(2002) 09 KL CK 0065

In the High Court Of Kerala

Case No : T.R.C. No''s. 548 to 556 of 2001

Siemens India Limited — APPELLANT

Vs

State of Kerala — RESPONDENT

Date of Decision : 16-09-2002

Acts Referred:

Central Sales Tax Act, 1956 — Section 3, 6(2)
Kerala General Sales Tax Act, 1963 — Section 2

Citation : (2003) 132 STC 418

Hon'ble Judges : S. Sankarasubban, J;K. Padmanabhan Nair, J

Bench : Division Bench

Advocate : Jose Joseph and Chitra Venkataraman, for the Appellant; S. Soman, Special Government Pleader, for the Respondent

Judgement

S. Sankarasubban, J.—These T.R.Cs. are filed against the common order passed by the Sales Tax Appellate Tribunal, Additional Bench, Ernakulam, in 12 appeals. The assessment years are 1986-87 to 1991-92 and from 1992-93 to 1995-96. Assessee is M/s. Siemens Limited. The facts necessary for the disposal of this case are as follows :

2. Petitioner is an assessee on the rolls of the Assistant Commissioner (Assessment), Sales Tax, Special Circle II, Ernakulam. While completing the assessment in respect of the assessee for the relevant years, the assessing authority disallowed the following claims of exemption made u/s 6(2) of the Central Sales Tax Act, 1956 (hereinafter referred to -as "the CST Act") :

1986-87 ... Rs. 50,17,537.00 1987-88 ... Rs. 31,84,914.00 1988-89 ... Rs. 46,00,265.00 1989-90 ... Rs. 4,53,114.00 1990-91 ... Rs. 27,99,864.00 1991-92 ... Rs. 29,63,052.00 1993-94 ... Rs. 7,63,225.00 1994-95 ... Rs. 1,42,15,090.00 1995-96 ... Rs 62,42,389.00

The assessee claimed exemption on the ground that the related turnovers represent subsequent sale of goods during its movement inter-State. The disallowance of the claims of exemptions was on the ground, that the disputed turnovers relate to execution of works contract, which is a deemed sale taxable u/s 5(1)(iv) read with Section 5C of the Kerala General Sales Tax Act, 1963 (hereinafter referred to as "the KGST Act").

3. The assessee was receiving work orders from the Cominco Binani Zinc Limited (CBZL) for the supply and erection of electrical equipments. The work orders were split into two ; one for design, engineering, manufacturing, testing and supply of equipments and materials and the other for erection and commissioning of the equipments. The first order is characterised as "supply order" and the second one as "service order". According to the assessee, pursuant to the supply order, the assessee in turn placed orders with various manufacturers outside the State for manufacture of the item according to the design and specification of the purchaser. It is also specifically provided in the supply order that notwithstanding the inspection test conducted at the suppliers works from time to time, the goods under the order shall not be despatched unless they have been finally inspected by FEDO/CBZL or inspection waived and despatch specifically authorised in writing. Accordingly, the goods covered by the supply order have been manufactured according to the design and specification of the purchaser in places outside Kerala and inspected by the purchaser before despatch and as such the said goods were appropriated to the contract at place outside Kerala.

4. The assessee effected sale of these goods to the purchasers while the goods were in movement as provided in Section 3(b) of the CST Act. These sales effected by the assessee u/s 3(b) of the CST Act while the goods were in movement are exempt from levy of any tax under the CST Act in terms of Section 6(2) of the CST Act. The goods directly despatched to the purchaser as aforesaid and sale of which was effected by transfer of documents of title to the goods during their movement from one State to another are taken delivery by the purchaser and taken into their stores. Thereafter, these goods were issued to the assessee for erection from the stores of the purchaser in terms of the work order. According to the assessee, the sale of goods effected by the assessee during its movement from one State to another is exempt from imposition of any tax as per Section 6(2) of the CST Act. Since it is a transaction in the course of inter-State trade and commerce, the same is outside the purview of any imposition under the KGST Act. Accordingly, the assessee claimed exemption on a turnover of Rs. 29,63,052 during the year 1991-92, u/s 6(2) of the CST Act. In order to avail the exemption, the assessee produced declarations in E form and C form. Hence, there is no reason whatsoever to deny the claim of exemption in respect of these transit sales. However, on a total misapprehension of law and facts, the assessing authority proceeded as if the contracts entered into by the assessee with CBZL are indivisible contract and the appropriation of the goods has taken place at the stage of erection and therefore it is a deemed sale within the State of Kerala and accordingly disallowed the claim for exemption and brought to tax the turnover under the KGST Act. Against that, the assessee went

in appeal. But the appeal was dismissed. Second appeal preferred also dismissed.

5. The main contention raised before us is that the authority was wrong in holding that the contract is an indivisible contract. As a matter of fact, the work order will show that there are two separate works ; supply order and service order. We are only concerned here with the supply order. According to the assessee, so far as the supply order is concerned, the materials which are not available with the assessee would be directed to be manufactured by the other units. Many clauses in the supply order show that the company is entitled to verify the supplies even before their despatch and those goods are insured with the Insurance Company. It has also come in evidence that the assessee has endorsed the receipts in favour of Cominco Binani Zinc Limited. Thus, according to the learned counsel, if we read the supply order, it will definitely show that it is actually a sale taking place inter-State.

6. On the other hand, learned Government Pleader submitted that the goods are actually arrived in Kerala and delivery has to be effected only after that. Hence, according to him, sale takes place in the State and not inter-State.

7. This Court had occasion to consider this question in Siemens Ltd. v. State of Kerala 20011 122 STC 1, In that decision, this Court held that Explanation 4(c) to Section 2(xxi) of the KGST Act has to be read down and it does not apply to inter-State sales. Learned counsel also brought to our notice the decisions in Bharat Heavy Electricals Ltd. v. State of Orissa [1996] 102 STC 324 (Ori) , Gannon Dunkerley and Co. and Others Vs. State of Rajasthan and Others, , State of Andhra Pradesh Vs. Usha Breco Ltd., and Sundaram Industries v. State of Tamil Nadu [1992] 86 STC 554 (Mad.) to drive home the point that there is inter-State sale in this case.

8. As already stated, there was an original petition challenging Explanation 4(c) to Section 2(xxi) of the KGST Act. Dealing with that question, this Court had held that by a deeming provision, the State Government cannot change the character of the sale and in such cases also inter-State sale is made. In that original petition, after the finding that Explanation 4(c) to Section 2(xxi) of the KGST Act cannot be treated as indivisible, the assessing authority was directed to reconsider the matter.

9. After hearing the parties, and after going through the records, we are of the opinion that the matter has to be considered again by the assessing authority. The assessing authority takes the view that in this case, there is indivisible contract. So far as this case is concerned, according to us, it is not indivisible. It contains two parts : supply order and service order. According to us, the Tribunal was not correct in holding that there was only one contract. The work order will show that it contains two parts ; supply order and service order. Price is also shown separately. The right of the buyer to inspect the goods before they are transported is also preserved. So also, the goods are insured. When the goods were transmitted, the assessee transferred the title to the property to Cominco

Binani Zinc Limited. The Tribunal has not considered this matter in detail. The Tribunal has relied on the decision of the Madras High Court in Sundaram Industries v. State of Tamil Nadu [1992] 86 STC 554. A perusal of the above decision will show that the facts are different from the facts of the present case and there is also dispute as to whether the delivery notes were transmitted to the company. It was in these circumstances that it was held by the Tribunal that there was no transfer of sale. According to us, the decisions in Bharat Heavy Electricals v. State of Orissa [1996] 102 STC 324 (Ori) and Gannon Dunkerley and Co. and Others Vs. State of Rajasthan and Others, have a bearing in the present case. We find that this Court had earlier in Siemens Ltd. v. State of Kerala [2001] 122 STC 1 had remanded back to the assessing authority the case of the same assessee for another year.

10. Taking into account the above facts, we are of the view that the assessing authority should consider the matter again after hearing the parties.

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

Order on C.M.P. No. 6802 of 2001 in T.R.C. No. 548 of 2001 dismissed.

Order on C.M.P. No. 6805 of 2001 in T.R.C. No. 549 of 2001 dismissed.

Order on C.M.P. No. 6808 of 2001 in T.R.C. No. 550 of 2001 dismissed.

Order on C.M.P. No. 6811 of 2001 in T.R.C. No. 551 of 2001 dismissed.

Order on C.M.P. No. 6813 of 2001 in T.R.C. No. 552 of 2001 dismissed.

Order on C.M.P. No. 6815 of 2001 in T.R.C. No. 553 of 2001 dismissed.

Order on C.M.P. No. 6817 of 2001 in T.R.C. No. 554 of 2001 dismissed.

Order on C.M.P. No. 6819 of 2001 in T.R.C. No. 555 of 2001 dismissed.

Order on C.M.P. No. 6821 of 2001 in T.R.C. No. 556 of 2001 dismissed.

