
(2009) 06 KL CK 0021
In the High Court Of Kerala
Case No : S.T.R. No. 84 of 2008

Dosal Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 23-06-2009

Acts Referred:

Citation : (2009) 3 KLT 682

Hon'ble Judges : C.N. Ramachandran Nair, J;C.K. Abdul Rahim, J

Bench : Division Bench

Advocate : N. Muraleedharan Nair, for the Appellant; Mohammed Rafiq, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—Connected revisions filed by the assessee arise from the common order of the Sales Tax Appellate Tribunal issued for the assessment years 1999-2000 to 2001-2002. During these years, petitioner was engaged in pipe-laying work for the Petronet CCK Ltd. connecting Kochi, Coimbatore and Karur for transferring petroleum products from Cochin Refineries Ltd. The pipe-laying work includes supply of pipes and other materials and so much so sales tax on works contract is payable. Even though petitioner filed returns declaring taxable turnover, they claimed exemption on value of pipes and other materials brought on stock transfer from Mumbai, Coimbatore, etc. and the value of goods purchased inter-State for the purpose of execution of work. The assessing officer found that petitioner took registration under the K.G.S.T. Act and transferred the goods from outside the State by using delivery notes issued in Form No. 26 and later used the materials brought on stock transfer in the execution of work and so much so transaction is a local sale that took place in the course of execution of work and it is assessable to works contract in Kerala. So far as materials purchased from outside the State is concerned, the assessing officer held that petitioner is not entitled to exemption as sale took place when the goods were appropriated to the contract in Kerala. Even though petitioner

succeeded in first appeal in which the appellate authority following the decision of this Court allowed the claim of exemption of stock transfer value and inter-State purchase value of goods, the Tribunal on second appeal by the department reversed the orders of the first appellate authority and confirmed the assessment. It is against these orders of the Tribunal that the petitioner has filed these revisions. We have heard counsel appearing for the petitioner and Government Pleader appearing for the respondent.

2. On going through the orders of the Tribunal, we find that clear-cut findings on facts entered by the Tribunal are that goods are brought on stock transfer basis by the petitioner from Mumbai, Coimbatore, etc. to Kerala stocked the same here and used it in the execution of works contract. Similar is the position for the goods purchased inter-State from outside the State, which were also appropriated to the contract during pipe-laying. Petitioner's claimed exemption on the ground that movement of goods from outside the State to Kerala is under contract of sale and so much so it is an inter-State sale assessable outside Kerala. The Tribunal found that stock transfer of goods from Mumbai to Kerala and inter-State purchase of goods from outside Kerala are independent transactions prior to appropriation of goods in the execution of work. Since the sale takes place locally in the execution of works contract, the entire material value is assessable for works contract in Kerala, is the finding of the Tribunal. Even though counsel has relied on the decision of this Court in *Siemens Ltd. Vs. State of Kerala and Another*, we do not think the decision has any application on the peculiar facts found by the Tribunal. A sale becomes inter-State only if the sale takes place in the course of movement of goods from one State to another or if it is made by endorsement of title to deeds in the course of movement of goods from one State to another. A contractor bringing materials from outside the State, stocking it in their godown and later appropriating it to the work cannot claim that sale in the execution of works contract is an inter-State sale from outside the State. Admittedly petitioner has not billed the goods to the awarder in Kerala to claim the transaction as inter-State sale. On the other hand, the petitioner brought the goods to Kerala, stocked it in their godown at their own risk and later appropriated it in the works contract. We are of the view that transfer of property in goods admittedly took place in Kerala when the goods are appropriated to the contract that is by laying pipe in the location identified by the awarder. Until then the goods were retained by the petitioner at their risk in their godown. A trader making inter-State purchase or bringing goods on stock transfer and selling the same later becomes liable for payment of tax under the K.G.S.T. Act on sale of such goods. The position is not different so far as contractors are concerned, who bring goods from outside the State either as stock transfer or as inter-State purchase, stock it in their godown and later use it in the execution of works contract. We are therefore of the view that Tribunal rightly held that transfer of materials in the course of execution of work in Kerala does not amount to inter-State sale of goods from Mumbai to Kerala. We therefore dismiss the Revision Petitions.