

(2002) 11 KL CK 0011
In the High Court Of Kerala
Case No : O.P. No. 28339 of 2000

Associated Cement Companies Ltd.

APPELLANT

Vs

Kerala State Rural Development Board

RESPONDENT

Date of Decision : 18-11-2002

Acts Referred:

Central Sales Tax Act, 1956 — Section 8, 8(4)
Constitution of India, 1950 — Article 226

Citation : (2006) 146 STC 677

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : P.M. Kunjumoideenkutty and Sanjai Padiyath, for the Appellant; P.K. Ashokan, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran, J.—The petitioner is a public limited company which has supplied cement to the respondent-Board, an agency of the Government of Kerala. The case of the petitioner is that supplies of cement from 1990-91 to 1994-95 were made from the Tamil Nadu depot of the company to the Board in Kerala against which the Board issued form D for claiming concessional rate of sales tax u/s 8(1)(a) read with Section 8(4) of the Central Sales Tax Act, 1956. The petitioner's case is that the declarations issued by the buyers were rejected by sales tax authorities in Tamil Nadu which led to demand of tax at full rate on the inter-State sales made by the petitioner. Though the petitioner made a representation to the respondent, the respondent rejected the same by exhibit P. 10 order. The petitioner is questioning exhibit P. 10 order.

2. I heard counsel for the petitioner and also counsel for the respondent. The petitioner is basically challenging the view taken by the respondent in exhibit P. 10 that they were entitled to issue form D to avail concessional rate under the Central Sales Tax Act and the forms were rightly issued. Counsel for the petitioner is relying on the decision of the Supreme Court in State of Punjab and

Others Vs. Raja Ram and Others, wherein the Supreme Court has held that a Body Corporate or an organisation with a separate legal entity cannot be a Government Department. So much so, going by the said decision of the Supreme Court, the petitioner's contention is that the view taken by the respondent in exhibit P. 10 letter that they are entitled to issue form D is not correct. According to counsel for the petitioner, the respondent is admittedly only a Government agency and is not a Government Department and therefore, they wrongly issued form D. Therefore, the prayer is for declaring the view expressed by the respondent in exhibit P. 10 as illegal and contrary to law declared by the Supreme Court and to grant consequential relief to the petitioner.

3. Counsel for the respondent on the other hand contended that the respondent has complied with terms of the contract by making payment as agreed and furnishing declaration in form D. According to him, if form D declarations were not acceptable, petitioner should have returned the same to the respondent for them to take up the matter with the sales tax authorities to get C forms in its place because the respondent being an agency of the Government engaged in construction and sale of buildings was entitled to issue C forms. Therefore, since the petitioner did not give an opportunity to the respondent by returning D forms, even if D forms were not acceptable, the respondent was denied the facility to issue form C in its place. His further contention is that the petitioner did not properly pursue the matter beyond the Commercial Tax Officer by filing appeal to the first appellate authority or to the Tribunal to get D forms accepted. Since no order of any sales tax authority is produced, it is not known at what stage the claim was given up by the petitioner. According to the respondent, the view of the Commercial Tax officer is not conclusive or final and therefore, the petitioner should have contested the matter further and without a decision by the Tribunal or High Court, the petitioner cannot say that the D forms issued amounted to misdeclaration. In fact misdeclaration will attract penalty on the person who issued the same and the petitioner should have returned the declarations if they were not accepted. The other contention raised by the respondent while rejecting the petitioner's claim is that the contract was controlled by Sale of Goods Act and the sale was over when goods are supplied evidenced by invoice. In other words, if at all there is a breach of contract, it is a matter for the petitioner to take up with the civil court claiming damages or additional consideration, if payable.

4. I do not think there is any need for this Court to enter into a finding as to whether the respondent was entitled to issue form D as a Government Department or in the alternative eligible to issue C form for purchase of goods resold in the course of executing works contract, i.e., construction work. The provisions of the Sales Tax Act giving right to the seller to collect tax is only a privilege or right conferred if the seller is a registered dealer under the Act. However, subject to the provisions of the Act, it is for the seller and the buyer to enter into contract specifying the tax liability as a component of price. In other words, tax is as much as a component of price as any other element such as

freight, insurance or the cost as such. If there is a breach of contract, it is for the aggrieved party to approach the civil court for compensation. There is statutory provision authorising the department to forfeit the excess collection from the seller and the buyer is entitled to claim such amount from the Government. However, there is no statutory provision entitling the supplier to collect differential tax in the event of short-collection under contract. This is therefore a matter to be governed by the contract provisions. Neither the tender conditions nor the purchase order is before this Court to examine what are the terms of the contract. In any case it is conceded that the tax loaded in the contract and collected by the supplier is only at 4 per cent on the price and the purchaser issued form D. Therefore, at the time of negotiation of contract and at the time of entering into contract, both the parties were under the impression that D forms are applicable to the case and the purchaser issued the same in terms of the contract. Assume that the assumption of the parties was wrong, then, of course, the contract should have provided for the collection of differential tax, in which case the petitioner could have demanded the same and on failure could have proceeded against the buyer, i.e., the respondent. However, in the absence of any statutory provisions, the petitioner cannot enforce or claim damages for breach of contract in writ proceedings. This is more so because the buyer is not conceding their ineligibility to issue form D and supplier did not pursue the assessment to get an authoritative order from the Tribunal or the High Court. The supplier also did not return form D or give an opportunity to the buyer to get C forms in its place as contended by them. There is again a fundamental question as to whether the petitioner would have got the purchase order from the respondent if the price quoted provided for full rate of tax as against 4 per cent agreed. The buyer was absolutely free to reject petitioner's offer if the price was excess by 6 per cent on account of differential tax. The respondent therefore would be able to contend that in that event they would not have issued the purchase order on account of price increase. In short, it is only a case of breach of contract and the remedy against the same lies in civil court. A writ petition Under Article 226 of the Constitution of India is not maintainable in this case.

Original petition is therefore dismissed.

Order on C.M.P. No. 47639 of 2000 in O.P. No. 28339 of 2000(W) dismissed.