(1996) 10 KAR CK 0011

In the Karnataka High Court

Case No : Writ Petitions No''s. 15958-59, 20879, 27943-46, 35806-807, 28602-604 and 28652 of 1996 (KST)

Gounder and Company APPELLANT

Vs

State of Karnataka and another RESPONDENT

Date of Decision : 10-10-1996

Acts Referred:
Constitution of India, 1950 — Article 366 (29A)
Karnataka Sales Tax Act, 1957 — Section 17 (6), 5 B

Citation : (1999) 114 STC 265

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Judgement

G.C. Bharuka, J.—The short question which has fallen for consideration in this batch of writ petitions is as to whether, under the provisions of section 17(6) of the Karnataka Sales Tax Act, 1957 (in short "the Act") as it stood prior to April 1, 1996, the dealers were liable to pay tax at the rates set out in the table thereto on the total turnover relating to the transfer of property in goods (whether as goods or in some other form) involved in the execution of works contracts or they were liable to pay the same on the entire consideration of the said works contract.

2. The petitioners herein are all civil contractors and they had undertaken to execute works contract during the assessment years in question. They had also opted to pay taxes in terms of section 17(6) of the Act instead of u/s 5-B of the Act. In all these cases, the assessing officers have levied tax at the rate of 2 per cent on the entire value of the works undertaken by the petitioners instead of restricting the same to the value of the goods involved in the execution of such contract. Section 17(6) of the Act to the extent it is relevant for the present purpose and as it stood prior to April 1, 1996 reads thus :

"Section 17(6). - Notwithstanding anything contained in sub-sections (1) to (3), subject to such conditions and in such circumstances as may be prescribed, the assessing authority of the area may, if a dealer liable to tax u/s 5-B in respect of the works contract specified in column (2) of the table below so elects, accept in lieu of the amount of tax payable by him during the year under this Act, by way of composition an amount at the rates specified in the corresponding entries in column (3) of the table on his total turnover relating to transfer of property in goods (whether as goods or in some other form) involved in the execution of such works contract."

--- Sl. No. Total turnover Rate --- 1 2 3 --- 1 to 5 .... 6 Civil works like construction of building, Two per cent bridges, roads, etc. 7 and etc . ... ---

3. The expression "transfer of property in goods (whether as goods or in any other form) involved in the execution of works contract" has been bodily lifted from sub-clause (b) of clause (29-A) of article 366 of the Constitution of India. The said expression had fallen for interpretation before the Supreme Court in the case of Builders Association of India v. Union of India [1989] 73 STC 370. In the said case after tracing out the history and purpose of incorporation of clause (29-A) in article 366, with regard to the interpretation of the above referred phrase it has been held that :

"Sub-clause (b) of clause (29-A) states that ''tax on the sale or purchase, of goods'' includes among other things a tax on the transfer of property in the goods (whether as goods or in some other form) involved in the execution of a works contract. It does not say that a tax on the sale or purchase of goods included a tax on the amount paid for the execution of a works contract. It refers to 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 emphasis is on the transfer of property in goods (whether as goods or in some other form). The latter part of clause (29-A) of article 366 of the Constitution makes the position very clear While referring to the transfer, delivery or supply of any goods that takes place as per sub-clauses (a) to (f) of clause (29-A), the latter part of clause (29-A) says that ''such transfer, delivery or supply of any goods'' shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made. Hence, a transfer of property in goods under sub-clause (b) of clause (29-A) is deemed to be a sale of the goods involved in the execution of works contract by the person making the transfer and a purchase of those goods by the person to whom such transfer is made. The object of the new definition introduced in clause (29-A) of article 366 of the Constitution is, therefore, to enlarge the scope of ''tax on sale or purchase of goods'' wherever it occurs in the Constitution so that it may include within its scope the transfer, delivery or supply of goods that may take place under any of the transactions referred to in sub-clauses (a) to (f) thereof wherever such "refer, delivery or supply becomes subject to levy of sales, tax. So construed the expression ''tax on the sale or purchase of goods'' in entry 54 of the State List, therefore, includes 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 also. The tax leviable by virtue of sub-clause (b) of clause (29-A) of article 366 of the Constitution thus becomes subject to the same discipline to which any levy under entry 54 of the State List is made subject to under the Constitution."

4. In my opinion, keeping in view the law laid down by the Supreme Court, it is not open for the Revenue to contend that the expression "total turnover" relating to transfer of property as appearing in section 17(6) of the Act should be read as "total turnover" relating to the value of the works contract. Such an interpretation cannot be given by applying any known and established rule of construction of statutes. Accordingly, it is held that the petitioners are liable to pay tax at the rate of 2 per cent on the total turnover relating to transfer of property in goods (whether as goods or any other form) involved in execution of the works contract undertaken by them and not on the entire value of such contract.

5. Accordingly, the impugned assessment orders are quashed with liberty to the assessing officers to pass fresh assessment orders keeping in view the law as laid down above and other relevant provisions of the contract.

Writ petitions are accordingly allowed but without any costs.

6. Writ petitions allowed.

