(2016) 06 KL CK 0056

In the High Court Of Kerala

Case No : WA. No. 1033 of 2014 in WP(C). 3843 of 2007

Assistant Commissioner (Audit Assmt) II Commercial Taxes APPELLANT

Vs

M/s. Siemens Limited RESPONDENT

Date of Decision : 16-06-2016

Acts Referred:
Central Sales Tax (Kerala) Rules, 1957 — Rule 11B(2)(c)
Central Sales Tax Act, 1956 — Section 13(3), 13(4), 6(2)

Citation : (2016) 3 KerLJ 195 : (2016) 3 KLT 376

Hon'ble Judges : Mr. Antony Dominic and Mr. Dama Seshadri Naidu, JJ.

Bench : Division Bench

Advocate : Smt. Sobha Annamma Eapen, Sr. Govt Pleader, for the Appellant; Sri. Jose Joseph, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Mr. Antony Dominic, J.—This writ appeal is filed by the respondents in W.P (C). 3843/07 who are aggrieved by the judgment dated 7.3.2014 rendered by the learned single Judge. By the judgment under appeal, Rule 11B(2)(c) of the Central Sales Tax (Kerala) Rules, 1957 (hereinafter, the ''CST Kerala Rules'', for short) was declared invalid and ultra vires the Central Sales Tax Act, 1956 (hereinafter, the ''CST Act'', for short) and the Central Sales Tax (Registration and Turnover) Rules, 1957 framed by the Central Government.

2. The respondent herein, a company incorporated under the Companies Act, is a dealer under the Kerala Value Added Tax Act, 2003 and the CST Act. They filed the writ petition challenging Exts.P8 and P9 assessment orders passed under the KVAT Act and CST Act for the assessment year 2005-06 and Ext.P10 assessment order passed under the CST Act for the assessment year 2006-07. In the writ petition, they also prayed that Rule 11B(2)(c) of the CST Kerala Rules be declared invalid and ultra vires the CST Act and the Rules framed thereunder by the Central Government.

3. The writ petition was admitted only with respect to the challenge raised

against the rule and it was made clear that it would be open to the respondents to pursue the statutory remedies against the assessment orders that were challenged. In that writ petition, learned single Judge has rendered the judgment under appeal and the ground on which the rule has been interfered with is reflected in paragraph 16 of the judgment, which reads thus:

"16. The only condition to attract the statutory mandate contained in Section 6(2) is submission of the documents prescribed in the 1st proviso to Section. Therefore, once the documents prescribed under the 1st proviso is submitted in respect of the subsequent sale, the provision will operate and the exemption provided under the provision will come into effect with its full scope and amplitude and the State has no authority to whittle down the effect of the exemption provided under the statute by framing any rules or otherwise. Therefore Rule 11B(2)(c) framed by the State Government, which has the effect of amending the provisions of Section 6(2) of the CST Act, is invalid and ultra vires being beyond the scope of power under Section 11(3)."

Reading of the above findings shows that according to the learned Judge, Rule 11B(2)(c) of the CST Kerala Rules has the effect of whittling down the exemption provided in section 6(2) and amending the statutory provision and therefore, the State Government have exceeded its power. It is the correctness of this finding that is raised in this appeal.

4. We heard learned Government Pleader for the appellants and the counsel appearing for the respondent assessee.

5. Before we examine the rival contentions with respect to the rule making power of the State Government, we shall survey the relevant statutory provisions contained in the CST Act. Chapter III of the CST Act contains section 6 providing for liability to tax on inter-State sales. This section, prior to its amendment by Taxation Amendment Act (Act 16 of 2007) with effect from 1.4.2007 read thus:

"6. Liability to tax on inter-State sales- (1) Subject to the other provisions contained in this Act, every dealer shall, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, not being earlier than thirty days from the date of such notification, be liable to pay tax under this Act on all sales of goods other than electrical energy effected by him in the course of inter-State trade or commerce during any year on and from the date so notified:

Provided that a dealer shall not be liable to pay tax under this Act on any sale of goods which, in accordance with the provisions of sub-section (3) of section 5 is a sale in the course of export of those goods out of the territory of India.

(1A) A dealer shall be liable to pay tax under this Act on a sale of any goods effected by him in the course of inter-State trade or commerce notwithstanding that no tax would have been leviable whether on the seller or the purchaser under the sales tax law of the appropriate State if that sale had taken place inside that State.

(2) Notwithstanding anything contained in subsection (1) or sub-section (1A), where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods,-

(a) to the Government, or

(b) to a registered dealer other than the Government, if the goods are of the description referred to in sub-section (3) of section 8, shall be exempt from tax under this Act: Provided that no such subsequent sale shall be exempt from tax under this sub-section unless the dealer effecting the sale furnishes to the prescribed authority in the prescribed manner and within the prescribed time or within such further time as that authority may, for sufficient cause, permit,-

(a) a certificate duly filled and signed by the registered dealer from whom the goods were purchased containing the prescribed particulars in a prescribed form obtained from the prescribed authority; and

(b) if the subsequent sale is made-

(i) to a registered dealer, a declaration referred to in clause (a) of sub-section (4) of section 8, or

(ii) to the Government, not being a registered dealer, a certificate referred to in clause (b) of section (4) of section 8:

Provided further that it shall not be necessary to furnish the declaration or the certificate referred to in clause (b) of the preceding proviso in respect of a subsequent sale of goods if,-

(a) the sale or purchase of such goods is, under the sales tax law of the appropriate State exempt from tax generally or is subject to tax generally at a rate which is lower than four per cent. (whether called a tax or fee or by any other name): and

(b) the dealer effecting such subsequent sale proves to the satisfaction of the authority referred to in the preceding proviso that such sale is of the nature referred to in clause (a) or clause (b) of this sub-section."

6. By Act 16 of 2007, sub-section (2) of section 6 was substituted and the substituted sub-section (2) read thus:

"(2) Notwithstanding anything contained in subsection (1) or sub-section (1A), where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods to a registered dealer, if the goods are of the description referred to in subsection (3) of section 8, shall be exempt from tax under this Act:

Provided that no such subsequent sale shall be exempt from tax under this sub-section unless the dealer effecting the sale furnishes to the prescribed authority in the prescribed manner and within the prescribed time or within such further time as that authority may, for sufficient cause, permit,-

(a) a certificate duly filled and signed by the registered dealer from whom the goods were purchased containing the prescribed particulars in a prescribed form obtained from the prescribed authority; and

(b) if the subsequent sale is made to a registered dealer, a declaration referred to in clause (b) of sub-section (4) of section 8:

Provided further that it shall not be necessary to furnish the declaration referred to in clause (b) of the preceding proviso in respect of a subsequent sale of goods if,-

(a) the sale or purchase of such goods is, under the sales tax law of the appropriate State exempt from tax generally or is subject to tax generally at a rate which is lower than three per cent or such reduced rate as may be notified by the Central Government, by notification in the Official Gazette, under subsection (1) of section 8 (whether called a tax or fee or by any other name): and

(b) the dealer effecting such subsequent sale proves to the satisfaction of the authority referred to in the preceding proviso that such sale is of the nature referred to in this subsection."

7. As per section 6(1), subject to the other provisions contained in the Act, every dealer shall, with effect from such date as the Central Government may, by notification in the Official Gazette appoint, not being earlier than thirty days from the date of notification, be liable to pay tax under the Act on all sales of goods, other than electrical energy, effected by him in the course of inter-State trade or commerce during any year on and from the date so notified. As per sub-section (2), prior to its substitution by Act 16 of 2007, notwithstanding subsection (1) or sub-section (1A), where a sale of goods in the course of inter-State trade or commerce has either occasioned movement of such goods from one State to another or has been effected by transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by transfer of documents of title to such goods to the Government or to a registered dealer, if the goods are of the description referred to in section 8(3), they shall be exempted from tax under the Act. However, proviso to sub-section (2) prescribe that no such subsequent sale shall be exempt from tax under subsection (2), unless the dealer effecting the sale furnishes to the prescribed authority in the prescribed manner and within the

prescribed time or within such further time as that authority may, for sufficient cause, permit, a certificate duly filled and signed by the registered dealer from whom the goods were purchased containing the prescribed particulars in a prescribed form obtained from the prescribed authority. As a result of the amendment by Act 16 of 2007, the change made in sub-section (2) is that sales to the Government stand omitted.

8. Section 13 of the CST Act confers power to make rules. While sub-section 13(1) confers power on the Central Government to make rules, sub-section (3) thereof confers power on the State Government to make rules not inconsistent with the provisions of the Act and the rules made by the Central Government, to carry out the purposes of the Act. In exercise of its power under section 13(1), the Central Government have framed the Central Sales Tax (Registration and Turnover) Rules, 1957. Rule 12(4) of the said Rules provides that the certificate referred to in section 6(2) shall be in Form E-I or Form E-II, as the case may be. As per clause D(iv) of both E-I and E-II forms, the number and date of the Railway Receipt/Trip sheet of lorry/or any other document of other means of transport are required to be stated.

9. As we have already stated, section 13(3) of the CST Act provides that the State Government may make rules, not inconsistent with the provisions of the Act and the rules made under section 13(1), to carry out the purposes of the Act. Section 13(4) and clause (c) thereof provide thus:

"13(4) In particular and without prejudice to the powers conferred by sub-section (3), the State Government may make rules for all or any of the following purposes, namely:-

(a) xxx xxx

(c) the furnishing of any information relating to the stocks of goods of purchases, sales and deliveries of books by, any dealer or any other information relating to his business as may be necessary for the purposes of this Act;"

10. It would appear that while the statutory provisions stood thus, the Board of Revenue had issued circulars directing the assessing authorities to insist on production of documents of title to the goods like lorry receipt/railway receipt or bill of lading evidencing endorsement of such documents, from the assessment year 1991-92 onwards. Validity of these circulars was questioned before this Court and in the judgment in P.A. George v. Assistant Commissioner of Sales Tax (Assessment) I, Special Circle, Alappuzha [(1998) 110 STC 25], this Court held that the Act or the Rules did not confer any power on the Board of Revenue to issue any direction of the nature contained in the circulars and accordingly, the circulars were declared as non est in law.

11. Apparently, in order to get over the situation created by the judgment in P.A.George''s case (supra), in the purported exercise of its power under Section 13(4)(c) of the CST Act, sub clause (c) to Rule 11B (2) was inserted to the CST

Kerala Rules as per SRO 848/99. Clause 11B(2)(c) reads thus:

"(c) The purchasing registered dealer who claims to have made a second or subsequent sale by transfer of documents of title to the goods shall, in respect of such claim furnish to the assessing authority a photo copy of the consignee copy of the Lorry Receipt, Railway Receipt, Bill of lading bearing endorsement made by such dealer or cash receipt in favour of the purchaser taking delivery of the goods."

12. Reading of this provision would show that a purchasing dealer claiming the benefit of Section 6 (2) shall, in respect of such claim, furnish to the assessing authority a photocopy of the consignee copy of the lorry receipt, railway receipt, bill of lading bearing endorsement made by such dealer or cash receipt in favour of the purchaser taking delivery of the goods. It was this provision which was challenged in the writ petition and which challenge was upheld by the learned Single Judge.

13. Law is settled that a subordinate legislation, such as the CST Kerala Rules, should be framed within the four corners of the rule making power conferred by the parent enactment, viz., the CST Act. If the rule so framed is in excess of the power conferred on the rule making authority, rule will be ultra vires the parent legislation and hence unconstitutional. It is because of this legal principle that the Government contended that having regard to the provisions of Section 6(2) and Section 13(3) of the CST Act, the Government was well within its power to frame rule 11B(2)(c). On the other hand, the learned counsel for the respondent contended that the rule making authority has exceeded its power conferred in the CST Act and that the rule, in effect amended section 6(2) thereof. According to the learned counsel, as per clause (a) to the proviso to Section 6(2), if the purchase made by the dealer is from a registered dealer, a certificate duly filled and signed by the seller containing the prescribed particulars, in the prescribed form obtained from the prescribed authority shall be submitted. It is further pointed out that in cases to which clause (b) is attracted, a declaration referred to in section 8(4)(b) shall be submitted. It is pointed out that once these requirements are satisfied by a dealer, the benefit of section 6 cannot be denied. According to him, having regard to the language used by the legislature, the power conferred on the rule making authority is only to prescribe the authority, manner, time, particulars and form in which the form or certificate is to be submitted. It is stated that when such is the restricted power that is conferred, the rule making authority cannot prescribe that for availing of the benefit of Section 6(2), additional documents such as lorry receipts, railway receipts bill of lading etc. shall be produced. This, according to the learned counsel, is tantamount to amending section 6(2) of the Act and hence, is in excess of the rule making power and that therefore, rule 11B(2)(c) is invalid.

14. Though this argument would, at the first blush, appear to be attractive, on a closer scrutiny of the statutory provisions, we are unable to accept it. First of all, Section 6 providing for exemption from levy of tax and prescribing the production

of certificate a declaration, as the case may be, for availing of the exemption, did not deprive the rule making authority its power to make further rules which will make the provisions workable or to prescribe anything in addition to what is provided in the section itself. That apart, by Section 13(3), power is conferred on the State Government to make rules to carry out the purposes of the Act and the only limitation therein is that such rules shall not be inconsistent with the provisions of the CST Act or the rules made by the Central Government under Section 13(1) thereof. The scope of such power is enlarged by section 13(4) which provide that in particular and without prejudice to the powers conferred as per 13(3), the State Government may make rules for all or any of the purposes enumerated therein. The purposes enumerated in clause (c) thereof include rules for furnishing of any other information relating to the business of a dealer as may be necessary for the purposes of the Act. According to us, such expansive power conferred on the rule making authority takes within its sweep, power to prescribe production of the documents that are mentioned in Rule 11B(2)(c) also for the purpose of availing of the exemption provided under section 6 of the CST Act. Even apart from that, the net result of Rule 11B(2) is that the dealer should produce documents, the details of some of which are already required to be specified in form E-I and E-II vide clause (4) thereof. In our view, these provisions of rule 11B(2)(c) do not, in any manner, run either inconsistent with the provisions of Section 6(2) nor can that rule be said to be framed in excess of the rule making power conferred under Sections 13(3) and 13(4) of the CST Act. Viewed in this manner, we are unable to sustain the judgment under appeal.

Judgment in the writ petition is set aside and the appeal is allowed as above.