(2001) 09 AP CK 0081

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 5764 of 1994 and 5772 of 1994

DCL Finance Limited and another	APPELLANT
Vs	
Union of India	RESPONDENT

Date of Decision : 04-09-2001

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 2(1), 5
Constitution (Forty-Sixth Amendment) Act, 1982 — Section 4
Constitution of India, 1950 — Article 336, 336(29

Citation : (2001) 5 ALD 495

Hon'ble Judges : S.R. Nayak, J;S. Ananda Reddy, J

Bench : Division Bench

Advocate : Mr. S.R. Ashok, for the Appellant; Government Pleader for Commercial Taxes, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Nayak, J.—The petitioners who are the dealers registered under the provisions of A.P. General Sales Tax Act, 1957 (for short, APGST Act) and the Central Sales Tax Act, 1956 (for short, CST Act), have filed these writ petitions praying for a mandamus declaring that Section 4 of the Constitution (46th Amendment) Act, 1982 insofar it has inserted the new sub-clause (d) in clause (29-A) in Article 366 of the Constitution of India and the new charging Section 5-E and sub-sections 2(1)(e), 2(1)(n), 2(1)(q), and 2(1)(s) of the APGST Act as amended by A.P. Act 18 of 1985, are ultra vires and violative of Articles 19(1)(g) and 300 of the Constitution of India.

2. The first petitioner in both the writ petitions are public limited companies incorporated under the Companies Act, 1956. They carry on business in extending finance facilities in respect of hire purchase and leasing transactions in the State of Andhra Pradesh and other States. The 2nd petitioner in both the writ petitions are the share-holders of the respective 1st respondent-companies. According to the petitioners, in the course of their business, the 1st petitioner is

extending finance facility under lease transactions to various parties in the State of Andhra Pradesh and other States. So far as the State of Andhra Pradesh is concerned, there have been some leasing contracts entered into by the 1st petitioner with respective lessees. The lease term is normally for 60 months. The 1st petitioner has bought the respective equipments directly from the suppliers and let them out on lease to the lessees who pay the fixed lease rental in monthly instalments and they have to return the leased equipments back to the lesser as per the specific provision in the concerned lease agreement.

3. The Indian Parliament by Constitution (46th Amendment) Act, 1982 introduced a new clause 29-A) to Article 366 of the Constitution in substitution of the old clause 29. Sub-clause (d) of clause 29-A reads-

"(d) a tax on the transfer of the right to use any goods for any purpose (whether or not for a specific period) for cash, deferred payment or other valuable consideration."

4. In pursuance of the above noticed Constitution (46th Amendment) Act, the A.P. Legislature enacted Section 5-E . It reads-

"5-E Tax on the amount realised in respect of any right to use goods: Notwithstanding anything contained in this Act,--

(a) Every dealer who transfers the right to use any goods for any purpose, whatsoever, whether or not for a specific period, to any lessee or licensee for cash, deferred payment or other valuable consideration, in the course of his business shall, on the total amount realized or realizable by him by way of payment in cash or otherwise on such transfer or transfers of the right to use such goods from the lessee or licensee, pay a tax at the rate of eight paise on every rupee of the aggregate of such amount realized or realizable by him during the year;

(b) The transfer of right to use any such goods entered into by any dealer, shall be deemed to have taken place in this State whenever the goods are used within the State, irrespective of the place where the agreement whether written or oral for such transfer of right is made :

Provided that no such tax shall be levied if the turnover of the dealer including such aggregate is less than Rs. Two lakhs."

Simultaneously, the definitions of the terms, ''dealer'' under clause (e) of Section 2(1), ''sale'' u/s 2(1)(n), ''tax'' u/s 2(1)(q) and ''turnover'' u/s 2(1)(s) of the APGST Act were amended.

5. In the background of thep2 Constitution (46th Amendment) Act, 1982 and the consequent amendments to the APGST Act, the writ petitions were filed seeking the reliefs already noticed above.

6. The only contention of the learned Counsel for the petitioners is that the service contract cannot be equated with the works contract, particularly in the

context of the background circumstances, which led to the Constitution (46th Amendment) Act and the consequent amendments to the APGST Act. This contention of the learned Counsel is required to be noticed only to be rejected for more than one reason. Suffice it to state that the constitutional validity of the Constitution (46th Amendment) Act, 1982 inserting clause (29-A) in Article 366 of the Constitution was assailed before this Court in Padmaja Commercial Corporation v. CTO No. 1, Vijayawada, (1987) 66 STC 26, and this Court has upheld the constitutional validity of the said Act and the said decision of this Court was affirmed by the Apex Court in Builders Association of India and others v. Union of India, 73 STC 376. Therefore, the only thing to be seen is whether the service contract under which the petitioners/dealers are dealing is covered by sub-clause (d) of clause 29-A of Article 366 of the Constitution of India. The language employed in sub-clause (d) of clause 29-A is quite clear and unambiguous, and it does not admit more than one meaning. In terms of clause (29-A) red with sub-clause (d), it includes tax on the transfer of the right to use any goods for any purpose, (whether or not for a specified period) for cash, deferred payment or other valuable consideration. The contention of the learned Counsel for the petitioners is that in service contracts there was no parting with the ownership of the goods permanently in favour of the lessee and the lessee is bound to return the goods to the lessor after the user of the goods for a specified period and that is the distinguishing feature between the works contract and a service contract. It may be so. But that fact itself would not take away the leasing of the right to use any goods from the purview of sub-clause (d) of clause (29-A) of Article 366 of the Constitution. Perhaps, the Parliament itself anticipating such a contingency and to cover such contingency has clarified the position by using the words "whether or not for a specified period". Therefore, it is totally immaterial whether parting of goods is for a specified period or not in deciding the question whether that goods falls within sub-clause (d) of clause (29-A) of Article 366 of the Constitution or not. In other words, even assuming that the petitioners/dealers parted with the goods only for a specified period, that fact itself would not take away the goods from the purview of sub-clause (d). Therefore, we do not find any merit in the contention of the learned Counsel for the petitioners. The learned Counsel for the petitioners is not in a position to demonstrate any constitutional flaw, which would render the impugned provisions unconstitutional.

7. The writ petitions are, therefore, dismissed, with no order as to costs.

