(1998) 09 KAR CK 0070

In the Karnataka High Court

Case No : Writ Appeal No''s. 1391, 1756 and 1811 of 1998

Mycon Construction Limited APPELLANT

Vs

State of Karnataka and Another RESPONDENT

Date of Decision : 09-09-1998

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

Citation : (2002) 127 STC 103

Hon'ble Judges : S.R. Venkatesha Murthy, J;Ashok Bhan, J

Bench : Division Bench

Advocate : Kishore Mallya, S.A. Nazeer and G.A. Srikantegowda, for the Appellant; R.I. D''Sa, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhan, J.—The arguments advanced before us are same as were raised before the learned single Judge.

2. The learned single Judge after going through the pleadings of the parties and the contentions raised before it crystallised the points into two questions reproduced below :

"(i) Whether Sub-section (6) of Section 17 of the Act as amended by means of Act No. 5 of 1996 is unconstitutional and as such, declared to be void ?

(ii) Whether Act No. 7 of 1997, which has made Act No. 5 of 1996 retrospective in operation, is unconstitutional and as such, declared to be void ?"

The learned single Judge concluded the first point against the appellants relying upon a judgment of the Supreme Court in State of Kerala and another Vs. Builders Association of India and others, which is directly on the point and covers the point as in the present case. The learned counsel for the petitioner unsuccessfully tried before the single Judge that the judgment in State of Kerala and another Vs. Builders Association of India and others, , runs counter to the observations made by the Supreme Court in Gannon Dunkerley & Co v. State of Rajasthan [1993] 88 STC 204 Raj and Builders Association of India v. Union of India [1989] 73 STC 370 which have been rendered by larger Benches and therefore later judgments be followed in preference to the earlier judgment mentioned above.

3. We have perused all the three cases referred above and are of the opinion that in Builders Association of India and Others Vs. Union of India (UOI) and Others, and Gannon Dunkerley and Co. and Others Vs. State of Rajasthan and Others, , the point raised was slightly different whereas in State of Kerala and another Vs. Builders Association of India and others, , the point raised is the same and the aforesaid judgment squarely covers the point in issue before us. We are unable to agree with the submissions made by the counsel for the appellant and affirm the finding recorded by the learned single Judge on question No, 1. On question No. 2 again we reiterate and affirm the finding recorded by the learned single Judge and hold that levy of composition fee could be amended/altered retrospectively.

4. In para 13 of the judgment, the learned single Judge had reserved liberty to the appellants and all the assessees in the State to opt afresh for regular assessment u/s 5B of the Karnataka Sales Tax Act, 1957 notwithstanding the fact that they had opted for composition fee u/s 17(6) of the Act within 12 weeks from the date of passing of the order. The judgment was pronounced on December 15, 1997 and the copy was made available to the counsel for the parties on March 13, 1998. By the time the copies were supplied to the appellants, the period of three months had almost expired. Counsel for the appellant request that the period of 12 weeks granted by the single Judge be extended by another four weeks. Mr. D''Sa does not object to extension of the period by another four weeks to the assessees in the State to give their options afresh choosing for regular assessment of their like. Accordingly request of the counsel for the appellant is accepted. The period for changing the option to opt for regular assessment u/s 5B of the Act instead of composition u/s 17(6) of the Act is extended by another four weeks from today. This extension of period would be available to the appellants and other assessees who are not before us as was directed by the single Judge. With these observations, appeals are dismissed.