(2009) 03 KL CK 0026

In the High Court Of Kerala

Case No : O.T. Appeal No. 11 of 2008

Ernakulam District Rolling Shutter Fabricators Association and Others — APPELLANT

Vs

Commissioner, Department of Commercial Taxes and Another — RESPONDENT

Date of Decision : 25-03-2009

Acts Referred:
Kerala Value Added Tax Act, 2003 — Section 6, 6(1), 62(1), 8, 94
Kerala Value Added Tax Rules, 2005 — Rule 80(1)

Citation : (2009) 3 ILR (Ker) 780 : (2009) 3 KLT 872 : (2009) 26 VST 499

Hon'ble Judges : Surendra Mohan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : A. Kumar, for the Appellant; V.K. Shamsudeen, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran, J.—This is an appeal filed u/s 62(1) of the Kerala Value Added Tax Act, 2003 (hereinafter called, "the Act") read with Rule 80(1) of the Kerala Value Added Tax Rules, 2005 against the order of clarification issued by the Commissioner of Commercial Taxes u/s 94 of the Act. The appellant is an association whose members are engaged in fabrication, supply and installation of rolling shutters. The appellant claimed that work involved, namely, fabrication and installation of rolling shutters for customers is works contract which entitles them for payment of tax at compounded rate u/s 8(a)(i) of the KVAT Act. The Commissioner, however, vide annexure V order clarified that fabrication and installation of rolling shutters is taxable u/s 6(1)(e) read with Section 6(1)(d) of the Act at the rate of 12.5 per cent. It is against this order appeal is filed by the appellant. We have heard counsel for the appellant and the Government Pleader appearing for the respondents.

2. Counsel for the appellant has relied on decision of the Madras High Court in Vinayaga Engineering Works v. State of Tamil Nadu [2009] 26 VST 226 : [2008]

14 TNCTJ 238 and contended that the transaction involved is works contract and therefore, the turnover cannot be assessed under Sub-clause (e) read with (d) of Section 6(1) of the Act as held by the Commissioner. The Government Pleader on the other hand relied on a decision of the Supreme Court in State of Andhra Pradesh Vs. Kone Elevators (India) Ltd., and in M/s. Hindustan Shipyard Ltd. Vs. State of Andhra Pradesh, and contended that fabrication and installation of rolling shutters is nothing but sale of goods which will attract tax at the rate of 12.5 per cent as held by the Commissioner in the impugned order. Section 6(1) which is the charging section under the KVAT Act is as follows:

Section 6. Levy of tax on sale or purchase of goods.--(1) Every dealer whose total turnover for a year is not less than ten lakhs rupees and every importer or casual trader or agent of a non-resident dealer, or dealer in jewellery of gold, silver and platinum group metals or silver articles or contractor or any State Government, Central Government or Government of any Union Territory or any Department thereof or any local authority or any autonomous body whatever be his total turnover for the year, shall be liable to pay tax on his sales or purchases of goods as provided in this Act. The liability to pay tax shall be on the taxable turnover,--

(a) in the case of goods specified in the Second and Third Schedules at the rates specified therein and at all points of sale of such goods within the State and in the case of aerated branded soft drinks excluding soda at the rate of twenty per cent at all points of sale within the State.

(d) in the case of goods not falling under Clauses (a) or (c) at the rate of 12.5 per cent at all points of sale of such goods within the State. Government may notify a list of goods taxable at the rate of 12.5 per cent.

(e) in the case of transfer of goods involved in the execution of works contract where transfer is in the form of goods, at the rates specified for such goods [clauses (a) or (d) above], as the case may be.

...

3. In fact, the Commissioner has partly held the issue in favour of the appellant by holding that fabrication and installation of rolling shutters is a works contract. However, by relying on Clauses (e) and (d) quoted above, the Commissioner has held that rate of tax applicable is 12.5 per cent. Therefore, the question to be considered is whether the appellant''s claim of rate of tax u/s 8(a) is tenable or not. Section 8 of the KVAT Act provides for payment of tax at compounded rate, which under Clause (a) provides for payment of tax at compounded rate in respect of works contract as follows:

Section 8. Payment of tax at compounded rates.---Notwithstanding anything contained in Section 6,--

(a)(i) any works contractor not being a dealer registered under the provisions of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), and who is not an importer may, at his option, instead of paying tax in accordance with the provisions of the said section, pay tax at three per cent of the whole contract amount;

(ii) any works contractor not falling under Clause (i) above may, at his option, instead of paying tax in accordance with the provisions of the said sections, pay tax at eight per cent of the whole contract amount:

Provided that notwithstanding anything contained in Sub-clause (ii) above, the compounded tax payable by any works contractor under this clause in respect of works contracts awarded by Government of Kerala, Kerala Water Authority or Local Authorities shall be four per cent of the whole contract amount:

Provided further that the provisions of this clause shall not apply to any works contract in which the transfer of material is in the form of goods:

...

4. Counsel for the appellant rightly pointed out that Section 8 is by way of an exception to Section 6 and therefore, they are entitled to payment of tax at compounded rate. However, we find that second proviso to Section 8(a)(ii) makes an exception to the compounding provisions with regard to works contract involving transfer of materials in the form of goods. The effect of the second proviso is that Section 8(a) providing for compounding is not applicable to works contract involving transfer of materials in the form of goods. In other words, since the contract providing for fabrication and installation of rolling shutter involves transfer of rolling shutter which is goods, the dealers engaged in such contracts including members of the appellant are not entitled to rate of tax provided under the compounding scheme u/s 8(a) of the Act. The Supreme Court has, in State of Andhra Pradesh Vs. Kone Elevators (India) Ltd., and in M/s. Hindustan Shipyard Ltd. Vs. State of Andhra Pradesh, referred above, held that a lift fabricated and installed at the premises of the customer and a ship fabricated and supplied in terms of the design and requirement of the customers answer the description of sale of goods. The rolling shutter is no doubt fabricated in the factory of the contractor and it''s installation is only a simple job of nailing it or fixing it in the customer''s premises. In fact, the dimension of the space where rolling shutter is to be installed is taken in advance and the rolling shutter is fabricated with the length and width required for the customer. We are in complete agreement with the Commissioner''s finding that the item supplied is in the form in which it is fabricated, i.e., as rolling shutter and the contract for installation which is only fixation of the same is only an incidental work, the cost of which is insignificant when compared to the value of the rolling shutter, i.e., cost of the materials and the fabrication cost to make the product namely, rolling shutter. In other words, first rolling shutter is fabricated as a product, though against specific order, and thereafter it is transferred by fixation in the customer''s premises making it operational or functional as a rolling shutter. We are of the view that the ratio of decision of the Supreme Court in State of Andhra

Pradesh Vs. Kone Elevators (India) Ltd., applies squarely to the facts of the appellant''s case. In fact, unlike in State of Andhra Pradesh Vs. Kone Elevators (India) Ltd., where the items involved are different types of goods, in the rolling shutter there is hardly any component other than the main rolling shutter, it''s side panels and it''s head containing rolling rod. We, therefore, uphold the order of the Commissioner and dismiss the appeal.