
(2010) 03 KAR CK 0001

In the Karnataka High Court

Case No : S.T.R.P. No"s. 86 of 2007, 52 to 107 and 123 of 2008

State of Karnataka

APPELLANT

Vs

Hindustan Aeronautics Ltd.

RESPONDENT

Date of Decision : 11-03-2010

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 5 B

Citation : (2011) 39 VST 205

Hon'ble Judges : K.L. Manjunath, J;B.V. Nagarathna, J

Bench : Division Bench

Advocate : Ashok Haranahalli, General, for the Appellant; M.R. Narayan, for M.R. Narayan and Co., for the Respondent

Judgement

K.L. Manjunath, J.—At the request of the Respondent's counsel and the learned Advocate-General, all these matters are heard together.

2. Legality and correctness of the order passed by the Karnataka Appellate Tribunal, Bangalore, in S.T.A. Nos. 564-571 of 2002 and other connected cases. State has come up in these revision petitions raising the following substantial questions of law:

(1) In the facts and circumstances of the case, whether the Tribunal is justified in giving a finding that the transactions between the Assessee-company and the Indian Air Force which is bilateral shall not be treated as sale or works contract for the purpose of taxation under the KST/CST Acts?

(2) Whether, in the facts and circumstances of the case, the Assessee-company, being an independent legal entity registered under the Companies Act as a company is a separate entity by itself which is different from Ministry of Defence?

(3) In the facts and circumstances of the case, whether the Tribunal is right in considering the works contract executed by the Assessee-company as inter-State works contract not eligible to levy of tax?

(4) In the facts and circumstances of the case, whether the Tribunal is justified in holding that the sales effected by the Assessee-company to the Indian Air Force cannot be construed as inter-State sales attracting the levy of tax under the CST Act?

3. Facts leading to this case are as hereunder:

The Respondent-Assessee is a public limited company incorporated under the provisions of the Indian Companies Act, 1956. The Respondent is engaged in the business of manufacture and sale of aircrafts, helicopters, aero engines and fabricated parts and accessories of aircrafts and helicopters. It also undertakes repairing, overhauling, maintenance and service of aircrafts, helicopters, engines, instruments and their accessories. The Respondent is a dealer registered under the provisions of the Karnataka Sales Tax Act, 1957. It has different divisions such as:

- (1) Air craft division
- (2) Helicopter division
- (3) Overhaul division
- (4) Engine division
- (5) Aerospace division
- (6) Foundry & forge division
- (7) ARDC division
- (8) RWRDC division, etc.

The Assessee filed returns separately for each division and each division is registered separately as a dealer. The assessing authority concluded the assessment separately on division-wise basis. The Respondent-Assessee claimed exemption on the sale consideration received from LAF as nontaxable CST sales and the works contract executed as inter-State works contract. It was submitted by the Respondent that each division of the organization was treated as separate and independent from other divisions for administration and control purpose. The Assessee has maintained accounts separately in respect of each divisions and similarly accounts in respect of those divisions are also audited separately and returns are filed separately.

4. Intelligence authorities of the Petitioner inspected the business premises of the Respondent and a report was submitted on January 9, 2003. Report disclosed that entire work was carried out at Hindustan Aeronautics Limited workshop, Bangalore, and inspection and certification regarding satisfactory completion of work was done at Hindustan Aeronautics Limited premises. The goods were delivered at Hindustan Aeronautics Limited premises as evident from declaration in form No. 530 used by the defence customers to take delivery of goods at Hindustan Aeronautics Limited premises. Therefore, it was reported that the

nature of transactions cannot be considered as inter-State works contract. Accordingly, assessing authority levied tax u/s 5B of the Karnataka Sales Tax Act as local works contract on the transactions of work, works executed by the assessee-company. The Assessee also claimed exemption in respect of spares, aircrafts and helicopters made to Indian Air Force as non-taxable CST sales on the ground that there was no bilateral transactions with the Defence Ministry and the said defence was also rejected by the assessing authority and tax was levied treating the sale of spares, helicopters and aircrafts and inter-State sales falling u/s 3(a) of the CST Act.

5. The Assessee aggrieved by the order of assessment, filed an appeal before the first appellate authority which authority dismissed the appeals on November 25, 2002. Aggrieved by the order of the first appellate authority, second appeal was preferred before the Karnataka Appellate Tribunal, Bangalore which appeal came to the allowed on April 18, 2006 remanding the matter to the assessing officer.

6. Being not satisfied with the order of remand, the Respondent-Assessee filed an application for rectification of the order dated April 18, 2006 which was allowed by the Tribunal on March 8, 2007 by granting full relief to the Assessee by setting aside the order of remand. Being aggrieved by the same, present revision petitions are filed by the State.

7. We have heard the learned Advocate-General for the revision Petitioners and Mr. Narayan for the Respondent-Assessee.

8. The learned Advocate-General contends that considering the nature of transaction and the manufacturing process of the Respondent-Assessee, contention of the Assessee that the supply made by it to the Defence Department whether aircraft or helicopter or any other machinery cannot be considered as a sale or works contract has to be negated. According to the State, considering the profit and loss account of the Respondent-Assessee, accounts maintained by the Assessee depicts profit earned by it and provision made for payment of taxes both income tax and sales tax, therefore he contends that the transaction between the Defence Department and the Respondent-Assessee is in the nature of sale in view of Section 5B of the Sales Tax Act which reads as hereunder:

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 Sub-section (3) or Sub-section (3C) of Section 5, but subject to Sub-section (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.

9. According to the learned Advocate-General, even if it termed as a works

contract it also amounts to sale only and it was for the Assessee to collect sales tax from the buyer and remit the same to the Department. It is also contended that the Respondent-Assessee has collected taxes for selling the spare parts not only to different purchasers but also to the Airforce Department only. He has produced certain invoices of the Respondent to show that it had collected Central sales tax on the inter-State sale in respect of spares sold to Navy, Airforce, etc. Relying upon these documents, he contends that the transaction between the Assessee and the Defence Department and the transactions between the Assessee and other purchasers has to be treated as a sale and sales tax has to be paid by the Assessee.

10. Per contra, Sri Narayan, counsel appearing for the Respondent contends that the Respondent-Assessee and the Defence Department cannot be treated as different entity and it has to be treated as one entity. He further contends that the Respondent-Assessee has been incorporated as a company under the provisions of the Indian Companies Act, 1956 only to manufacture machineries to be supplied to the Defence Department and the entire control of the Respondent-Assessee is by the Defence Department and the President of India, therefore transaction between the Assessee and the Defence Department cannot be termed either as inter-State sale or as works contract. He further contends that Defence Department has set up defence store within Hindustan Aeronautics Limited premises and all materials are supplied from the defence store and if any shortfall in the material to be supplied by the Defence Department, in such circumstances, Respondent can purchase material from outside under the supervision and direct control of the Defence Department and he further submits that even the wages payable to the employees of HAL or any benefits to be given to its employees are under the complete control of the Defence Department, in the circumstances he contends that by lifting the corporate veil this Court has to dismiss the revision petitions of the Revenue holding that the transaction of supply of machineries by the Assessee to the Defence Department cannot be termed either as a sale or as a works contract, therefore he requests the court to dismiss these petitions.

11. Having heard the counsel for the parties, what is observed by this Court is that HAL is a corporate body incorporated under the provisions of the Indian Companies Act, 1956. By looking into the memorandum of association and the articles of association, it is treated as a separate legal entity. By looking into the various letters produced by Mr. Narayan, HAL is under the direct control of the Defence Department. It is also not in dispute that the materials supplied by the Defence Department to the Assessee through its stores under separate agreement. In what manner the machineries are to be manufactured and sold and how the machinery sold to the defence has to be valued, is the prerogative of the Defence Department. The contract further reveals that the Respondent-Assessee is entitled for 10 per cent over and above the actual expenses incurred for the manufacture of aircrafts, helicopters, engines and other accessories. Agreement further provides that sales tax is to be deducted wherever it is

applicable. From the invoices produced by the Appellant-Government, it is clear that sales tax is also collected by the Respondent-Assessee in respect of spare parts sold by it either to Navy or to Airforce. With this background, we have to consider the nature of undertaking of the Assessee and whether the transactions between the Assessee and the Defence Department has to be considered as inter-State sale or works contract and whether Karnataka Sales Tax Act can be made applicable to the case of the Assessee based on the nature of the transaction of the Assessee whether Defence Department can be treated as its customer and whether contract entered into between the Defence Department and the HAL has to be treated as a works contract.

12. We have seen the order passed by the assessing officer. We have also seen the order passed by the first appellate authority as well as the second appellate authority. Before the assessing officer, the Respondent-Assessee has not placed any material in regard to the defence raised on its behalf to claim exemption. In other words, we are of the opinion that the materials which were required to be placed before the assessing officer either to lift the corporate veil or to understand the nature of transaction between the Defence Department and the Respondent-Assessee in regard to nature of sales made by it to its customers within the State and in regard to spare parts sold by the Respondent-Assessee either to Navy or to Defence Department or to any of its customers as a inter-State sale or to claim exemption in respect of entire transaction of the Respondent-Assessee in view of its contention that the Respondent-Assessee has been established by the Defence Department of the Central Government only to manufacture and supply of aircrafts or helicopters or any other machineries manufactured by it to be supplied only to Defence Department and to hold that the Assessee is a part and parcel of the Defence Department and cannot be taxed in respect of its transactions between the Defence Department and the Assessee or not were not produced by the Respondent. Similarly, first appellate authority had no occasion to consider these facts. But the Tribunal, without considering the facts involved in this case relying upon certain judgments has come to the conclusion that there is no sale or purchase between the Assessee and the Indian Airforce. While considering the points which had arisen for its consideration, the Tribunal has not dealt in detail in regard to the sale of spare parts to the Navy or Airforce collecting Central sales tax on sale of goods by the Assessee within the State to its different customers. Without considering these factual aspects the Tribunal has granted relief at the first instance remanding the matter to the assessing officer and later on order has been modified by setting aside the entire order of assessment on the ground that there is a mistake apparent on record. But in the order of rectification, it is not stated what was the mistake committed by the Tribunal in passing the earlier order.

13. In this background we are of the opinion that the matter requires to be reconsidered by the assessing officer without answering the questions of law framed in this revision petition for the following reasons: Admittedly the Assessee-company is a Defence owned company established for the manufacture

and repairs of helicopters, aircrafts, air engines, etc., and the same cannot be considered as a distinct or separate entity and whether it has to be treated as a part and parcel of the Defence Department and that the transaction between the Respondent-Assessee and the Defence Department is neither sale nor works contract can be considered only by lifting the corporate veil. We have also come across ruling of the Supreme Court between the same parties Hindustan Aeronautics Ltd. Vs. State of Karnataka, . The dispute in the aforesaid judgment was in regard to the sale of spare parts to the Airforce and whether such sale would amount to works contract or not. Said judgment has been delivered by the Supreme Court as per the provisions prior to 46th Amendment to the Constitution of India. If there was no 46th Amendment to the Constitution, it would have been easy to follow the judgment of the apex court. But after amendment, even works contract is held to be deemed sale. Therefore in this background we are of the opinion that judgment relied upon by the counsel for the Respondent-Assessee is of no assistance in the background of this case. When such a defence was not raised before the assessing officer, when no material was placed by the Respondent-Assessee either before the assessing officer or before the first appellate authority, we are of the opinion that corporate veil cannot be lifted in a revision petition before this Court without there being a foundation laid by the Respondent-Assessee and that too when the assessing officer had no opportunity to examine the nature of activities of the Respondent and the contract entered into between the Indian Air force and the Respondent. Transaction is not only between the Defence Department and the Respondent but the Respondent-Assessee is also having sale transaction with others. Therefore, the assessing officer could not pass an order by examining the relevant records and the nature of transaction between the Assessee and its customers in detail and similar handicap was there for the first appellate authority and so far as the order of the Tribunal is concerned, the Tribunal without considering the factual aspect relying upon certain decisions has given judgment which according to us requires to be set aside and the matter requires to be re-considered by the assessing officer by giving an opportunity to the Respondent-Assessee. The Respondent-Assessee is also permitted to produce all necessary documents before the assessing officer in order to claim exemption. Assessing officer, considering the nature of transaction between the Assessee and the Defence Department and the transaction between the Assessee and third parties and inter-State sale and so also sale transaction within the State shall take appropriate decision in accordance with law.

14. Accordingly, the revision petitions are disposed of. Considering the fact that the assessment is pertaining to 1994-95 onwards, we direct the assessing officer to expedite the matter and dispose of the same within a period of six weeks from the date of receipt of this order.