(2009) 04 KAR CK 0005

In the Karnataka High Court

Case No : S.T.R.P. No. 32 of 2007

Bates India Pvt. Ltd., formerly known as Clarion Advertising Services Ltd.	APPELLANT
Vs	
The State of Karnataka	RESPONDENT

Date of Decision : 03-04-2009

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 2 K, 6 B

Citation : (2010) 27 VST 236

Hon'ble Judges : V. Gopala Gowda, J;Arali Nagaraj, J

Bench : Division Bench

Advocate : K.S. Ramabadran, for G. Sarangan, for the Appellant; S. Sujatha, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

V. Gopala Gowda, J.—We have reheard Mr. G. Sarangan, learned Senior Counsel today in this Sales Tax Revision Petition.

2. The correctness of the order dated 21st November 2006 passed by the Karnataka Appellate Tribunal, Bangalore, in STA Nos. 691 to 711 of 2002, affirming the order of the Assessing Authority by dismissing 21 appeals filed by the petitioner herein by holding that the petitioner is carrying on business in advertising and Publicity, supply of printed materials like booklets, calendars, diaries, visiting cards etc., in the course of business and liable for levying Turnover Tax u/s 6-B of the Karnataka Sales Tax Act, 1957 (an ''Act'' for short), is questioned in this writ petition.

3. The following substantial questions would arise:

(1) Whether on the facts and in the circumstances of the case, the Appellate Tribunal had material to hold that there is a transfer of property in goods to the petitioner from the Printer and also from the petitioner to the Customer so as to warrant a conclusion that there are two sales?

(2) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding chat the petitioner carries on "Business" and that there is no dispute about the fact?

As the other questions are all similar to questions (1) and (2) above, therefore, they are not extracted here.

4. The learned Senior Counsel appearing on behalf of the petitioner herein questioned the correctness of the finding recorded by the Karnataka Appellate Tribunal, concurred by the first Appellate Authority and aggrieved with the same by the Second Appellate Tribunal in the impugned order held that the business carried on by the petitioner relates to the supply of the printed materials in respect of the calendars, diaries etc., Therefore, the petitioner is a dealer liable for tax on total turnover u/s 6-B of the Act is questioned, placing strong reliance on the judgment of the Supreme Court in the case of Imagic Creative Pvt. Ltd. v. The Commissioner of Commercial Taxes and Ors. in which, he has taken us to the relevant paragraphs of the Supreme Court decision which has considered the provisions of the Service Tax Act and Sales Tax Act. The learned Counsel substantiated the contention that the petitioner is rendering service and not carrying on business to come within the definition of dealer as defined u/s 2(K) which defines to attract levy of tax u/s 6-B of the Act. It is further contended that Service Tax has already been paid to the Central Government. Therefore, the finding recorded by the first Appellate Authority and the Tribunal are not only erroneous in law but also suffers in law and further submits that the finding recorded on the contentious points by the ICAT is vitiated both on facts and materials produced before the Appellate Authority and the provisions of the KST Act namely the Dealer as defined u/s 2(k) of the Act. Petitioner is neither doing business nor dealing, selling, supplying or distributing goods directly or otherwise or for commission, remuneration or for other valuable consideration and also for want of sub-clauses incorporated therein, as the petitioner is a service oriented advertising agency and the same is being carried on to its customers. Therefore, its activities do not fall within the definition of the dealer. As only service is being rendered to its customers. Therefore, it is contended that the petitioner has not registered as a dealer under the provisions of KST Act. The Appellate Authority was not right in issuing proposition notice and passing the assessment order holding that it is doing business, supplying all the materials like booklets, calendars, diaries etc., to its customers and therefore, it is liable to pay turn over Tax to the Department.

5. Further, it is contended that the aforesaid materials are not printed by them, only on the basis of the requisition made by its customers. These cards have been printed and supplied to its customers that does net come within the definition of the dealer for the purpose of KST Act., which comes within the Service Act and this has not been considered by either the Assessing Authority or the First Appellate Authority or Tribunal. Therefore, the findings recorded in paragraph 11 of the impugned order is not only erroneous but also suffers from

error in law. Therefore, the learned Senior Counsel submits that the decision in M/s. Imagic Creative Pvt. Ltd., wherein the Apex Court has examined the entire case law rendered by the constitutional Bench judgment with reference to Clause 29A in Article 366, and other various Clauses by way of 44th amendment to the Constitution of India is aptly applicable to the facts situation. Therefore, the aforesaid substantial questions of law has to be answered in favour of the petitioner assessee.

6. With reference to the above said legal contentions urged by Mr. Sarangan, we have carefully examined the same as to whether the said legal contentions urged on behalf of the petitioner are legally tenable in the light of the findings recorded by the Assessing Authority, both the points are required to be answered against the petitioner assessee for the following reasons.

In view of the categorical finding of fact recorded by the Assessing Authority on the basis of the statement of objections filed for the proposition notices issued by the Assessing Authority after the liberty given to assessee by this Court in the earlier writ petition filed by it in WP Nos. 1096 and 97/1995 dated 3.1.1997, this Court after examining the legal contentions urged in the said case, has directed the petitioner to appear before the Sales Tax Officer to put forth their case to bring its notice all the contentions raised in the writ petition and also the other contentions that may be available to them and further, this Court has made an observation that the expenses made by the petitioner company including the Sales Tax liability on the petitioner company. Pursuant to the said direction and liberty, the petitioner filed statement of objection disputing its liability contending that it is not carrying on with the business. Therefore, he is not a dealer liable to Sales Tax on total turnover u/s 6-B of the KST Act. With reference to the said contention, it is worth while to extract the portion of the order of the Assessing Authority which reads thus:

It would be pertinent to identify whether the Advertising Agency engaged in the business of buying and supplying falls within the purview of ''Dealer'' as defined in Section 2(k)) of the KST Act. It is here that the documents seized by the Int. Wing attains significance. By tracing the sequence of events and the ''modus operandi'' adopted by the dealer Company, the following conclusions are drawn:

(a) The dealer receives orders from clients for supply of the required products/ material like Booklets, Folders, Calendars, Visiting Cards etc.,

(b) The dealer Company then places orders with other parties/printers for supply of the above materials.

(c) The printers execute the order and supplies the required items as per specification provided by the dealer company against Invoices raised in favour of the dealer Co., i.e., the Advertising Agency.

(d) The dealer Company/Advertising Agency on receipt of the material supplies the same to the client against Invoices at the rate agreed upon. From the various related correspondence supported by seized documents of Invoices raised by the Printer to the dealer Co. and from the dealer Co. to the client, it is amply clear that the title of the goods had been passed on to the dealer Company by the supplier/printer and subsequently, the same were transferred to the dealer Co.''s clients by way of a separate sale. It is therefore explicit that the transactions are prima facie purchases and sales and not just ''service oriented'' as claimed by the dealer Company/Advertising Agency. Hence, by virtue of the aforesaid facts, the dealer Company is bound to get registered u/s 10(1) of the KST Act.

7. The Assessing Officer on the basis of the detailed scrutiny of the documents seized by the Intelligence Wing and the Books of Accounts seized by it, and invoices for four over have reportedly either been misplaced 01 dispatched to the Head Office at Calcutta and further, the material supplied to the suppliers name also furnished which are extracted and the same are being extracted here.

(1) Asfa Offset Printers

(2) My tee Process Works

(3) Graphic Printers

(4) Eastern Press

(5) Brindavan Printers

(6) Ellora Printers

(7) Nataraj Printers

(8) Hosalli Press.

And the Assessing Officer has also made the cross verification of the documents relating to the above printers and investigations carried out by the then CTO(Int) ill revealed that the transactions duly accounted for in the books of accounts which are extracted in the impugned order which is worth while to extract.

As could be seen from the Invoices raised by M/s. Mytee Processes Ltd., in favour of M/s. Clarian Advertising Services, M/s. Mytee have charged and collected ST and Surcharge. The collected tax and surcharge have been paid to the assessing authority by Mytee Process.

On the same lines, cross verification of transactions was made in respect of M/s. Nataraj Printers to show that the sales tax was collected and paid to the Commercial Tax Officer, 20th Circle, Bangalore. Bill No. are extracted:

Bill No. Amount ST+SC

5058 1070 42.84 5310 25194 1129.44 5342 130 5.20 5276 235 9.35 5440 1041 41.65 5308 503 20.10

8. On the basis of the above said details, the Assessing Officer has come to the right conclusion and held the above said details of the documents seized from

the petitioner and the goods supplied by the petitioner to its custom ere would establish that petitioner is liable to pay turn over tax to the Department Therefore, the invoices raised by the dealer petitioner company include the cost of supplying the material, the Agency commission, sales tax, total turnover element as well. Therefore, the specimen of the invoices raised by the petitioner also extracted and the same are worthwhile to be extracted in this order and come to the conclusion and held that it is carrying on business of taking orders, placing the same with the printers and getting the aforesaid material printed and supplying the same amounts to business carrying on with the supply of the material to its customers for consideration. Therefore, it is held that the petitioner is a dealer and liable for payment of sales tax on the total turnover u/s 6-B of the Act. Thus, the findings have been affirmed by the first Appellate Authority with reference to the legal contentions urged by the Tribunal with reference to the findings challenged in the appeals before the second Appellate Tribunal, which is the second Appellate Authority with reference to the same at paragraph No. 11, after recording its reasons has further concurred with the concurrent finding of fact recorded by the first Appellate Authority. Therefore, the same cannot be said that the points answered by the Tribunal is vitiated on account of the erroneous finding for want of legal evidence on record. We are in respectful agreement with the concurrent finding of fact recorded by the Appellate Authority as the same is based on materials and the accounts books and the various other materials referred to in the order of Assessing Officer by the Intelligence wing of the Sales tax department and the same has been rightly concurred with the KAT, we do not find any reason whatsoever, to interfere with the same.

9. For the reasons stated supra, the questions framed by us do not arise for our consideration. The petition is dismissed as devoid of merit.

