(1994) 09 SC CK 0007

In the Supreme Court Of India

Case No : Civil Appeal No''s. 2064-66 of 1984

Asstt. Commissioner (Intelligence) IV, Hyderabad — APPELLANT

Vs

Nandanam Construction Co. and Others — RESPONDENT

Date of Decision : 06-09-1994

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 6A
Kerala General Sales Tax Act, 1963 — Section 5A(1)
Madhya Pradesh General Sales Tax Act, 1958 — Section 7

Citation : (1994) 48 ECC 77 : (1995) 1 SCALE 76 : (1995) 2 SCC 370 Supp : (1994) 95 STC 601

Hon'ble Judges : S. C. Sen, J;K. S. Paripoornan, J;B.P. Jeevan Reddy Reddy, J

Bench : Full Bench

Judgement

1. Heard learned Counsel for both the parties.

2. A direct conflict arises between the decisions of two Benches of coordinate strength of this Court on the interpretation of the words "either consumes such goods in the manufacture of other goods for sale or otherwise"-which occur in Section 6-A of the Andhra Pradesh General Sales Tax Act as well as several other State enactments imposing purchase tax So far as we could see, these very words occur in the Kerala Sales Tax Act, Tamil Nadu Sales Tax Act and Madhya Pradesh Sales Tax Act. In Ganesh Prasad Dixit Vs. Commissioner of Sales Tax, Madhya Pradesh, , Shah, J., speaking for himself, Ramaswami and Grover, JJ. construed the said words in the following manner:

Mr. Chagla, for the appellant urged that the expression "or otherwise" is intended to denote a conjunctive introducing a specific alternative to the words for sale immediately preceding. The clause in which it occurs means, says Mr. Chagla, that by Section 7 the price paid for buying goods consumed in the manufacture of other goods, intended to be sold or otherwise disposed of, alone is taxable. We do not think that is a reasonable interpretation of She expression "either consumes such goods in the manufacture of other goods for sale or otherwise".

It is intended by the Legislature that consumption of goods renders the price paid for their purchase taxable, if the goods are used in the manufacture of other goods for sale or if the goods are consumed otherwise.

(emphasis added)

3. According to this view, the clause would mean:

(i) either consumes such goods in the manufacture of other goods for sale; or

(ii) consumes such goods otherwise.

4. However, in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food Packers, , Pathak, J., speaking for himself, Bhagwati and Tulrapurkar, JJ. construed the very same words occurring in the Kerala Sales Tax Act u/s 5-A in a different manner. The learned Judge observed:

Learned Counsel for the Revenue contends that even if no manufacturing process is involved, the case still falls within Section 5A(1)(a) of the Kerala General Sales Tax Act, because the statutory provision speaks not only of goods consumed in the manufacture of other goods for sale but also goods consumed otherwise. There is a fallacy in the submission. The clause, truly read, speaks of goods consumed in the manufacture of other goods for sale or goods consumed in the manufacture of other goods for purposes other than sale." According to this reading, the said clause means:

(i) either consumes such goods in the manufacture of goods for sale; or

(ii) consumes such goods in the manufacture of goods not meant for sale ('otherwise').

5. It is also brought to our notice that subsequently a two-Judge Bench comprising Sabyasachi Mukharji and Ranganathan, JJ. in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Thomas Stephen and Co. Ltd., Quilon, , a case arising u/s 5-A of Kerala General Sales Tax Act, preferred the view taken in Pio Foods rather than the view taken in Ganesh Prasad Dixit.

6. Left to ourselves, we would have preferred the view taken by Shah, J. in Ganesh Prasad Dixit, but since there is a direct conflict between two Benches of coordinate strength, we ate obliged to refer the matter to a larger Bench for resolving the conflict.

7. It is true that the Andhra Pradesh Legislature has intervened and amended the aforesaid clause in Section 6-A by introducing the word "them" before the word "otherwise" thus making its meaning clear. The Said amendment is indicative of legislative intent that the view taken in Ganesh Prasad Dixit is the correct one. Be that as it may, it is not brought to our notice that other State Legislatures have brought about similar amendments. The controversy, therefore, survives and is bound to arise under one or the other State enactment.

8. We may also indicate how the question arises in this case. The respondent here is a construction company engaged in building of flats and buildings. It purchases raw material like sand and stone. The sale of sand, stone etc. is not taxable in the hands of the sellers under the Act. Purchase tax was sought to be levied on the respondent in respect of the said purchases u/s 6-A of the Andhra Pradesh Act. The respondent's contention was that inasmuch as the construction of buildings cannot be said to be 'manufacture of goods', the said clause is not attracted. The Andhra Pradesh High Court, after noting the conflicting decisions in Ganesh Prasad Dixit and Pio Food Packers, preferred to follow the decision in Pio Food Packers on the ground that it is a later decision. In our opinion, it is but appropriate that the conflict is resolved at an early date. The papers may be placed before the Hon'ble Chief Justice for appropriate orders in this behalf.

