

(2003) 11 KAR CK 0029
In the Karnataka High Court
Case No : STRP No. 109 of 2003

Karnataka State Construction Corporation Limited	APPELLANT
Vs	
The State of Karnataka	RESPONDENT

Date of Decision : 13-11-2003

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 17 (6), 23 (1), 5 B

Citation : (2004) ILR (Kar) 844 : (2004) 138 STC 75

Hon'ble Judges : P. Vishwanatha Shetty, J;Ajit J. Gunjal, J

Bench : Division Bench

Advocate : G. Sarangan, for S. Parthasarathy, for the Appellant; B. Anand, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P. Vishwanatha Shetty, J.—The petitioner in this petition is the Karnataka Construction Corporation Ltd. which is a Government of Karnataka undertaking and a registered dealer under the provisions of Karnataka Sales Tax Act, 1957 (hereinafter referred to as "the Act"). In this petition filed u/s 23(1) of the Act, the petitioner has called in question the correctness of the Order dated 3rd June 2003 made in STA No. 790 of 2002 by the Karnataka Appellate Tribunal, Bangalore, (hereinafter referred to as "the Tribunal"), wherein the Tribunal had confirmed the order passed by the Joint Commissioner of Commercial Taxes (Appeals) (hereinafter referred to as "the Appellate Commissioner"), dismissing the appeal filed by the petitioner challenging the correctness of the order made by the Assessing Officer rejecting the claim of the petitioner that a portion of the work shown in the composition does not fall u/s 5B of the Act.

2. The facts leading to this petition can be briefly stated as hereunder:

The petitioner is a Government of Karnataka Undertaking and is a registered dealer under the provisions of the Karnataka Sales Tax Act, 1957 (hereinafter referred to as "the Act"). It is also the case of the petitioner that it is an agency

of the Government of Karnataka for execution of works entrusted to it by the Government and it also executes works entrusted to it by other Government bodies. The petitioner for the assessment year 1997-98 made an application in Form No. 8-AA seeking for composition u/s 17(6) of the Act read with Rule 8-B of the Karnataka Sales Tax Rules, 1957 (hereinafter referred to as "the Rules"). The Assessing Officer allowed the said request made by the petitioner. However, in the return filed by the petitioner, the petitioner claimed that certain works executed by it does not relate to works contract u/s 5B of the Act and as such the same has to be excluded from the assessment. The said claim made by the petitioner was rejected by the Assessing Officer on the ground that once the assessee opts for composition u/s 17(6) of the Act, it is not permissible for the assessee to go back on that. Aggrieved by the said order, the petitioner filed the appeal before the first Appellate Authority u/s 20 of the Act. The first Appellate Authority rejected the appeal confirming the order passed by the Assessing Officer. The second appeal filed by the petitioner against the said Order before the Tribunal was also unsuccessful. Hence this Revision Petition.

3. Sri Sarangan, learned Senior Advocate appearing along with Sri Parthasarathy challenging the correctness of the impugned order submitted that since the portion of the work executed by the petitioner did not relate to works contract, the petitioner was entitled to make a claim that the said portion of the work is not liable for assessment and as such the Assessing Officer should have allowed the exemption sought for by the petitioner. In support of his submission that the portion of the work executed by the petitioner did not fall within the meaning of works contract u/s 5B of the Act, he referred to us the clarification given by the Commissioner by means of his order dated 18th February 1992 made in CLR.CR.686/ 1991-92 and clarification dated 18th July 1992 made in CLR.CR.806/ 1991-92. It is his submission that the composition could be sought only in respect of the works which are in the nature of a works contract; and if an item of work or a contract executed by an assessee does not fall within the meaning of works contract, the question of composition would not arise and under those circumstances it would be open to the assessee in the return filed to seek for exclusion of that portion of the work which did not fall within the meaning of works contract from assessment. He further submitted that if there are several contracts executed by an assessee some of which do not fall within the meaning of works contract, they will have to be necessarily excluded while considering the return filed by the Assessing Officer and he is required to be given relief to that extent. In support of his submission, he also referred to us the decision of this Court in the case of TATA HONEYWELL LTD. v. DEPUTY COMMISSIONER OF COMMERCIAL TAXES 115 STC 220

4. However, Sri Anand, learned Government Advocate strongly supporting the orders impugned pointed out that since undisputedly the petitioner has sought for composition under Sub-section (6) of Section 17 of the Act he cannot be permitted to go back on that and seek for exclusion of a portion of the work from the assessment either on the ground that the said portion of the work does not

fall within the meaning of works contract or some of the works in respect of which he has sought for composition among several works also would not fall within the meaning of works contract. Elaborating this submission, he pointed out that the object of the composition is to provide for a hassle-free and simple method to the assessee and since the application seeking composition is required to be made long before the conclusion of the assessment year, the petitioner cannot be permitted to wriggle out of the composition even if it is found at the end of the year that adopting regular assessment as against composition sought for by him would be convenient to him. It is his submission, that once a composition is sought for and granted, it is not permissible for a dealer to request the Assessing Officer to examine in minute details, the nature of the work executed by such a dealer. In support of these submissions, he relied upon the decisions of the Hon'ble Supreme Court in the case of Commissioner of Central Excise and Customs Vs. M/s. Venus Castings (P) Ltd., and draw our attention to paragraphs 11 and 12 of the judgment and also in the case of State of Kerala and another Vs. Builders Association of India and others, .

5. In the light of the rival submissions made by the counsel appearing for the parties, the only question that would emerge for our consideration in this petition is as to whether the orders impugned are liable to be interfered with by us in exercise of our revisional jurisdiction u/s 23 of the Act?

6. The undisputed facts referred to above indicate that the petitioner has sought for composition u/s 17(6) of the Act. It is not its case either before the Assessing Officer or before the first Appellate Authority or before the Tribunal or before us that in respect of certain work in respect of which it has not sought composition, the Assessing Officer proceeded to make an order of assessment on the ground that the composition was granted to it in respect of other items of work. Therefore, in this petition the only question that would arise for consideration is, if the petitioner has sought for composition, whether it is permissible for it to go back on that, either on the ground that the portion of a work does not fall within the meaning of Section 5B of the Act or out of several works in respect of which he has sought composition, that some work does not fall within the meaning of a works contract. In our view, the answer should be in the negative as rightly held by the Tribunal confirming the orders passed by the subordinate authorities.

7. Sub-section (6) of Section 17 of the Act, which provides for composition came to be incorporated into the Act by means of Act No. 14 of 1997 with effect from 1st April 1988. The said Section reads as follows:

"17(6)(1) Notwithstanding anything contained in Section 5B, but 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 5B 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 on the total consideration for the works contracts executed by him in that year in the State in respect of works contract specified in Column (2) of the Sixth Schedule at the rate of four per cent.

(II) Any dealer may apply to the assessing authority to be permitted to pay the amount under Clause (i) and, on being so permitted, he shall pay tax in advance as provided for u/s 12B and all the provisions of Section 12B mutatis mutandis shall apply to this sub-section;

(iii) the amount paid under Clause (ii), shall be subject to such adjustment as may be necessary on completion of final assessment.

Explanation. - No tax shall be payable under this sub-section on the turnovers relating to amounts paid to sub-contractors as consideration for execution of works contract whether wholly or partly subject to production of proof that such sub-contractor is a registered dealer liable to tax under the Act and that the turnover of such amounts is included In the monthly statements or return of turnover, as the case may be, filed by such sub-contractor".

Rule 8-B of the Karnataka Sales Tax Rules, 1957 (hereinafter referred to as the Rules") prescribes the conditions and the circumstances under which a dealer may seek for composition under sub-section (6) of Section 17 of the Act. The said Rule as it stood during the assessment year 1997-98 reads as follows:

"8-B. Composition of tax in the case of dealers executing works contracts- (1) The dealer who elects to compound the tax for any year under Sub-section (6) of Section 17, shall submit an application in Form 8-AA to the Assessing Authority each year, within thirty days from the date of commencement of such year, or of the business if he has commenced the business during the course of the year:

Provided that the Assessing Authority having jurisdiction may on sufficient cause being shown and for reasons to be recorded in writing condone the delay in respect of applications made after the expiry of such period of thirty days but within a period of ninety days from the date of commencement of such year or the business, as the case may be.

(2)(i) The assessing authority having jurisdiction, after such verification as may be necessary permit such dealer, subject to the conditions specified in Sub-rule (1), to pay in lieu of the amount of tax payable by him during the year, in respect of which such permission is granted, an amount by way of composition as provided in Sub-section (6) of Section 17.

(ii) Such permission for composition shall he granted within thirty days from the date of receipt of the application during the year for which the composition is applied for. The permission shall be in Form 8-AB and shall be valid for the entire year to which it relates.

(iii) The Assistant Commissioner of Commercial Taxes or Commercial Tax Officer may cancel such permission, if the dealer,-

(a) fails to pay tax in any month within the time specified; or

(b) contravenes any provision of the Act or the Rule made thereunder.

As it could be seen from Sub-rule (1) of Rule 8-B of the Rules as it stood then, a dealer who elects to compound the tax for any year under Sub-section (6) of Section 17, should submit an application in Form 8-AA to the Assessing Authority each year, within thirty days from the date of commencement of such year, or of the business, if he has commenced the business during the course of the year. However, power is conferred on the Assessing Authority to condone the applications made seeking composition after the expiry of the period of thirty days, but within a period of ninety days from the date of commencement of such year or the business, as the case may be, on sufficient cause being shown and for the reasons to be recorded by him. Rule 8-B of the Rules referred to above requires a dealer to make an application within thirty days from the date of commencement of such year or of the business, if he has commenced during the course of the year. Sub-rule (2) of Rule 8-B further provides that the assessing authority having jurisdiction, after such verification as may be necessary permit such dealer, subject to the conditions specified in Sub-rule (1), to pay in lieu of the amount of tax payable by him during the year, in respect of which such permission is granted, an amount by way of composition as provided in Sub-section (6) of Section 17. Clause (ii) further provides that the permission once granted shall be valid for the entire year to which it relates. It is not in dispute that the Assessing Authority has permitted the composition in terms of the request made by the petitioner. It is only at the time of the finalisation of the return filed by the petitioner, the petitioner made a claim that some of the works executed by him did not relate to works contract and as such in respect of the same, the petitioner is not liable to pay any tax. In support of this plea, it relied upon the two circulars referred to above, issued by the Commissioner in exercise of the power conferred on him u/s 3A of the Act. In our view, once the dealer opts for composition, he cannot be permitted to go back on that. The scheme of Sub-section (6) of Section 17 of the Act is to provide an alternative, simplified, convenient and hassle-free method of assessment of tax payable by making it optional for the assessee. If a dealer with his eyes wide open has opted for composition in terms of Sub-section (6) of Section 17 of the Act, at the fag end of the year, he cannot be allowed to go back on that. In our view, a dealer who seeks for composition under Sub-section (6) of Section 17 of the Act when it is accepted by the Assessing Officer is estopped by his conduct from wriggling out of the request made by him for composition. This is also clear from the fact that the time limit is prescribed for making an application at the commencement of the year or the commencement of the business. Therefore, in our view, it would not be permissible for a dealer to go back on the composition granted to him. In our view, the observation made by the Hon"ble Supreme Court in the case of Commissioner of Central Excise and Customs (supra) relied upon by the learned Government Advocate supports the view we have taken above. At paragraph 12 of the judgment, the Hon"ble Supreme Court has observed as follows:

"12, On the reasoning adopted by us and bearing in mind that in taxation measures composition schemes are not unknown and when such scheme is

availed of by the assessee it is not at all permissible for him to turn around and ask for regular assessment, we think, there is no substance in the contention urged on behalf of the respondents."

Further, no doubt it is true, in the case of State of Kerala and Another (supra), relied upon by the learned Government Advocate, the Hon''ble Supreme Court did not consider the question whether a dealer who has opted for composition can go back on that and the Court only considered the validity of Sub-section (7) of Section 7 of the Kerala General Sales Tax Act. However, in our view, the observation made by the Hon''ble Supreme Court in the said decision gives an indication that the provision made for composition is meant for the benefit of an assessee to relieve him of the botheration of book keeping and of going for a regular assessment and filing appeals against the order of assessment, if he is aggrieved. It is necessary to point out that if a dealer opts for composition, he is required to pay tax at the rate of four per cent, which is much less than rates for various works enumerated in Schedule VI. In this connection, it is useful to refer to the observation made by the Hon''ble Supreme Court in the Case of State of Kerala and Another (supra) at pages 139 and 140 reads as follows:

"In these circumstances, it is evident that a contractor who had not opted to this alternate method of taxation cannot complain against the said sub-sections, for he is in no way affected by them. Nor can the contractor who has opted to the said alternate method of taxation, complain. Having voluntarily and with the full knowledge of the features of the alternate method of taxation, opted to be governed by it, a contractor cannot be heard to question the validity of the relevant sub-sections or the rules. Sub-sections (8), (11) and (12) of Section 7 are incidental and ancillary to Sub-sections (7) and (7A) and cannot equally be faulted. Secondly, it is true that the goods transferred in the course of execution of the works contract may be chargeable at different rates under different Schedules appended to the Kerala Act; it may also be that some of them may be "declared goods", the levy of tax upon which is subject to certain restrictions specified in Sections 14 and 15 of the Central Sales Tax Act; it may also be that sale of some of the goods may also be subject to Central Sales Tax. It must yet be remembered that the method of taxation introduced by Sub-sections (7) and (7A) is in the nature of composition of tax payable u/s 5(1)(iv). The impugned sub-sections have evolved a convenient, hassle-free and simple method of assessment just as the system of levy of entertainment tax on the gross collection capacity of the cinema theatres. By opting to this alternate method, the contractor saves himself the botheration of book-keeping, assessment, appeals and all that it means. It is not necessary to enquire and determine the extent or value of goods which have been transferred in the course of execution of a works contract, the rate applicable to them and so on. For example, under Sub-section (7), the contractor pays two per cent of the total value of the contract by way of tax and he is done with all the above mentioned botheration. The rate of two per cent prescribed by Sub-section (7) is far lower than the rates in first, Second and Fifth Schedules referred to in Section 5(1)(iv)(a). In short,

Sub-sections (7) and (7A) evolve a rough and ready method of assessment of tax and leave it to the contractor either to opt to it or be governed by the normal method. It is only an alternative method of ascertaining the tax payable, which may be availed of by the contractor if he thinks it advantageous to him."

Therefore, we are of the view that once a dealer elects for composition on the ground that opting for composition is beneficial to him, at the end of the assessment year he cannot be permitted to go back on that. We are of the view that the decision relied upon by Sri Sarangan in the case of Tata Honeywell Ltd. (supra), is of no assistance to him. That is a case where exemption was granted u/s 8A of the Act and that has nothing to do with the matters in controversy in this petition.

8. In the light of the discussion made above, we do not find any merit in this petition. Accordingly, this petition is rejected. However, no order is made as to costs.