

(2006) 07 KL CK 0020

In the High Court Of Kerala

Case No : S.T.R. No's. 99, 111, 114, 115, 120, 121, 129, 130, 131, 143 and 144 of 2003

I.T. Johny

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 31-07-2006

Acts Referred:

Citation : (2007) 10 VST 19

Hon'ble Judges : K.M. Joseph, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : V.P. Sukumar, for the Appellant; V.V. Asokan, Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—The 11 sales tax revision cases filed by the assessee pertain to KGST assessments for the years 1987-88 to 1992-93 and CST assessments for the years 1988-89 to 1992-93. The question involved in both sets of sales tax revisions is whether the petitioner is engaged in sale of doors, windows, etc., made of aluminium, or whether the petitioner is executing only works contracts. The work done by the petitioner was fabrication of aluminium partitioning materials, doors, windows, etc., mostly with glass and fixing the same at the customer's site. On facts, after verifying the orders produced before the Tribunal, the Tribunal found that the petitioner was fabricating and supplying aluminium doors, windows, frames, etc., with glass based on specific orders placed by the customers. In fact, it is seen from one of the purchase orders produced by the petitioner before the Tribunal that the Tribunal found that petitioner was charging price per piece of the items supplied. Therefore, the Tribunal concluded that the items supplied are finished aluminium products as value charged was for every piece. In upholding the assessment as sale of goods, the Tribunal followed the principles laid down by the Supreme Court in *M/s. Hindustan Shipyard Ltd. Vs. State of Andhra Pradesh*, .

2. In the course of hearing before us, learned Counsel for the petitioner submitted that the petitioner was engaged in executing work at site of the customer and it was not a case of manufacture and sale of various articles as stated by the Tribunal. It is seen from the Tribunal's order that the Tribunal has not correctly verified all the purchase orders for the works executed by the petitioner. The petitioner has a case that apart from doors and windows and other articles referred to by the Tribunal in their order, the petitioner has fabricated and installed metal walls for partition for making cabins, shutters to room, etc. The Tribunal does not appear to have dealt with these matters. However, from the order of the Tribunal, it is clear that they have not considered all the purchase orders and nature of the receipts for the entire work executed by the petitioner. Counsel for the petitioner relied on the decision of the Madras High Court in *Joseph Technical Institute v. State of Tamil Nadu* [1993] 90 STC 27(SC) and contended that fabrication and supply of doors, windows, shutters, etc., amounts to works contract and not sale of goods. Another decision cited is that of the Supreme Court in *Sentinel Rolling Shutters and Engineering Company (Pvt.) Ltd. Vs. The Commissioner of Sales Tax*, . So far as fabrication and supply of doors, windows, etc., by charging piece rate is concerned, we are in complete agreement with the Tribunal that those are sale of goods, and not works contract because even if a product is made to suit a customer, it does not cease to be goods. It is seen from the orders of the Tribunal that the petitioner collected 40 per cent towards advance and on delivery 50 per cent was charged. Therefore, 90 per cent price is charged for fabrication and supply of goods and balance 10 per cent was charged on fixing the doors/windows at the customer's premises. The transactions of the nature referred to by the Tribunal are, in our opinion, only sale of aluminium products, even though those are custom made items. However, if any fabrication work is done in the nature of partition or in the nature of making a cabin where the awarded work is executed at the site of the party, then, of course, the same will be works contract, as transfer itself takes place in the course of fixing of the item to the building.

3. Since the Tribunal has not considered the entire purchase orders, we feel one more opportunity should be granted to the petitioner to produce all the purchase orders before the Tribunal for the Tribunal to consider the nature of transaction, item-wise and with specific reference to terms of contract. Therefore, while upholding the Tribunal's order that fabrication and supply of doors, windows, etc., on piece rate basis is sale of goods, we direct the Tribunal to consider the nature of other works executed which are claimed by the petitioner to be cabin making, partition, etc. The petitioner is given one-month time from the date of receipt of a copy of this judgment to produce copies of the documents and purchase orders and accounts before the Tribunal for re-verification and for modification of their orders. However, if the petitioner does not produce the documents to substantiate his claim as above, then, of course, the Tribunal's orders will stand confirmed. The Tribunal is directed to re-hear and modify its orders to the extent required within a period of two months from the date of

production of a copy of this judgment. The six sales tax revision cases against the Tribunal's orders arising from KGST assessments, namely, S.T. Rev. Nos. 99, 114, 115, 121, 130 and 144 of 2003, are disposed of as above.

4. So far as the orders of the Tribunal confirming the CST assessments are concerned, the case of the petitioner is that contracts were received at Bangalore and the amounts were received in Bangalore for the works executed by him in Bangalore. According to the petitioner, only some materials were transferred, that too for two years and for the balance years full materials were sourced from Karnataka and executed the work there. However, the assessing officer assumed that receipt of sale price from Karnataka represents inter-State sales, though partly pertaining to works contract. Therefore, he estimated the sale price of the goods at 70 per cent of the total consideration received and assessed the same as inter-State sales. The transaction obviously involves sale of materials. Even if the petitioner's case of works contract outside the State is accepted, Karnataka has similar law as in Kerala for assessment of sales tax on works contract. The petitioner should have taken registration and got the assessments for works contract in Karnataka. In the absence of any assessment in Karnataka and particularly when the petitioner has consigned goods from Kerala to Karnataka, we do not find any ground to interfere with the orders of the Tribunal sustaining the CST assessments at 70 per cent of the total sale proceeds received from Karnataka.

5. In the circumstances, the sales tax revision cases filed against the orders of the Tribunal confirming CST assessments for all the years, namely, S.T. Rev. Nos. 111, 120, 129, 131 and 143 of 2003, are dismissed.