

(2009) 11 KAR CK 0002
In the Karnataka High Court
Case No : S.T.A. No. 24 of 2006

Skyline Constructions and Housing Pvt. Ltd.	APPELLANT
Vs	
Authority for Clarification and Advance Rulings, Gandhinagar, Bangalore and Another	RESPONDENT

Date of Decision : 17-11-2009

Acts Referred:

Citation : (2011) 37 VST 290

Hon'ble Judges : K. L. Manjunath, J; Aravind Kumar, J

Bench : Division Bench

Advocate : V. Srinivasa Raghavan, for the Appellant; Geetha Menon, Government Advocate, for the Respondent

Judgement

Aravind Kumar J.

1. The appellant is a registered dealer under the Karnataka Value Added Tax Act, 2003 (hereinafter referred to as "the KVAT Act") and is engaged in the execution of the works contract for construction of residential apartments. The appellant is said to be paying tax at four per cent in terms of notification No. FD 55 CSL 2005(7) dated March 23, 2005 and in the course of the execution of the works contract the appellant claims to employ sub-contractors who are also said to be registered under the KVAT Act and pay taxes as per the provisions of the Act and the Rules made thereunder. The appellant sought for an advance ruling u/s 60 of the KVAT Act read with rules 163 to 165 of the KVAT Rules, 2005 as to whether the works entrusted to sub-contractors would also come within the total turnover of the appellant.

2. The above said authority after hearing the appellant herein held as follows :

(a) In the absence of specific provisions for deduction on the turnover of the sub-contractor, up to March 31, 2006 the activity of the works contract is exigible to tax at the rate applicable to goods involved in the transfer of property under the KVAT Act, 2003 and section 4(1)(c) of the KVAT Act with effect from April 4,

2006;

(b) The payments made to the sub-contractors are not eligible for deduction up to March 31, 2006; and, (c) The sub-contractor turnover is eligible for deduction with effect from April 1, 2006 by virtue of notification dated May 27, 2006.

3. We have heard Sri V. Srinivasa Raghavan appearing for the appellant and Smt. Geetha Menon, the learned Government Advocate appearing for the respondents and perused the order dated July 29, 2006 passed by the Authority for Clarification and Advance Rulings.

4. It is the contention of the learned counsel for the appellant that the activity of works contract up to March 31, 2006 is exigible to the KVAT Act, 2003 as ruled by the authority is erroneous for the following reasons :

(i) Works executed by the sub-contractor in the course of execution of works contract awarded to the appellant cannot be treated as consideration received by the appellant and it is to be treated as consideration received by the sub-contractors.

(ii) There would be double taxation on the transaction since the subcontractors are also registered under the KVAT Act and in that portion of the sub-contract the sale takes place in respect of those portions, directly in favour of the owner of the land or the person and hence there is no sale in favour of the principal contractor and contends that the said payments made to the sub-contractor in a work executed by them cannot be included in the total consideration received by the principal contractor.

(iii) There is only one deemed sale involving the transfer of property in the goods which are employed in the works as it constitutes the single deemed sale and those in respect of part works awarded to the subcontractor by the main contractor do not exclude those parts, therefore there is no deemed sale at the hands of the main contractor, i.e., the appellant herein.

5. In support of the above-raised contentions, the learned counsel for the appellant would rely upon the decision of the honourable Supreme Court in the case of State of Andhra Pradesh and Others Vs. Larsen and Tourbo Ltd. and Others,

6. Per contra the learned Government Advocate would submit that the issue which was under consideration before the honourable Supreme Court was prior to the amendment of Rule 17 of the Andhra Pradesh Value Added Tax Rules, 2005, and as such the amendment brought to the Karnataka Value Added Tax Act subsequently which is in pari materia with rule 17 of the Andhra Pradesh Value Added Tax Rules, 2005 is applicable only from April 1, 2006 including and the Rules made thereunder and hence said judgment would not be applicable to the facts of the present case.

7. At the time of admission of this appeal the following substantial questions of

law were formulated :

1. Whether under the Karnataka Value Added Tax Act, 2003 for the period from April 1, 2005 to March 31, 2006, in respect of principal contractors involved in the business of carrying out works contract of construction of buildings for the purpose of computing liability to pay taxes on composition basis u/s 15, whether the consideration for execution of works contract executed refers to consideration received for execution of works contract by the principal contractor by himself or includes any consideration received but paid to sub-contractors as consideration for portions of work executed by sub-contractors?

2. Whether u/s 15 of the KVAT Act, 2003, for the period prior to March 1, 2006 the principal contractors involved in the business of carrying out works contract of constructing buildings is entitled for deduction of payment made by them to sub-contractors who are registered dealers to whom portions of the work has been sub-contracted, as consideration to them for the portions of the work executed by such contractors, from the total consideration received by the principal contractor ?

8. As per section 3(1) of the KVAT Act every sale of goods in the State by registered dealer or a dealer is leviable to tax in accordance with the provisions of the Act. The "works contract" having defined u/s 2(37) is also leviable to tax where there is transfer of property involved.

9. The Karnataka Value Added Tax Act, 2003 came to be amended by Act No. 4 of 2006 wherein clause (c) to sub-section (1) of section 4 was amended which reads as follows :

In respect of transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract specified in column (2) of the Sixth Schedule, subject to sections 14 and 15 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), at the rates specified in the corresponding entries in column (3) of the said Schedule.

10. Thus, section 4 is the charging section in so far as transfer of property of the goods involved in the execution of the works contract.

11. The appellant has elected for composition in terms of the provision u/s 15 of the KVAT Act, 2003 read with Notification No. FD 55 CSL 5 (7) dated March 23, 2005 and paid tax at the rate of four per cent. Section 15 of the KVAT Act, 2003 reads as follows :

15. Composition of tax.--(1) Subject to such conditions and in such circumstances as may be prescribed, any dealer other than a dealer who purchases or obtains goods from outside the State or from outside the Territory of India, liable to pay tax as specified in section 4 and,-

(a) whose total turnover in a period of four consecutive quarters does not exceed an amount as may be notified by the State Government which shall not exceed

fifty lakh rupees, and who is not a dealer falling under clauses (b) or (c) or (d) below :

(b) who is a dealer executing works contracts; or

(c) who is a hotelier, restaurateur, caterer (or bakery or any other class of dealers as maybe notified by the Government); or

(d) who is a mechanised crushing unit producing (granite or any other metals)

may elect to pay in lieu of the net amount of tax payable by him under this Act by way of composition, an amount at such rate not exceeding five per cent on his total turnover or on the total consideration for the works contracts executed or not exceeding two lakh rupees for each crushing machine (per annum as may be notified by the Government).

(2) For the purposes of sub-section (1) a quarter shall mean any period ending on final day of the months of March, June, September and December.

(3) Any dealer eligible for composition of tax under sub-section (1) may report, to the prescribed authority, the exercise of his option and he shall pay such amount due and furnish a return in such manner as may be prescribed.

(4) Any dealer opting for composition of tax under sub-section (1) shall not be permitted to claim any input tax on any purchases made by him.

(5) Notwithstanding anything contained in sub-sections (1) and (4)-

(a) a dealer executing works contracts and who purchases or obtains goods from outside the State or from outside the Territory of India shall be eligible to opt for composition under sub-section (1), and if the property in such goods (whether as goods or in some other form) is transferred in any works contract executed by him, the dealer shall be liable to pay tax on the value of such goods at the rate specified in section 4, and such value shall be deducted from the total consideration of the works contracts executed on which an amount as notified is payable under sub-section (1) by way of composition in lieu of the tax payable under the Act;

(b) in the case of a dealer executing works contracts and opting for composition of tax under sub-section (1), no tax by way of composition shall be payable on the amounts paid to a sub-contractor as consideration for execution of works contract whether wholly or partly and such amounts shall be deducted from the total consideration of the works contracts executed on which an amount as notified is payable under sub-section (1) by way of composition in lieu of the tax payable under the Act subject to production of proof that such sub-contractor is a registered dealer liable to tax under the Act and that such amounts are included in the return filed by such sub-contractor;

(c) in the case of a dealer executing works contracts, after opting of composition of tax under sub-section (1), effects sale of any goods liable to tax under the Act

other than by transfer of the property in such goods (whether as goods or in some other form) in any works contract executed by him, the dealer shall be liable to pay tax on the value of such goods at the rate specified in section 4, without any deduction for input tax on purchase of such goods made by him;

(d) in the case of a dealer opting for composition of tax under clause (a) or (c) of sub-section (1), the turnover on which tax is leviable under sub-section (2) of section 3 shall be deducted from the total turnover on which an amount as notified is payable under subsection (1) by way of composition in lieu of the tax payable under the Act.

12. In respect of the sub-contract entrusted by the appellant, the said subcontractor executes the part of the contract and transfer of property as the goods involved in that part of the work executed by them goods are transferred to the customer directly and thus there is no sale between contractor and the sub-contractor. It is the claim of the appellant that the subcontractors are also registered under the KVAT Act and the Rules made thereunder and they would also be liable to tax and are in fact paying the tax. If this contention of the appellant is to be accepted then as rightly contended by the learned counsel for the appellant it would amount to double taxation.

13. In this regard the decision of State of Andhra Pradesh and Others Vs. Larsen and Tourbo Ltd. and Others, would be required to be extracted. The relevant paragraph, namely, paragraph 16 reads as follows :

16. In this case we are concerned with the Andhra Pradesh Value Added Tax Act, 2005. Section 4 is the charging section. It comes in Chapter III which deals with "incident, levy and calculation of tax". In this case, we are concerned with the taxability of works contract. That subject is dealt with by section 4(7) of the said 2005 Act. In our view, section 4(7) is a code by itself. It begins with a non obstante clause. It, inter alia, states that every dealer executing works contract shall pay tax on the value of goods at the time of incorporation of such goods in the works executed at the rates applicable to the goods under the Act. The point to be noted is that section 4(7)(a) of the 2005 Act indicates that the taxable event is the transfer of property in goods involved in the execution of a works contract and the said transfer of property in such goods takes place when the goods are incorporated in the works, the value of the goods which constitutes the measure for the levy of the tax is the value of the goods at the time of the incorporation of the goods in the works. What is stated hereinabove also finds place in rule 17(1)(a) of the APVAT Rules, 2005, quoted hereinabove. It is important to note that each of the sub-contractors of L&T is registered dealer. None of them are unregistered. u/s 4(7)(a) read with rule 17(1)(c), quoted above, where a VAT dealer awards any part of the contract to a sub-contractor, such subcontractor shall issue a tax invoice to the contractor for the value of the goods at the time of incorporation in such sub-contract. The tax charged in the tax invoice issued by the sub-contractor shall be accounted by him in his returns. Therefore, the scheme indicates that there is a "deemed sale" by the dealer

executing the work, i.e., the sub-contractor. It is only the sub-contractor who effects transfer of property in goods as no goods vests in the respondent-company (contractor) so as to be the subject-matter of a retransfer. By virtue of article 366(29A)(b) of the Constitution once the work is assigned by the contractor (L&T), the only transfer of property in goods by the sub-contractor(s), who is a registered dealer in this case and who claims to have paid taxes under the Act on the goods involved in the execution of the works. Once the work is assigned by L & T to its sub-contractor(s), L & T ceases to execute the works contract in the sense contemplated by article 366(29A)(b) because property passes by accretion and there is no property in goods with the contractor which is capable of a retransfer, whether as goods or in some other form.

14. A contract for work, i.e., works contract, involves transfer of property and also element of service or work rendered and thus called as composite contract. The contract in question is a works contract for construction. The taxable event in a works contract is a transfer of property in goods and the said transfer of property in such goods takes place when the goods are incorporated in the work. The value of the goods which constitutes the measure in the levy of tax is the value of the goods at the time of incorporation of the goods in the works. Thus, the said contractor to whom the work has been entrusted to is required to maintain an account and issue tax invoice as required u/s 2(32). The tax charged in the tax invoice issued by the sub-contractor has to be accounted to in his returns. Thus, it indicates there is "deemed sale" by the dealer executing the work, i.e., sub-contractor. In effect it is the sub-contractor who effects transfer of property in goods as no goods vest in the contractor so as to be subject-matter of a retransfer. Hence by virtue of article 366(29A)(b) of the Constitution once the work is assigned by the contractor the only transfer of property in goods is by the sub-contractors and who claims to have paid tax under the Act on the goods involved in the execution of the works. Once the work is assigned by the contractor to its sub-contractor, the contractor ceases to execute the work because the property passes by accretion and there is no property in goods left with the contractor which is capable of retransfer either as goods or in any other form. Thus, the transfer of property is from sub-contractor to the contracting party that is contractee, namely, the recipient. Hence the work executed by the subcontractor results in single transaction and not as multiple transaction.

15. Hence, it would be erroneous to hold that the payments made by the contractor to the sub-contractor would require to be brought within the total turnover of the appellant or contractor and if such an interpretation is to be given it would lead to double taxation and hence we are of the opinion that the question of law formulated hereinabove is to be held as follows :

(i) The consideration for execution of works contract executed refers to consideration received by the principal contractor and does not include the consideration received and paid to sub-contractor.

(ii) u/s 15 of the KVAT Act, 2003 for the period up to March 1, 2006 the principal

contractor is entitled for deduction of payment made by sub-contractors only if they are registered dealers and the said sub-contractor has accounted for it and paid tax thereon.

16. Hence for the aforesaid reasons, we find in the facts and circumstances of the case that it is for the assessing officer to examine the claim of the appellant by seeking for the appellant to produce such particulars as may be required to ascertain as to whether the work involved in the subcontract has resulted in tax yielding so as to find out whether it has come within the scope of clause (c) of sub-section (1) of section 4 and it is for this precise reason we are of the opinion that the same being a fact-finding exercise, the assessing officer is hereby directed to call for such particulars either from the contractor or sub-contractors to find out whether the work entrusted to sub-contractors has come within the turnover of the subcontractors after examining the issue and giving a finding thereon. In the event the appellant or the sub-contractors as the case may be are unable to demonstrate that the works contract entrusted to the sub-contractor has been levied with the tax it would be open to the authorities to add the same to the turnover of the contractor and not otherwise since it would amount to double taxation.

17. Accordingly the following order is passed :

ORDER

(i) The order dated July 29, 2006 passed by the Authority for Clarification and Advance Rulings bearing No. AR.CLR.CR.480/06-07 is hereby set aside and the appeal is allowed subject to the observations made herein-above.

(ii) The substantial questions of law are answered in favour of the assessee and against the Revenue as answered supra.

(iii) No costs.