

(2005) 02 KAR CK 0056

In the Karnataka High Court

Case No : Writ Petition No. 37301 of 2004 connected with Writ Petition Nos. 49784 and 50256 of 2003 (T-KST)

Paramahansa Electrical Corporation, Bangalore

APPELLANT

Vs

The Assistant Commissioner of Commercial Taxes, I
Additional Circle, Bangalore and Another

RESPONDENT

Date of Decision : 14-02-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Sales Tax Act, 1957 — Section 5B
Karnataka Sales Tax Rules, 1957 — Rule 6(4)(M)(I)

Citation : (2005) 59 KarLJ 115

Hon'ble Judges : D. V. Shylendra Kumar, J

Judgement

1. Petitioner is a registered dealer under the provisions of the Karnataka Sales Tax Act, 1957 ("Act" for short) particularly, as a dealer who is liable to pay tax in terms of the provisions of Section 5-B of the Act.

2. The question that is sought to be raised in these petitions is about the scope of Rule 6(4)(m)(i) of the Karnataka Sales Tax Rules, 1957 ("Rules" for short) which provides for exclusion of certain amount from the total turnover of the value of goods which has to be taken into consideration for the purpose of levy of tax under Section 5-B of the Act.

3. The contention urged on behalf of the petitioner is that in the guise of excluding certain amount from the value of the turnover in respect of the goods involved in the execution of a works contract, the authorities are subjecting even that part of the turnover which in fact, enjoys an exemption otherwise also and as the Rule has the effect of bringing to tax even such portion of turnover which has been exempted, the Rule is bad, ultra vires the provisions of the section and it has to be struck down and consequently, relief be given to the petitioner by setting aside that part of the assessment order dated 15-10-2003 copy at Annexure-A, levying or determining a tax liability of Rs. 78,198/- which includes levy of tax on exempted parts of the goods involved in the execution of works

contract.

4. Sri Narayan, the learned Counsel appearing for the petitioner submits that though the order is an appealable one, the petitioner has chosen to invoke the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India as the petitioner is questioning the very legality of the Rule i.e., Rule 6(4)(m)(i) of the Rules and the Rule being ultra vires the section, it is liable to be struck down and in such circumstances, the remedy of appeal is not availed of.

5. The submission of the learned Counsel appearing for the petitioner is that the liability of a firm like the petitioner in respect of value of the goods involved in the execution of a works contract is that value of the goods arrived at by addition of values of all such goods which go into the execution of works contract and which are liable to be taxed and if any part of that turnover itself is not liable to tax, there is no question of including such turnover for the purpose of computing the petitioner's liability under Section 5-B and as the Rule has the effect of increasing such liability of the petitioner even by adding to the turnover value of such goods which are in fact exempted from levy of tax under the Section, the Rule is bad.

6. In this regard, the learned Counsel seeks to rely upon the decision of the Hon'ble Supreme Court in "First Builders" case in Builders' Association of India and Others v Union of India and Others, AIR 1989 SC 1371, and also the decision of the Andhra Pradesh High Court in the case of Media Communications v Government of Andhra Pradesh, (1997)105 STC 227 (AP) (DB), rendered in the context of interpretation of an analogous Rule framed under the Andhra Pradesh General Sales Tax Act and had struck down Section 5-F of the Act particularly, the proviso of Section 5-F which had employed the words "in the same form in which they were purchased by the contractor".

7. The submission of Sri Narayan, learned Counsel appearing for the petitioner is that Rule 6(4)(m)(i) as amended with effect from 1-4-1993 is also in pari materia with Section 5-F of the Andhra Pradesh General Sales Tax Act; that when identical words are used in the Rule also and for the very reason that the Andhra Pradesh High Court has assigned for invalidating the proviso to Section 5-F of the Andhra Pradesh General Sales Tax Act, the present Rule also should be struck down.

8. It is to be noticed that the liability is not under the Rule but under Section 5-B. The Rule particularly, Rule 6(4)(m)(i) occurs in Rule 6(4) which is a Rule for excluding certain types of turnovers, i.e., the value of goods of the nature mentioned in this sub-rule for computing the total turnover in respect of which tax is to be levied under Section 5-B of the Act. What Rule 6(4) provides for is that while determining the taxable turnover, the amount specified in clauses (a) to (p) shall subject to the conditions specified therein be deducted from the total turnover. Rule 6(4)(m)(i) provides for a situation for deducting the amount mentioned in this sub-rule and sub-clause. What actually this provision achieves

is to exclude some part of the turnover subject to the conditions mentioned therein from computing the total taxable turnover. This sub-rule by itself does not create any liability but only seeks to exclude certain amounts from the taxable turnover.

9. However, the submission of Sri Narayan, learned Counsel is that the authorities by implication, are seeking to tax what is not excluded under this Rule if the conditions thereunder is not fulfilled.

10. The Rule by itself does not have the effect of creating a liability on any part of the turnover but has only the effect of excluding something while computing the turnover. If the Rule 6(4)(m)(i) does only to exclude some part of the turnover, it cannot be said that it is bad as for being ultra vires the Section 5-B or any other provision. The Rule definitely cannot control Section 5-B of the Act. The charge is under Section 5-B and scope and understanding of the liability under Section 5-B is not dependent on the understanding of Rule 6(4)(m)(i) as is sought to be contended by the learned Counsel for the petitioner. If any authority subjects the dealers to a liability over and above what is provided for, that again by itself cannot render the Rule as either void or ultra vires the provisions of the section. So long as the rule does not provide for creating such a liability, the rule cannot be held as bad or ultra vires. On a reading of the provisions of Section 6(4)(m)(i), I find that the rule by itself does not create any liability but is an enabling provision to reduce the scope of liability. Such a rule cannot be held to be either bad or ultra vires the provisions of the section. Hence, there is no occasion to grant the declaration as sought for by the petitioner or strike down the Rule 6(4)(m)(i).

11. Accordingly, petitions are dismissed. It is always open to the petitioner to pursue all such remedies that are available under the provisions in accordance with the provisions. Rule discharged. If an appeal is filed immediately or within a reasonable time, the Appellate Authority shall take into consideration the pendency of this writ petition while examining the question of limitation.