(1994) 02 KL CK 0009

In the High Court Of Kerala

Case No : O.P. 9192 of 1992

C.J. Michael — APPELLANT

Vs

State of Kerala and Another — RESPONDENT

Date of Decision : 09-02-1994

Acts Referred:

Constitution of India, 1950 — Article 366
Kerala General Sales Tax Act, 1963 — Section 2, 7(7)

Citation : (1994) 02 KL CK 0009

Hon'ble Judges : T.L. Viswanatha Iyer, J

Bench : Single Bench

Advocate : T.K. Pankajakshan Pillai, for the Appellant; T. Karunakaran Nambiar, Spl. Govt. Pleader for Taxes, for the Respondent

Judgement

T.L. Viswanatha Iyer, J.—The Petitioners in both these cases are contractors undertaking civil works for the Kerala State Electricity Board. The Petitioner in O.P. No. 9192 of 1992 had undertaken the work of remetalling or grouting of road, while the Petitioner in O.P. No. 2291 of 1993 did the work of laying cables. All the materials for the execution of these works are supplied by the Electricity Baord and the Petitioners only supply the labour. As the Petitioners put it, the work is a labour oriented one without any supply of materials. The Electricity Board has issued, a circular, a copy of which is marked Ext. P-6 in O.P. No. 2291 of 1993, on 24th June 1992, directing deduction of specified amounts from, the payments made to contractors to meet the sales tax due on works contracts under the Kerala General Sales Tax Act, 1963 (the Act.). Petitioners state that no such deductions can be made from the amounts due to them under the aforesaid contracts, as there is no transfer of goods involved in the execution of these, works. Petitioners have therefore filed the writ petitions seeking relief against collection of sales tax in respect of the above works.

2. There is no dispute that the Petitioners are not supplying any materials to the Electricity Board and that they have only supplied the labour for the purpose of

carrying out the works. The Forty-sixth Amendment to the Constitution has introduced Clause 29A to Article 366 defining "tax on the sale or purchase of goods" as inclusive of a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract. The definition of sale in Section 2(xxi) of the Act was thereafter amended with effect from 1st April 1984, inter alia adding Explanation (3A) deeming a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract, as a sale. The Supreme Court has analysed the reason behind the Constitutional Amendment in Builders Association of India v. Union of India (1989) 73 S.T.C. 370 and laid down that the emphasis is on the transfer of property in goods. Without such transfer of property in goods being involved, there could be no levy of sales tax in relation to a works contract. The ratio of the decision applies to Explanation (3A) to Section 2(xxi) of the Act as well.

3. Ext. P-6 circular does not militate against either the constitutional provision or Explanation (3A) aforesaid. The first two clauses speak of cases where there is a transfer of property in goods in the execution of works contract in which case, deduction of tax is directed at the rates mentioned. None can find fault with these directions. The third clause relates to contractors who have exercised the option to pay tax at the compounded rate u/s 7(7) of the Act, in which case, deduction is directed of the amount so payable. I do not find anything in the circular Ext. P-6 directing payment of tax in the case of pure labour contracts where there is no supply or transfer of goods by the contractor to the awarder. I am afraid the Petitioners'' apprehensions based on Ext. P-6 are misplaced.

4. It is only therefore necessary to declare that, the awarder, namely the Electricity Board in these two cases is not bound to make deduction of any amounts by way of tax under the Act in cases where the contract is only for supply of labour, or for the carrying out of a work with materials supplied by the Board, without the contractor supplying or transferring any goods to the Board. If however any goods of the contractor are used and they get embedded in the work, necessarily the question of making deduction for payment of the tax due on such materials will arise. But, that question does not arise in these cases where no transfer of property in goods is involved in respect of the contracts mentioned.

5. The Respondents are therefore directed to look into the matter and make payment to the Petitioners of any amount which has been withheld from them in respect of works contracts not involving any transfer of property in goods whether as goods or in some other form.

The original petitions are disposed of with the above direction.

