

(1987) 08 AP CK 0028

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 2121 and 6216 of 1987

Ranjit Kumar

APPELLANT

Vs

Commercial Tax Officer, Naidupeta, Nellore District and
Another

RESPONDENT

Date of Decision : 11-08-1987

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 12, 13, 2, 2(1), 5
Central Sales Tax Act, 1956 — Section 14

Citation : (1988) 71 STC 502

Hon'ble Judges : K. Bhaskaran, C.J.; S.S. Mohammed Quadri, J

Bench : Division Bench

Advocate : S. Dasaratharama Reddi, for the Appellant; Government Pleader for C.T., for the Respondent

Judgement

K. Bhaskaran, C.J.—Petitioners are different; but the questions of law raised are common; hence these two writ petitions have been heard together and are being disposed of by this judgment.

2. It would suffice to state the facts in W.P. No. 2121 of 1987 for deciding the questions of law raised. The petitioner is a civil engineering contractor having its office at Madras. For the time being, it has civil engineering contracts with Department of Space, Government of India, at Sriharikota, Nellore district, in the State of Andhra Pradesh. As the petitioner did not trade in any goods, it did not get itself registered earlier as a dealer under the Andhra Pradesh General Sales Tax Act, 1957 ("APGST Act"). The petitioner, however, got itself registered and obtained a registration with effect from 1st July, 1985 on which date the Andhra Pradesh General Sales Tax (Amendment) Act (Act 18 of 1985) came into force, inasmuch as under the said Act transfer of property in the goods used in execution of works contract was made liable to sales tax. This amendment of the "APGST Act" was in consequence of the Constitution (Forty-sixth Amendment) Act, which came into force on 3rd February, 1983, necessitated by the decision of the Supreme Court in *The State of Madras Vs. Gannon Dunkerley and Co.*,

(Madras) Ltd., and the decision of this Court in *Hotel Dwaraka Hyderabad v. Union of India* [1985] 58 STC 241.

3. In the writ petitions, two points are canvassed : (1) Whether in view of the provisions of article 286(3)(b) as amended by the Constitution (Forty-sixth Amendment) Act, the levy of tax on works contracts is constitutionally valid, inasmuch as the Parliament had not by law specified the conditions, restrictions and other incidents subject to which the State Legislature was empowered to impose tax on works contracts; and (2) In any event, before the coming into force of the amendments to the Andhra Pradesh General Sales Tax Rules, 1957 ("the Rules"), dated 5th November, 1986 introduced by G.O. Ms. No. 1445 Revenue (H) Department 5th November, 1986 published in the Official Gazette dated 25th November, 1986, no tax could have been levied or collected in respect of transfer of property in goods used in works contracts.

4. We are of the opinion that both the points raised are concluded by the Division Bench ruling of this Court in *Padmaja Commercial Corporation Vs. Commercial Tax Officer, Vijayawada and Others*, . So far as the first point is concerned, the Division Bench held that the State Legislature was competent to enact Act 18 of 1985 amending the definitions of "dealer", "sale", "turnover", "tax" and "works contract"; and under the enlarged definition of "sale" contained in clause (29A) of article 366 of the Constitution, designed to widen the ambit of entry 54 of List II of the Seventh Schedule, the State Legislature was competent to make suitable provisions enabling the levy of tax on the transactions listed in the definition. A feeble attempt was made before us by the learned counsel for the petitioners to persuade us to reconsider the decision in *Padmaja Commercial Corporation Vs. Commercial Tax Officer, Vijayawada and Others*, . On this point, repeating the contention that the power of the State Legislature to make laws for the levy of tax on works contract was subject to conditions, restrictions and other incidents as might be specified by law by the Parliament, and that Parliament had not by law specified any conditions, restrictions and other incidents subject to which the State Legislature could make laws for the levy and collection of sales tax on works contracts it was urged that Act 18 of 1985 was unconstitutional. We are not at all impressed by this submission made by the learned counsel for the petitioners. Article 286(3)(b) referred to and relied on by the counsel for the petitioners is an enabling provision for the Parliament, if it chooses to do so, to specify by law, the conditions, restrictions and other incidents subject to which alone the State Legislature could make laws for the levy and collection of tax with respect to goods used in the execution of works contract. It would be totally illogical and unreasonable to contend for the position that specifying by law by the Parliament of such conditions, restrictions and other incidents is a condition precedent to the making of law by the State Legislature for the levy of tax on goods used in the execution of the works contracts, for the simple reason that the Parliament has the option either to specify or not to specify by law any conditions, restrictions and other incidents subject to which the State Legislature could make laws for the levy of sales tax on the goods used in the execution of

the works contracts. The correct position in law, according to us, is that if and when the Parliament in exercise of its power under article 286(3)(b) of the Constitution specifies by law any conditions, restrictions and other incidents, the extent to which the provisions of the State legislation is excessive of or repugnant to those conditions, restrictions or other incidents, it would be invalid and inoperative. This provision of law is analogous to that of the power of the Parliament to declare u/s 14 of the Central Sales Tax Act, 1956, certain declared goods to be of special importance, in terms of article 286(3)(a) of the Constitution, by making additions or deletions from the list of such goods from time to time by amendment. We hold that the power of the State to make laws to levy sales tax on the transfer of property in the goods used or supplied in the execution of works contract is not dependent on the actual exercise of power of specifying conditions, restrictions or other incidents by the Parliament, though the laws, if any, made or to be made by the State Legislature in that behalf would be subject to them (conditions, restrictions and other incidents) if and when they are specified by law by the Parliament. We, therefore, so far as the first point is concerned, reject the contention of the petitioners.

5. We will now deal with the second point. In terms of section 2(e) of the APGST Act as amended by section 2(iii) of Act 18 of 1985, "dealer" includes one who "carries on or executes any works contract involving supply or use of material". So also, in terms of section 2(s)(iii)(a)(i) "turnover" includes the cost of any goods as determined by the assessing authority "to have been used or supplied by the dealer in the course of execution of the works contract" as amended by section 2(viii) of Act 18 of 1985. "Works contract" in terms of section 2(t) of the APGST Act as amended by section 2(ix) of Act 18 of 1985 means "any agreement for carrying out for cash or for deferred payment or for other valuable consideration, the construction, fitting out, improvement or repair of any building, road, bridge or other immovable property or the fitting out, improvement or repair of any movable property". In terms of Explanation VI to section 2(n) of the APGST Act as amended by Act 18 of 1985 "whenever any goods are supplied or used in the execution of a works contract, there shall be deemed to be a transfer of property in such goods, whether or not the value of the goods so supplied or used in the course of execution of such works is shown separately and whether or not the value of such goods or material can be separate from the contract for the service and the work done". There is, in fact, no need to go into the minute details of the changes brought into the definitions in the APGST Act by Act 18 of 1985, because there is no contention that goods used or supplied in the course of the execution of a works contract are not exigible to sales tax. The contentions, as already noticed, are restricted to the one based on article 286(3)(b), which we have rejected; and to the other that the liability to tax could not relate to a period anterior to the amendment of the Rules and issuing of the Rules by G.O. Ms. No. 1445, dated 5th November, 1986 published on 25th November, 1986. In support of the second contention, one of the arguments relates to amendment to section 13 of the APGST Act, effected by

Act 18 of 1985 requiring dealers "liable to be registered", instead of "liable to tax" to file the returns. It is pointed out that by Act 19 of 1986, which came into force on 1st August, 1986, section 39(1)(aaa) was introduced conferring on the Government the rule-making power to prescribe rules, inter alia, for computation of turnover in respect of goods used in works contracts; and that section 12 as amended makes registration mandatory for works contractors irrespective of the turnover; and sub-section (5) thereof makes registration to be a condition precedent to the doing of business by a dealer. It was also the contention before us by the petitioners that the amended rules had no retrospective effect; and, therefore, it is only on and after 25th November, 1986 on which date the amendment was published, taxable turnover could be ascertained, and tax levied and collected. According to the petitioners, the rules pertaining to the determination of the value of goods used or supplied in the course of the execution of the works contracts became necessary because though u/s 2(s)(iii) (a) the assessing authority had the power to determine the value of goods, his power is subject to section 5(3) which reads as follows :

"For the purpose of this section and the other provisions of this Act, the turnover which a dealer shall be liable to pay tax shall be determined after making such deductions from his total turnover, and in such manner as may be prescribed."

6. It was also pointed out by the learned counsel for the petitioners that u/s 2(1) of the Act "prescribed" means "prescribed by rules". According to him, section 5(3) of the Act has effect over all the provisions of the Act; in the absence of such rules, the "taxable measure", namely, the turnover could not be fixed; and the charging section was thus incomplete and inoperative till the coming into force of the amended rules. Reliance was placed on the decision of the Supreme Court in *Govind Saran Ganga Saran Vs. Commissioner of Sales Tax and Others*, holding that four essential ingredients, namely, taxable event, taxable person, rate of tax and measure or value to which the rate will be applied, must be there for levy of tax. The learned counsel for the petitioners would further contend that so far as the works contracts are concerned, before the introductions of the new rules by the amendment, there was no machinery or method provided for ascertaining the measure or value of the goods on which tax was payable, in the case of composite and indivisible works contracts. It was strongly contended that this fact escaped the notice of the Division Bench while disposing of *Padmaja Commercial Corporation Vs. Commercial Tax Officer, Vijayawada and Others*, , inasmuch as the learned Judges found only that the taxable event, levy point and rate of tax had already been prescribed under the Act for all the components or materials in the transactions and separate or fresh rules were not called for and the enlarged definitions of "sale", "turnover", "dealer", "tax" and "works contract" muster up the provisions already in vogue, but no mention had been made about one of the other ingredients found necessary in *Govind Saran Ganga Saran Vs. Commissioner of Sales Tax and Others*, , namely, measure or the value to which the rate would be applied.

7. It was contended before us that it was only by the amendment of rule 6 by rule 3 of the amending rules [G.O. Ms. No. 1445, Revenue(S) Department, dated 5th November, 1986] that the detailed manner in which the total turnover of a dealer with respect to works contract had been prescribed, and it was only by the amendment of rule 17-B by rule 12 of the amending Rules that the submission of returns by a dealer in works contract was made obligatory and so also registration made necessary by amendment of rule 28 by amending rule 24.

8. In our opinion, there is no contentions. As already pointed out by the Division Bench in *Padmaja Commercial Corporation Vs. Commercial Tax Officer, Vijayawada and Others*, , the three essential ingredients and components (the taxable event, levy point and rate of tax) are present in the Act with regard to all materials and goods relatable to the transactions. So far as the measure or the value of the goods used is concerned, it is something which could be available from the accounts of the assessee or from the information furnished by him or as assessed by the assessing authority. In view of the amended definition in clause (a) of section 2 of the Act, there could be no difficulty whatsoever to determine the measure or value of goods supplied or used in the execution of the works contract even in the absence of any rules in that behalf. May be that once the method for determining the turnover is prescribed by the rules the assessing authorities are bound to follow it. It is, however, difficult to contend for the position that until and unless such methods are prescribed by the rules, the charging section would be incomplete and inoperative even though the definition in section 2(s) of the Act itself contains the necessary guidelines for the determination of the turnover. Even before the rules are amended by G.O. Ms. No. 1445, dated 5th November, 1986, this was possible. The difficulty might arise only in composite and indivisible works contract as observed by the Supreme Court in *Govind Saran Ganga Saran Vs. Commissioner of Sales Tax and Others*, . In the instant case, the petitioners have no case that the goods used are in composite and indivisible works contract. The question as to what would happen if the works contract is spread over to a period of more than one year is also hypothetical. Even in such case, it might have been possible for the assessee to furnish, or the assessing authority to ascertain the particulars pertaining to the goods used or supplied in the execution of the works during the assessment year; however, that question does not directly arise here.

9. It is the settled law that in fiscal laws due importance has to be given to the phraseology used in the charging section. Sub-section (1) of section 5 of the Act lays down that every dealer whose total turnover for a year is not less than Rs. 25,000 shall pay a tax for each year at the rate of five paise on every rupee of his turnover; and sub-section(2) thereof provides the rate at which the tax is payable with respect to goods mentioned in the First, Second, Fifth and Sixth Schedules. With the inclusion of transfer of property in the goods used in the execution of the works contract in the term "turnover" as defined in section 2(s) of the Act, under the charging section, every dealer is under an obligation to pay tax in respect of such turnover in terms of the provisions of section 5 of the Act.

It is nobody's case that rules had not been framed for the purpose of section 5(3) of the Act earlier. In fact, G.O. Ms. No. 1445, dated 5th November, 1986(issued on 25th November, 1986) only amended some of the rules so as to streamline some of the provisions in the rules, inter alia, to make the procedure in regard to determination of the turnover involved in works contracts more effective. If the turnover could be determined, as already noticed, even without the aid of the amended rules, it would be idle to contend for the position that till the rules were so amended, section 5 of the Act in so far as it related to goods used or supplied in the execution of works contracts remained incomplete and unenforceable. Application for registration, submission of returns, etc., are all procedural matters, and irrespective of the fact that such procedure in relation to works contract has been prescribed or not, the liability of the dealer would exist unless a case is made out that without the aid of the rules which came into force on 5th November, 1986 (published in the Gazette on 25th November, 1986) it might not have been possible to ascertain the measure or the value of the goods used in the execution of the works contract for determining the turnover on which tax had to be paid; this has not been shown to be such a case; and therefore there is no force in the contention that though the Act had been amended, and the charging section enjoined payment of tax, the dealer was not liable to pay the tax because the amended rules has not been published till 25th November, 1986.

10. For the foregoing reasons, we hold that there is no merit in either of the contentions raised by the petitioners. We are also of the opinion that the decision of the Division Bench in Padmaja Commercial Corporation Vs. Commercial Tax Officer, Vijayawada and Others, on the points canvassed before us lays down the correct position in law. The result, therefore, is the writ petitions are dismissed, however, without any order as to costs. Advocate's fee Rs. 300, in each.

11. Writ petitions dismissed.