(2010) 06 KAR CK 0001

In the Karnataka High Court

Case No : Writ Appeal No. 1327 of 2007 and Miscellaneous W. No''s. 4273 and 4536 of 2010

Associated Cement Companies Limited and Another APPELLANT

Vs

State of Karnataka and Another RESPONDENT

Date of Decision : 17-06-2010

Acts Referred:

Karnataka Electricity (Taxation on Consumption) (Amendment) Act, 2004 — Section 3 (2)

Citation : (2010) 5 KarLJ 422

Hon'ble Judges : V.G. Sabhahit, J;A.S. Bopanna, J

Bench : Division Bench

Advocate : Sriyuths Udaya Holla for A. Rama, D. Venkatesh and Vikram A. Huilgol, for the Appellant; Ashok Haranahalli, General and R.G. Kolle, A.G.A., for the Respondent

Judgement

1. This writ appeal is de-linked from W.A. Nos. 625, 1030, 1126, 1406, 1456, 1942, 2118, 2312 of 2007 since learned Senior Counsel for the appellants has confined his arguments to the validity of the demand notice and submitted that the appellants are not interested in pursuing the contention relating to the constitutional validity of the provisions of the Karnataka Electricity (Taxation on Consumption) (Amendment) Act, 2004 which has been upheld by the learned Single Judge and the relief is confined to quashing of the demand notice dated 10-11-2003 as sought for in the writ petition.

2. The essential facts of the case leading upto this appeal are as follows.-

The Government of Karnataka amended the Karnataka Electricity (Taxation on Consumption) Act, 1959 by Act No. 5 of 2004 and amended Section 3 of the principal Act, Section 3(2) of the Amendment Act reads as follows.-

Section 3. (2) Subject to the provisions of this Act, there shall be levied and paid to the State Government, with effect from the date of commencement of the Karnataka Electricity (Taxation on Consumption) (Amendment) Act, 2004 and till the First day of July, 2004, an electricity tax at the rate of 25 paise per unit on all the units of energy consumed by any person:

(i) not being a licensee who has generated such energy, or

(ii) to whom it is supplied free of charge by a person not being a licensee who has generated such energy.

3. Being aggrieved by the said amendment in including Section 3(2) by Amendment Act No. 5 of 2004, the appellants herein filed W.P. No. 50935 of 2003. Several other petitions were also filed challenging the constitutional validity of the Amendment Act. All the petitions were clubbed and the learned Single Judge after hearing the learned Counsel appearing for the parties by order dated 22-12-2006 upheld the constitutional validity of Section 3(2) of the Karnataka Act No. 5 of 2004 as culled out above and disposed of all the writ petitions including the writ petition filed by the appellants herein in W.P. No. 50935 of 2003. Being aggrieved by the said order, this appeal is filed contending that the order passed by the learned Single Judge upholding the constitutional validity of Section 3(2) as inserted by Amendment Act No. 5 of 2004 as valid is not justified and in any event, the order is erroneous for not quashing the notice dated 10-11-2003. In view of the submissions of the learned Senior Counsel on instructions that the appellant has given up the prayer regarding the constitutional validity of the amendment Act as sought for in the writ petition, the constitutional validity of the amendment Act inserting Section 3(2) of the Act need not be gone into.

4. The learned Senior Counsel appearing for the appellants submitted that even otherwise under the provisions of Section 3(2) of the Act, the petitioner 3/The Tata Power Company Limited on whom demand is made is not covered by Clause (i) or (ii). Learned Senior Counsel submitted that the tax leviable is for consumption of electricity and not for generation of energy. Clause (i) would not be applicable as second appellant is not a licensee who has generated such energy and the second appellant/Tata Power Company Limited was permitted to generate electricity by the order of the Government. Therefore, the demand notice under the Act is without jurisdiction and liable to be quashed.

5. The learned Advocate General who appeared for the respondents submitted that the constitutional validity of Section 3(2) as amended by Amendment Act No. 5 of 2004 has been upheld by the learned Single Judge and the petitioner has not produced any material before the Court to show that the demand notice is without jurisdiction and the said question as to whether the third petitioner viz., the second appellant herein is covered under Clause (i) of Section 3(2) has to be decided by the Competent Authority on arriving at a finding of fact and therefore the learned Advocate General fairly and rightly submitted that the demand notice may be treated as show-cause notice and the third petitioner may be permitted to file objections and thereafter the Competent Authority will consider the objections filed and thereafter issue demand notice if necessary.

6. We have given careful consideration to the contentions of the learned Senior Counsel and the learned Advocate General appearing for the parties.

7. In view of the submissions of the learned Counsel appearing for the parties, it is clear that once the constitutional validity of the provisions of Section 3(2) of the Act as amended by Act No. 5 of 2004 is upheld, the next question is as to whether the demand notice could be issued to the second appellant and whether the second appellant is covered by Section 3(2) of the Karnataka Electricity (Taxation on Consumption) (Amendment) Act, 2004. This has to be considered in the light of the material made available by the parties before the Competent Authority and the said question was not gone into since the question of constitutional validity was in question in the writ petitions filed.