(2014) 08 KAR CK 0111

In the Karnataka High Court

Case No : Sales Tax Appeal Nos. 12 of 2011 and 81 to 103 of 2012

H.C. Satish Babu APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 27-08-2014

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 15, 17(6), 2(33), 36

Citation : (2014) 80 KarLJ 203

Hon'ble Judges : Rathnakala, J;N. Kumar, J

Bench : Division Bench

Advocate : V. Sudhindranath, Advocate for the Appellant; Sujatha, Additional Government Advocate, Advocate for the Respondent

Judgement

N. Kumar, J.—The assessee has preferred these appeals against the order passed by the Additional Commissioner of Commercial Taxes, Zone-II, Bangalore, where levy of compounded rate of tax under a composition scheme was held to be justified and the order of the Assessing Authority was restored. However, the matter was remanded for the limited purpose of re-conclusion of reassessment of tax together with consequential levies under Section 72(2) and Section 36 in compliance of Section 2(33) read with Rule 37(2) of Karnataka Value Added Tax Rules, 2005. We have heard the learned Counsel for the parties.

2. As could be seen from the impugned order, during the year 2005-2006, the assessee has received the sub-contract and entered into an agreement with M/s. Pride and Expert Properties Private Limited, Bangalore. He has raised the bill for Rs. 24,64,000/- which was only labour charges. Therefore, he filed Nil return for the whole year. The authorities held that the assessee is required to pay tax at compounded rate on entire gross receipts relating to works contract. As per Section 15 of the Act, whether such receipts relates to only labour or transfer of property in goods or combination of the both. The scheme for payment of tax is on gross works contract receipts. It is the correctness of this finding which is assailed in these appeals.

3. During the year 2006-2007, the assessee has declared gross contract receipt to the tune of Rs. 19,25,385/-. Out of which, the assessee has claimed the labour charges for Rs. 18,94,885/- and on the balance of Rs. 30,500/-, the assessee has paid the tax at compounded rate at 4%. The authority held that the assessee is liable to discharge tax at compounded rate on entire receipts relating to works contract. It is the correctness of the said finding which is also the subject-matter of these appeals.

4. This Court in the case of H.S. Chandra Shekar Hande Vs. State of Karnataka, considering the said questions has held as under:

"The tax payable under Section 17(6) of the Karnataka Sales Tax Act, 1957 is on the total consideration of the works contract which necessarily includes labour charges. The assessee would not be entitled to any exemption in respect of that labour charges which is included in the works contract when once he opts for composition of tax under Section 17(6). However, if he enters into purely labour contract where no aspect of sale is involved and consideration received in the labour contract is outside the claim of Sales Tax Act, no portion of that labour charges is liable to tax under the Karnataka Sales Tax Act, 1957. If the total turnover which he has declared in the return has both those components i.e., consideration received in the works contract, he is liable to pay tax under Section 17(6) only in respect of works contract. In respect of the consideration received in the labour contract, no tax need to be paid".

5. The tax payable under Section 17(6) of the Karnataka Sales Tax Act, 1957 is on total consideration of the works contract which necessarily includes labour charges. The assessee would not be entitled to any exemption in respect of said labour charges which included in the works contract when once he opts for composition of tax under Section 17(6). However, if enters into purely labour contract where no aspect of sale is involved and consideration received in the labour contract is outside the claim of Sales Tax Act, no portion of that labour charges is liable to tax under the KST Act. If the total turnover which he has declared in the return has both those components i.e., consideration received in a pure labour contract and the consideration received in the works contract, he is liable to pay tax under Section 17(6) only in respect of works contract. In respect of the consideration received in the labour contract, no tax need to be paid.

6. In other words, a works contract is a composite contract which includes payment of labour contract plus payment of material. In respect of that labour charges under Section 17(6) tax is payable on the total consideration in the works contract. If the labour contract is an individual contract where the component is only labour, no tax is payable.

7. Applying the said law to the facts of the case, the amount of Rs. 24,64,000/- claimed by the assessee for the year 2005-2006 is a contract of labour only. Therefore, as no aspect of sale is involved, the payment of tax under the KVAT Act would not arise. The impugned order to that extent requires to be set aside.

Insofar as the period 2006-2007 is concerned it is a composite contract which includes cost of labour and cost of goods and therefore, the assessee is liable to pay tax at 4%.

8. Therefore, the impugned order insofar as assessment year 2005-2006 is concerned, levy of tax is set aside. Insofar as 2006-2007 is concerned, the levy of tax is upheld. Accordingly, the appeals are disposed of. The substantial question of law are answered accordingly.