(2012) 10 KAR CK 0031

In the Karnataka High Court

Case No : Sales Tax Revision Petition No''s. 101 and 153 of 2010 (TAX)

State of Karnataka APPELLANT

Vs

A.L. Sudarshan Company Limited RESPONDENT

Date of Decision : 12-10-2012

Acts Referred:

Citation : (2013) 76 KarLJ 220

Hon'ble Judges : K. Sreedhar Rao, J;B.V. Pinto, J

Bench : Division Bench

Advocate : S. Sujatha, for the Appellant; M.N. Shankaregowda, for the Respondent

Judgement

K. Sreedhar Rao, J

1. The assessee is a civil contractor. He has executed certain contact works. It is the contention of the department that the assessee purchased the jelly and sand from unregistered dealers, therefore, subjected the said items for purchase tax u/s 6(1) of Karnataka Sales Tax Act, 1957, apart from levy of tax on the ready concrete mix. The assessee has also allotted a portion of the contract works to the sub-contractor and the Assessing Officer while assessing the turnover of the sub-contractor, has not given deduction to the sub-contractor. The assessee however, disputes that no deduction is given to the sub-contractor and that the department has levied tax on the assessee as well as on the sub-contractor. The Joint Commissioner of Commercial Taxes (Appeals) confirmed the order of the Assessing Officer. The assessee before the Appellate Tribunal had produced materials to show that jelly used for ready mix concrete is extracted from the quarry obtained on lease and has paid the royalty to the Government. In other words, the assessee states that they have not purchased jelly for making concrete mix.

2. The Tribunal based on the said materials found that no purchase tax is leviable on the jelly and also held that no tax is levied on the sand component used in

the ready mix concrete. The Revenue aggrieved by the said order has preferred the present revision.

3. The following substantial questions for law are framed for consideration:

a. Whether the Tribunal is right in the facts and circumstances of the case holding that the respondent is not liable to pay tax u/s 6(1) of the KST Act on the purchase of jelly and sand purchased from the unregistered dealers and consumed in the manufacture of Ready Mix Concrete?

b. Whether the Tribunal is right in setting aside the levy of tax u/s 5-B of the KST Act on the assessee on such portion of the turnover which has not been subjected to tax under Sections 5, 5-A, 5-B, 5-C or 6?

c. Whether the Tribunal is right in following the law declared by this Hon''ble Court in ECI Engineering and Construction Co., Ltd. Vs. Additional Commissioner of Commercial Taxes, Zone I,

4. The assessee has placed sufficient material to show that he has not purchased jelly from outside agency and used the jelly from his quarry and paid the royalty to the Government. In that view, the finding of the Tribunal that the assessee is not liable to pay purchase tax on jelly is sound and proper.

5. However, the assessee accounted towards the purchase of sand from unregistered dealers. Therefore, levy of purchase tax on sand component would be sound and proper and contra finding of the Tribunal is set aside. With regard to resale tax, the material produced before the Tribunal and before the authorities below, which states that the sub-contractor has been given due deduction of the resale tax. The contention that the department is trying to levy of resale tax on the contractor and sub-contractor is incorrect. The Tribunal has dealt with the proposition of the law laid down in the case of ECI Engineering and Construction Company Limited. In the said case, this Court had held that the department cannot levy resale tax on both the contractors i.e., the original contractor as well as the sub-contractor. Here in the instant case, there is no such double levy of tax. Therefore, the ratio laid down has no application to the facts on hand. For the reasons stated above, the questions of law is partly answered in favour of the Revenue, insofar as the levy of tax on sand is concerned. The petitions are allowed.

