(2011) 11 KAR CK 0190

In the Karnataka High Court

Case No : STA No. 93 of 2009

H.S. Chandra Shekar Hande APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 04-11-2011

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 17 (6), 22 A (1), 5 B

Citation : (2013) 57 VST 234

Hon'ble Judges : Ravi Malimath, J;N. Kumar, J

Bench : Division Bench

Advocate : K.S. Suryanarayana, for the Appellant; S. Sujatha, Additional Government Advocate, for the Respondent

Judgement

N. Kumar, J.—The assessee has preferred this appeal against the order passed by the Additional Commissioner of Commercial Taxes u/s 22A(1) of the Karnataka Sales Tax Act, 1957 setting aside the order passed by the assessing authority and levying sales tax on the entire turnover. The assessee is engaged in the business activity of fabrication and erection of structural works. The assessee filed his annual return for the year 1999-2000 on April 29, 2000. In the said return he showed the total consideration received as Rs. 37,62,208.51. The assessee claimed exemption on the turnover of Rs. 23,71,721.52 under the head labour and other like charges involved in the execution of works contract. The assessing authority held that exemption could have been granted if the assessee has been assessed to tax u/s 5B of the KST Act, 1957. However, as the assessee has opted for composition rate of tax where total consideration is the criteria for levy of tax, such an exemption is not available u/s 17(6) of the Act. Therefore, he assessed the assessee u/s 17(6) of the Act in the entire turnover shown in his return. Aggrieved by the said order, the assessee preferred an appeal to the Joint Commissioner of Commercial Taxes (Appeals). On re-appreciation of the entire evidence on record, the Appellate Commissioner held that if the assessee is doing purely labour works wherein goods are not involved, it could not be called as works contract and in such circumstances, the provisions of the Act particularly section 2(t), section 2(u2), section 2(v), section 5B and section 17(6) will not be applicable. Labour expenses pertaining to labour contract would not form part of turnover, whereas the same expenses pertaining to works contract would form part of turnover. Therefore, the assessee has inadvertently included the amount received towards labour contracts. Therefore, it has to be excluded from the total receipts to arrive at the turnover/consideration in respect of works contract u/s 17(6) of the Act. Therefore, he allowed the appeal and granted the exemption sought for by the assessee. It is this order which has been revised by the Additional Commissioner'' of Commercial Taxes by virtue of power conferred on him u/s 22A(1) of the Act on the ground that the said order is erroneous as well as prejudicial to the interest of the Revenue.

2. What is weighed by the revisional authority is that total turnover which the assessee declared in his return was treated as the total consideration towards execution of works contract and therefore, he held that the deduction allowed is against law causing loss to the Revenue. It is against the said order present appeal is filed.

3. The learned counsel for the assessee assailing the impugned order contended, that no doubt it is true in the, declaration filed the total turnover is shown as Rs. 37,62,208.51, but the said total turnover is not the turnover of works, contract. Apart from the works contract, the assessee was also having labour contract. The said turnover declared in the returns is the totality of the turnover of both the labour contract and the works contract. The Appellate Commissioner on being satisfied about these facts was justified in granting the relief and the revisional authority without proper appreciation of the factual position has committed a serious error in reversing the said finding.

4. Per contra learned Government Advocate submitted that the assessee declares in the returns the total turnover and the assessee being a works contractor and a registered dealer under the Act and when he has opted for composition of tax u/s 17(6) of the Act, he is not entitled to exemption on the ground that the labour charges are included in the aforesaid total turnover and therefore, she submits that the order passed by the revisional authority is legal and valid and does not call for any interference.

5. From the aforesaid facts it is clear that the assessee, a dealer, has filed return showing the total turnover as Rs. 37,62,208.51. He is engaged in structural works as a works contractor. He has opted for payment of composition scheme u/s 17(6) of the Act. Otherwise u/s 5B in respect of the total turnover of the works contract he was expected to maintain accounts showing labour charges and the value of the goods sold and he had to pay sales tax on the value of the goods sold. It is to overcome such difficulties he has opted for composition scheme u/s 17(6). The tax payable u/s 17(6) 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 u/s 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 KST Act. If the total turnover which he has declared in the return has both these components, i.e., consideration received in a pure labour contract and the consideration received in the works contract, he is liable to pay tax u/s 17(6) only in respect of works contract. In respect of the consideration received in the labour contract, no tax need to be paid. But this is a matter which has to be gone into by the assessing authority with reference to the contract to be produced and the accounts maintained by the assessee to demonstrate that he is involved both in works contract as well as in labour contract. 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 u/s 17(6) tax is payable oh 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. In these circumstances, we set aside the order passed by the revisional authority who has not kept thus distinction in mind. At the same time we also set aside the order passed by the assessing authority as well as the revisional authority and remand the matter back to the assessing authority for a fresh assessment giving an ample opportunity to the assessee to produce necessary contracts, documents and other evidences to substantiate his claim. Thereafter the assessing authority shall proceed to pass an order of assessment keeping in mind the observations made by this court in this order and in accordance with law.