(2009) 12 KAR CK 0070

In the Karnataka High Court

Case No : S.T.R.P. No. 85 of 2007

Hind Nippon Rural Industries Pvt. Ltd. APPELLANT

Vs

The State of Karnataka RESPONDENT

Date of Decision : 11-12-2009

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 12 (3), 20 (5), 5 C

Citation : (2010) 29 VST 468

Hon'ble Judges : K.L. Manjunath, J;Aravind Kumar, J

Bench : Division Bench

Advocate : A. Rama, D. Venkatesh and Vikram A.H, for the Appellant; A.K. Vedamurthy, AGA, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Manjunath, J.—This Revision Petition is filed by the assessee challenging the concurrent findings of the order passed by the Deputy Commissioner of Commercial Taxes,(Assessments), Bangalore, dated 8.9.2004, which has been confirmed by the Joint Commissioner of Commercial Taxes (Appeals), Bangalore, dt. 13.5.2005 u/s 20(5) of the K.S.T. Act and further affirmed by the Karnataka Appellate Tribunal, Bangalore dt.16.7.2007 in STA 1170/2005.

2. The facts leading to this case are as hereunder:

The assesses is a Private Limited Company engaged in the manufacture and export of granites and it is also engaged in the business of hiring of Hydraulic Excavator. The assesses filed the return for the assessment year 2000-01. The same was perused u/s 12(3) of the Karnataka Sales Tax Act. Earlier there was an order of assessment, which was challenged by the assessee by filing an appeal. The Appellate Court had remanded the matter to the Assessing Officer to consider the case of the assessee afresh. After remand the Assessing Officer passed an order adding of turnover of Rs. 11,26,414/- u/s 5-C of the KST Act. Challenging the inclusion of the turnover u/s 5-C of the KST Act, the assessee filed an appeal before the Joint Commissioner of Commercial Taxes(Appeals), contending that the vehicles and machinery of the appellant-Company were not the subject matter of transfer of right to use the goods as contemplated u/s 5-C of the Act and that the complete control of the vehicles and machinery including the possession was with the assessee and there was no transfer of property of goads in the hands of its customers. Therefore, it was contended that the turnover of Rs. 11,26,414/- u/s 5-C of the KST Act, could not have been considered by the Assessing Officer and the said amount is exempted from tax. The contention of the assessee was turned down by the Appellate Authority. Accordingly, the Joint Commissioner of Commercial Taxes(Appeals), dismissed the appeal of the assessee on 13.5.2095. Aggrieved by the same, the assessee filed a second appeal before the Karnataka Appellate Tribunal, Bangalore in STA No. 1170/2005. The Tribunal after hearing the parties, formulated the following points for its consideration:

1) Whether the Assessing Authority is justified in levying tax u/s 5-C of the KST Act on the turnover of Rs. 11,26,414/- and Whether the First Appellate Authority is justified in confirming the same.

3. The Tribunal considering the elaborate arguments advanced by both the parties has held the points which had arisen for its consideration, against the assessee and dismissed the appeal. Being aggrieved by the same, the present Revision Petition is filed raising the following questions of law:

1) Whether, the Karnataka Appellate Tribunal was right in law in confirming the order dated 13.05.2005 of the JCCT (Appeals), Bangalore City Division-1, Bangalore, holding that the provisional assessment order passed was valid u/s 5-C of Karnataka Sales Tax Act, 1957?

2) Whether the Karnataka Appellate Tribunal was right in law in confirming the order dated 13.05.2005 of the JCCT (Appeals), Bangalore City Division-1, Bangalore, holding the transaction between the petitioner and Mysore Construction Co. as liable for tax u/s 5-C of the Karnataka Sales Tax Act, 1957?

3) Any other question of law this Hon''ble Court deems fit in the facts and circumstances of this case.

4. Though two questions are formulated, according to us, only the first question would be sufficient as the second question formulated by the assesses is in regard to the order passed by the Joint Commissioner of Commercial Taxes (Appeals) and the order of the Karnataka Appellate Tribunal. According to us, if the first point is held in favour of the assesses, there is no necessity to consider the 2nd point. Therefore, we would like to consider the question No. 1 as hereunder:

In order to appreciate the contentions of both the parties, it would be necessary for us to refer to the facts of this case. According to the assessee certain machineries and vehicles of the assessee were permitted to be used by its customers, M/s Mysore Construction Company. The Mysore Construction Company had under taken the construction activities in different places. Accordingly, the machineries of the assessee were dumped into the site of the Mysore Construction Company. The assesses has not produced any agreements entered into between the assessee and the Mysore Construction Company to show the nature of transaction in order to find out whether the assessee had only permitted the Mysore Construction Company to utilise the vehicles and machineries under the supervision and control of the assessee or not. In order to contend that the effective control of the vehicles and machinery was with the assessee and there was no transfer of right to use goods of M/s Mysore Construction Company, the assessee has relied upon only the bills raised by it on Mysore Construction Company. Therefore, it is clear that the Assessing Officer was required to consider the case of the assesses to bring the transaction within Section 5-C of the Act, only based on the bill raised by the assesses and not on other materials, since the assessee has failed to produce necessary documents.

5. In the circumstances, this Court has to consider based on the bills produced by the assessee, whether the turnover in question would fall within Section 5-C of the KST Act or not. A copy of the bill dt. 30.5.2000 is placed before us to show that in respect of the machinery dumped at Chunchunkatte site the assessee has raised a bill for Rs. 90,773/-. According to this bill, the machinery has been used for 139 hours by M/s. Mysore Construction Company. The assesses has also raised a bill for 11 hours on account of idle charges. In all, Rs. 1,38,750/- has been raised calculating the same at Rs. 925/- per hour. Out of which, a sum of Rs. 47,976.60 ps is deducted towards diesel parts and repair charges claimed by M/s Mysore Construction Company. The assessee has not placed any material to show who were operating the machineries at the site. No material is also placed before the Assessing Officer that the employees of the assessee were handling the machineries and the assessee was only collecting the hire charges and that there was no actual transfer of machinery to M/s. Mysore Construction Company to house the same at its site. In the absence of any material, we are of the view that the Assessing Officer was justified in holding that in the absence of transfer of right to use the goods, by the assessee in favour of its customers, it would be difficult to rely upon the bills raised by the assesses to come to the conclusion that no such transfer was effected while using the machineries of the assessee by M/s Mysore Construction Company. Therefore, on facts, we are of the view that the Assessing Officer was justified in excluding the turnover by relying upon Section 5-C of the KST Act. The Jt. Commissioner of Commercial Taxes was also justified in dismissing the appeal and similarly Karnataka Appellate Tribunal is also right in dismissing the second appeal of the assessee.

6. In the result, the petition is dismissed and the questions of law answered against the assessee.

