(2011) 04 KAR CK 0124

In the Karnataka High Court

Case No : Sales Tax Appeal No''s. 7 and 8 of 2009

S.R. Ravishankar APPELLANT

Vs

Additional, Commissioner of Commercial Taxes RESPONDENT

Date of Decision : 07-04-2011

Acts Referred:

Citation : (2012) 54 VST 448

Hon'ble Judges : Ravi Malimath, J;N. Kumar, J

Bench : Division Bench

Advocate : T.M. Keshava Murthy, for the Appellant; Sujatha, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

N. Kumar, J.—These three appeals are preferred by the assessees against the orders passed by the revisional authority, who has set aside the order passed by the Joint Commissioner of Commercial Taxes (Appeals), who had rectified the order passed by the assessing authority and assessed the assessee u/s 5B read with section 12 of the Karnataka Sales Tax Act, 1957 (hereinafter referred to as, "the Act"). One S.R. Ravishankar is the assessee in Appeal Nos. 7 of 2009 and 8 of 2009 and his brother S.R. Udayashankar is the assessee in Appeal No. 9 of 2009. The relevant assessment year as far as Ravishankar is concerned is, 2003-04 and 2004-05 and as far as Udayashankar is concerned, it is 2003-04. As common questions of law are involved in all these three appeals, they are taken up for consideration together and disposed of by this common order.

2. The assessees are dealers registered under the provisions of the Karnataka Sales Tax Act, 1957. They are engaged in the execution of works contract of asphalting of roads. They opted for composition assessment as provided u/s 17(6) of the Act and filed the prescribed application in form No. 8AA before the assessing authority. The assessing authority concluded non-scrutiny assessment u/s 12C of the Act, levied composition tax at four per cent as provided u/s 17(6) of the Act. Subsequently, the assessees filed a rectification application u/s 25A of

the Act, contending that they have purchased goods from outside the State for the purpose of using such goods in the execution of works contract and therefore, in terms of section 17(7) of the Act, they are not eligible for composition assessment u/s 17(6) of the Act. Therefore, they wanted reassessment u/s 5B read with section 12 of the Act. However, the Deputy Commissioner of Commercial Taxes rejected the said request on the ground that the assessees opted for composition by filing form 8AA well in time and the assessment is concluded, which is in order and therefore, no case for rectification or reassessment is made. Aggrieved by the said order/endorsement, the assessees preferred an appeal before the Joint Commissioner of Commercial Taxes (Appeals) u/s 20(5) of the Act. The Commissioner after careful scrutiny of the entire material on record held that the assessees have purchased the goods from outside the State and have put to use such goods in execution of works contract. Therefore, they are not entitled to the benefit of composition of tax, as the assessees have infringed the provisions of section 17(7) of the Act, they have to lose the benefit of composition tax leviable u/s 17(6) of the Act. Therefore, he took into consideration the turnover declared by the assessee and proceeded to assess them u/s 5B of the Act. In fact, at the time of hearing the appeal, the assessees filed revised return of turnover in form No. 4 disclosing the total and taxable works contract receipts and also enclosed the taxes payable on the works contract receipts u/s 5 of the Act. They have also filed audited profit and loss account. It is on consideration of the aforesaid additional material, which was made available to him in the course of appeal, an order assessment came to be passed and to that extent, the order of assessment by the assessing authority stood modified and the assessing authority was directed to issue revised demand notice.

3. The Additional Commissioner of Commercial Taxes, in exercise of his power u/s 22A(1) of the Act, initiated suo motu proceedings for revision of the aforesaid order passed by the appellate authority. The reason for invoking the revisional jurisdiction was, according to the revisional authority, the appeal order were not clear as to what are these goods and whether the goods are involved in execution of works contracts resulting in transfer of property in goods in terms of section 2(1)(t) read with section 5B of the Act so as to invoke the prohibition provision u/s 17(7) of the Act. The record disclosed that the assessee had made purchases from outside the State, which relate to the parts and accessories of road equipment. There is no evidence on record to establish that these goods are actually used in the execution of civil works contracts and they have been effected as deemed sales by way of transfer of property in goods during the execution of works. According to the revisional authority, only the goods that are used in the execution of works contracts resulting in transfer of property in goods are barred from purchase from outside the State or its receipt in the similar way from outside the State and not otherwise. The inter-State purchases of goods in the instant case are purportedly the spare parts and accessories of road equipment, which cannot be used in the execution of civil work contracts

resulting in transfer of property in goods. Therefore, he held that the appellate authority committed a mistake in reversing the assessment order and therefore, he set aside the order of the appellate authority and restored the order passed by the assessing authority. Aggrieved by the said order, the assessees are in appeal.

4. These appeals are admitted to consider the following substantial questions of law:

(i) Whether, in the facts and circumstances of the case, the respondent is legally justified in considering that the order dated September 13, 2007, passed by the appellate authority as in annexure E is erroneous and prejudicial to the interest of the Revenue and warranting revision u/s 22A(1) of the Act?

(ii) Whether the appellant that has purchased machinery spares from outside the State and used the same in the execution of works contract of asphalting of road is eligible or otherwise for composition assessment u/s 17(6) of the Act?

5. The learned counsel for the assessee assailing the impugned order contends, in section 17(7) of the Act, nowhere it is mentioned that, only the goods that are used in the execution of works contract resulting in transfer of property in goods are entitled to the benefit of composition u/s 17(6) of the Act. Virtually the revisional authority has rewritten the said provision, which is ex facie illegal and the impugned order is required to be set aside.

6. The learned counsel for the Revenue supporting the impugned order contends, that in law a clear distinction has to be made between the purchase or receipt of goods from outside the State for the purpose of using such goods in execution of works contract, from using such goods in the execution of works contract resulting in transfer of property. Therefore, the order passed by the revisional authority is legal and valid, as in the instant case, there is no transfer of property in the works contract.

7. In the light of the aforesaid material, the substantial questions framed and the arguments canvassed, the short point that arises for consideration is, whether in order to attract section 17(7) of the Act, is it necessary that there should be a transfer of property in the goods?

8. Sub-section (6) of section 17 reads as under:

(6)(i) Notwithstanding anything contained in section 5B, but subject to such conditions and in such circumstances as may be prescribed, the assessing authority of the area may, if a dealer liable to tax u/s 5B so elects, accept in lieu of the amount of tax payable by him during the year tinder this Act, by way of composition an amount on the total consideration for the works contracts executed by him in that year in the State in respect of works contract specified in column (2) of the Sixth Schedule at the rate of four per cent.

(ii) any dealer may apply to the assessing authority to be permitted to pay the amount under clause (i) and, on being so permitted, he shall pay tax in advance as provide for u/s 12B and all the provisions of section 12B mutatis mutandis shall apply to this subsection;

(iii) the amount paid under clause (ii), shall be subject to such adjustment as may be necessary on completion of final assessment.

9. Section 17(7) of the Act reads as under:

(7) Nothing contained in sub-section (6) shall apply to a dealer who purchases or receives goods from outside the State for the purpose of using such goods in the execution of works contract.

10. Section 5B of the Act is the charging section insofar as the works contracts are concerned, which reads as under: 5B. Levy of tax on transfer of property in goods (whether as goods or in some other form) involved in the execution of works contracts.-- Notwithstanding anything contained in sub-section (1) or subsection (3) or sub-section (3C) of section 5, but subject to sub-sections (4), (5) or (6) of the said section, every dealer shall pay for each year, a tax under this Act on his taxable turnover of transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract mentioned in column (2) of the Sixth Schedule at the rates specified in the corresponding entries in column (3) of the said Schedule.

Every dealer shall pay for each year, a tax under this Act on his taxable turnover of transfer of property in goods involved in the execution of works contract mentioned in column (2) of the Sixth Schedule at the rates specified in the corresponding entries in column (3) of the said Schedule. However, sub-section (6) of section 17 which starts with a non obstante clause provides that, notwithstanding anything contained in section 5B, but subject to such conditions and in such circumstances as may be prescribed, the option is given to the dealer to elect to pay tax by way of composition on the total consideration for the works contracts executed by him in that year in the State in respect of works contracts or he may choose to pay tax u/s 5B. Section 17(6) is a beneficial piece of legislation, which permits an assessee to pay composition tax at four per dispensing with meticulous maintaining of accounts, payments and receipts and other requirements of the Act. The aforesaid provision makes it clear that the said benefit is subject to such conditions and in such circumstances as may be prescribed. One such condition, which is prescribed, is found in subsection (7) of section 17 of the Act. Sub-section (7) of section 17 provides that, nothing contained in sub-section (6) shall apply to a dealer who purchases or receives goods from outside the State for the purpose of using such goods in the execution of works contract. Therefore, the benefit of section 17(6) is not available to a dealer, who purchases or receives goods from outside the State for the purpose of using such goods in the execution of works contract. In other words, the benefit is confined to a dealer, who purchases or receives goods within the State. As is clear form subsection (7) of section 17, there is no further requirement that the goods so purchased or received should be transferred in favour of the customer of the assessee. The revisional authority was of the view that only when the goods purchased or received from outside the State is sold in the course of using of such goods in execution of the works contract, application of section 17(6) is excluded. Virtually the revisional authority is attempting to rewrite the section by using words, which the Legislature has not used in the said section. To attract section 17(7), all that the assessee has to show firstly is that, he has purchased or received goods from outside the State and the said goods is used in the execution of the works contract. It is not the requirement of law that in the course of using such goods, the title to the goods should be transferred to the customer. In the nature of things, when machinery is purchased or received from outside the State for the purpose of using them in the execution of the works contract, neither title in the machinery will pass on to the customer nor that machinery will be used as raw material in the works to be carried out. It is a tool which is used to execute the contract. Therefore, the intention of the Legislature is very clear, unambiguous and it does not require any interpretation at all. In that view of the matter, the order passed by the revisional authority is patently erroneous, contrary to the statutory provisions and cannot be sub-stained. Therefore the substantial questions of law is answered in favour of the assessee and against the Revenue. Hence, we pass the following: ORDER

Appeals are allowed. The impugned orders passed by the revisional authority are hereby set aside. The order passed by the appellate authority is restored.

Parties to bear their own costs.

