(1995) 08 KAR CK 0047

In the Karnataka High Court

Case No : Sales Tax Revision Petition Nos. 61, 62, 63, 64, 65, 66 and 67 of 1993

M/s. Bangalore Water Supply and Sewerage Board, Bangalore — APPELLANT

Vs

State of Karnataka — RESPONDENT

Date of Decision : 28-08-1995

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 2(1)(T)

Citation : (1999) 46 KarLJ 1

Hon'ble Judges : Kumar Rajaratnam, J;S. Rajendra Babu, J

Judgement

S. Rajendra Babu, J.-In these petitions the facts and the questions that arise for consideration are identical. The petitioner is the Bangalore Water Supply and Sewerage Board carrying on several activities as provided under the statute. For the purpose of the works carried on by it certain contractors were engaged and in the course of the execution of these works materials such as iron and steel, cement, cast iron pipes, fittings, GI pipes, fittings, PVC pipes and fittings, machinery parts and accessories were procured by the Board by purchasing these materials from registered dealers within the State and also purchases were made from outside the State dealers by issue of ''C'' forms. After the goods were purchased the same were supplied to various contractors and other agencies to execute the works of the Board. It is stated that in respect of these items of goods which were supplied by the Board certain deductions were made out of the amounts payable to the contractors. Therefore, the Department took the view that the supply of materials to the contractors amounts to sale, relying upon the decision of the Supreme Court in the case of M/s. N.M. Goel and Company v Sales Tax Officer, Rajnandgaon and Another, AIR 1989 SC 285. In the context of Entry Tax Act, whether levy of entry tax therein was correct or not, certain items of building materials were supplied by the PWD while several other items were purchased by the contractor. Clause in contract enabled PWD to deduct full value of items supplied from the amount due to the contractor. Therefore the transaction in question constituted sale. All the authorities right upto the Tribunal have taken the view that the petitioner is deemed to have sold the goods to its contractors.

2. Before us the learned Counsel urged that no materials had been transferred to the contractors to constitute a sale under the Karnataka Sales Tax Act. On the other hand, the materials and stores were utilised under the supervision of the Board''s Engineers at the site in question with the help of the labourers provided by the contractors. When no sale or transfer of the goods as such has taken place in the case of the petitioner, question of taxing under the Sales Tax Act does not arise and it is contended that the principle stated in Goel and Company''s case, supra, is not applicable to the facts of the case.

3. Sri Nazeer, learned Government Pleader, who appears for the respondent submitted that in this case as in Goel and Company''s case, supra, referred to earlier for the performance of contract the contractors were bound to procure the materials. However, in order to ensure the quality of the materials, the Board itself supplied such materials and stores from time to time, which were used by the contractors for the purpose of performing the contract only. The value of such quantity of materials and stores so supplied was specified at a rate and got set off or deducted from any sum due or to become due thereafter to the contractors. Therefore, considering the transactions between the Board and the contractors in a proper way, it must be held that sale had taken place. He, therefore, contended that the view of the authorities below was perfectly in order and calls for no interference at the hands of this Court.

4. In this case the facts are clear that the Board purchased the goods from the local dealers, against ''C'' forms from dealers outside the State and those goods were supplied to the contractors in question for being used in the work carried on. It is not in dispute that the goods supplied by the Board to the contractors could be utilised in any other work, much less the goods could be taken out of the site and sold to other parties and if really the goods passed to the contractors, sale would have taken place and in such an event the property would have passed to the contractors attracting the sales tax. But, in this case it is clear that such a course was not permissible at all and in the event any goods were left over (sic) with the contractor the same had to be returned to the Board. In the event any sale had taken place in favour of contractors, it is inconceivable that such an arrangement (sic) has been entered into between the Board and the contractors. Therefore, the principles stated in Goel''s case, supra, cannot be made applicable to the facts of the present case, because in that case the terms of contract were entirely different from the terms of contract in the present case. At any rate, it is clear that the goods did not pass to the contractors at all. When the goods did not pass to the contractors, the same having been utilised by the contractors for the benefit of the Board and never ceased to be the goods of the Board, merely by utilisation of such materials in the course of the work done by the contractors, it cannot be said that the Board lost control or possession or ownership of the goods nor on completion of the work the goods does not became the property of the Board once again. In that

view of the matter we think there is no justification to uphold the orders made by the authorities or the Tribunal in question. The same are set aside insofar as the levy of tax in respect of these items supplied to the contractors by the Board. We allow these petitions accordingly.