the case are that, the petitioner herein is a company engaged in business of development of infrastructure projects, they being specialised in the construction work have taken up construction of 6-laning of km. 556.00 to km. 539.00 and km. 535.00 to km. 527.00 of Hyderabad-Bangalore section of NH-7, in the State, and they are carrying out the work. As per the proceedings of the Government of Karnataka in respect of the infrastructure policy, they have sought for exemption of entry tax as provided at Clause 18(H) they are entitled for extension of the benefit of exemption from State entry tax, as the project was involving investment of more than Rs. 100 crores, and the Government may consider the grant of further concessions/ incentives which are directly related to the project, depending upon the merits of each case. The petitioners'' request has been considered by the Competent Authority of the respondents, and granted entry tax exemption for a period of four years in the first case and for a period of three years in the second case. After issuing a notice to the petitioners, the Government has passed the order dated 28-3-2007 bearing No. IDD 174 IDM 2003, vide Annexure-J, modifying the four years'' period of entry tax exemption to three years only as per Clause 18(a), without reference to Clause 18(h) and without considering the directions of the Hon''ble Finance Minister contained in the file noting at Serial Nos. 139 and 140, who has approved the exemption for a period of four years; and in the second case, the Finance Minister-in-charge for infrastructure has approved for extension of the exemption for four years as provided under Clause 18(h) of the proceedings of the Government vide Annexure-A. Inspite of the rightful approval by the in-charge Finance Minister, the Under Secretary to Government has proceeded to pass the impugned order in the first case modifying the exemption period from four years to three years, and in the second case, has not extended the relief sought for i.e., for enhancement of the exemption period from three years to four years. Keeping in view this background as stated supra, the petitioners felt necessitated to file the instant writ petitions for appropriate reliefs.

5. After careful perusal of the material on record and after microscopic evaluation of the proceedings of the Appellate Authority of the Joint Secretary to the Government, Infrastructure Development Department, bearing No. IDD 174 IDM 2003, dated 28-3-2007, it emerges that, insofar as the first writ petition is concerned, the four years State entry tax exemption has been granted and in the second writ petition, the in-charge Minister has approved to extend the benefit of four years and the same has been ordered as found at ink page 98 in Annexure-J.

6. It is significant to note that, as per the provisions of the Karnataka Government (Transaction of Business) Rules, 1977 (hereinafter called as "Business Rules" in short), the Finance Minister may call for papers from any Department in which financial consideration is involved and he has got every right as per Rule 15(2) and as per Rule 17(2) no proposal which requires previous consultation with the Finance Department under this rule but in which Finance Department has not concurred may be proceeded with unless a decision to that effect has been taken by the Cabinet and as per Rule 33(1) and (2)

subject to the provisions of these rules, the Minister-in-charge may dispose of all cases arising in Departments under his control and if more than one Department is concerned with a case and there is a difference of opinion between the Departments, the Minister-in-charge may decide the issue, if he is in-charge of both the Departments. Inspite of these relevant rules as referred above, the authority has not looked into nor referred by the respondents herein and has proceeded and issued the impugned certificate, without reference to Clause 18(h) and the approval accorded by the concerned in-charge Minister and also failed to consider specifically if the investment has involved more than Rs. 100 crores, and the Government can extend further concessions, etc., directly to the person depending upon the merits of each case.

7. In the instant cases, first respondent has not taken any decision having regard to the merits and demerits of the case, there is no whisper regarding why he wants to modify the exemption period from four years to three years and why he did not want to unilaterally extend the benefit of four years to the second project, is not coming forth. Therefore, in view of non-conducting proper enquiry and not taking proper decision strictly in compliance of relevant provisions of the Act and Rules applicable to the facts and circumstances of these cases, has proceeded and issued the impugned certificate. Therefore, at any stretch of imagination, the impugned order passed vide Annexure-J, dated 28-3-2007 cannot be sustainable and this matter requires reconsideration afresh, after affording reasonable opportunity to the petitioners and strictly in terms with the relevant proceedings of the Government as per Annexure-A and as per Business Rules, 1977, as referred above.

8. In the light of the facts and circumstances of these cases, W.P. No. 10309 of 2007 filed by the petitioner is allowed in part, quashing the modified certificate issued by the first respondent bearing No. IDD 174 IDM 2003, dated 28-3-2007 vide Annexure-J. Matter stands remitted back for fresh decision in both these writ petitions in accordance with law, after affording reasonable opportunity to the petitioners in the light of observations made supra, and dispose of the same as expeditiously as possible, at any rate within a period of eight (8) weeks from the date of receipt of the copy of this order.

W.P. No. 13048 of 2007 stands disposed of accordingly.

