

(1999) 12 KAR CK 0011
In the Karnataka High Court
Case No : S.T.R.P. No. 202 of 1996

Karthik Engineering Works

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 08-12-1999

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 2 (1) (m), 5 C

Citation : (2000) 119 STC 88

Hon'ble Judges : V.K. Singhal, J;T.N. Vallinayagam, J

Bench : Division Bench

Advocate : P.A. Bhat, for the Appellant; S. Sujatha, High Court Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

V.K. Singhal, J.—The order of the Karnataka Appellate Tribunal dated June 28, 1996 has been assailed in this petition. The petitioner entered into a lease and licence agreement for use of the premises and machinery of factory. It was contended that the plant and machinery are fixed in the building and, therefore, being immovable property tax cannot be levied. The Tribunal found that it is a composite contract wherein separate lease amount cannot be determined for the purpose of arriving at the lease rent exclusively for the machinery used and as such the tax levied by the assessing authority was justified. Reference was made to the judgment given in the case of The Growth Leasing and Finance Ltd. Vs. State of Gujarat, .

2. In order to examine the controversy it may be observed that under Article 466 of the Constitution of India, Legislature have been provided the right to levy tax on the sale or purchase of goods and by inclusive definition under entry (29A), the transfer of right to use any goods for any purpose (whether/or not for a specified period) for cash, deferred payment or other valuable consideration would be subjected to tax. This entry refers to right to use any goods. Goods have been defined u/s 2(1)(m) of the Karnataka Sales Tax Act, 1957 as under :

" "goods" means all kinds of movable property (other than newspapers, actionable claims, stocks and shares and securities) and includes livestock, all materials, commodities and articles (including the goods as goods or in some other form) involved in the execution of a works contract or those goods to be used in the fitting out, improvement or repair of movable property, and all growing crops, grass or things attached to, or forming part of the land which are agreed to be severed before sale or under the contract of sale."

3. Section 5C of the Karnataka Sales Tax Act, 1957 provides for levy of tax and transfer of the right to use any goods, mentioned in Seventh Schedule for any purpose. In the provisions of Section 5C read with column (2) the liability of tax could be in respect of those goods where there is a transfer of right to use any goods. It is not the transfer of goods but only a transfer of right to use the goods. There may be an instance where the machinery has been given under the lease agreement as movable property. Certain machineries can be used as movable while others because of their nature or other reasons cannot be termed as movable but have to be embedded in the earth so as to make it as immovable property. If at the time of entering into an agreement, the right to use is given of a movable property, i.e., the goods, then there would be liability of tax u/s 5C. But if at the time of entering into an agreement the machinery itself is an immovable property then it will be beyond the scope of the goods as defined u/s 2 and also under the definition of "goods" as given in the Sale of Goods Act, 1930 which was considered in *The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd.,* . In these circumstances, we are of the view that the levy of tax was not proper. There is another point also that the amount of Rs. 44,000 received was not only in respect of the leasing of machinery but also for the factory premises and it was a composite agreement. Tax has been levied on the entire amounts on the ground that the lease amount cannot be bifurcated. This approach of the taxing authorities is also not proper in view of the decision given by the apex Court in *State of Himachal Pradesh v. Associated Hotels of India Ltd.* [1972] 29 STC 474 HP where the composite amount was considered not entitled to be split up into two. If the agreement is indivisible then it cannot be permitted to be taxed in its entirety.

The revision is accordingly allowed.