(2001) 12 KL CK 0017

In the High Court Of Kerala

Case No : T.R.C. No''s. 116, 117, 118 and 119 of 2001

S. Philipose — APPELLANT

Vs

State of Kerala — RESPONDENT

Date of Decision : 12-12-2001

Acts Referred:
Kerala General Sales Tax Act, 1963 — Section 5(1)

Citation : (2002) 126 STC 210

Hon'ble Judges : S. Sankarasubban, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : K.B. Mohamed Kutty, for the Appellant; Georgekutty Mathew, Government Pleader, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The petitioner is engaged in contract work for the Kerala Water Authority. The contract which gives rise to these petitions along with the schedule of the work is produced in these petitions as annexure-A. The question is with regard to the rate of tax applicable to the taxable turnover on the item of work which is treated as works contract. The assessment was at the rate of 12.5 per cent applicable to item 15 of the Fourth Schedule to the Kerala General Sales Tax Act, 1963. The assessment is confirmed in first appeal.

2. We have heard Sri K.B. Mohamed Kutty, counsel for the petitioner and the Government Pleader for the respondent.

3. We have also gone through the nature of the work described in annexure A. The work awarded to the petitioner is in connection with the laying of pipeline in Kalladipatta colony in Ongallur Panchayat by the Water Authority. Counsel for the petitioner has pointed out that similar other items awarded by the Water Authority are also covered by the assessment under dispute. The work is excavation of land for laying the pipeline, the transportation of the pipe and installation of concrete small structures and for installation of public taps. Essentially the materials are supplied by the Water Authority and the petitioner is engaged in excavation and laying of pipeline, filling of the earth, etc. Besides

this, the petitioner was also engaged in the work of joining the pipes and installed small structures for fixing public taps. Item No. 15 of the Fourth Schedule describes the entry as follows :

"Supply and erection of sanitary fittings and articles for pumping drainage, sewages, etc."

It is obvious that only if sanitary fittings and articles for pumping drainage, etc., are supplied in the course of execution of the contract, the contract can come under item 15 of the Fourth Schedule to the Kerala General Sales Tax Act. In this case the pipes are supplied by the Water Authority and the petitioner is engaged in transportation and labour. The works contract done by the petitioner is earth work and civil construction work.

4. The Government Pleader has brought to our notice item 5(a) in the description of the work in annexure-A. Here again joining the pipes, etc., are done with materials supplied by the Water Authority. Therefore the material portion is outside the scope of work except in regard to the civil work. The petitioner has rightly paid the tax at the rate applicable to civil contract on the turnover and we therefore find that the Tribunal has committed an error of law in describing the contract as one coming under item 15 of the Fourth Schedule to the Kerala General Sales Tax Act. We, therefore, reverse the order of the Tribunal on this issue and direct assessment on the petitioner''s taxable turnover in respect of all these years at the rate applicable to civil work.

T.R.Cs. are disposed of as above.

Order on C.M.P. No. 1682 of 2001 in T.R.C. No. 116 of 2001 dismissed.