(2014) 02 KAR CK 0197

In the Karnataka High Court

Case No : Sales Tax Revision Petition Nos. 348 of 2012 and 222 to 228 of 2013

State of Karnataka APPELLANT

Vs

Krishvi Projects Private Limited RESPONDENT

Date of Decision : 13-02-2014

Acts Referred:
Karnataka Value Added Tax Act, 2003 — Section 2(29)

Citation : (2014) 78 KarLJ 307

Hon'ble Judges : Dilip B. Bhosale, J;B. Manohar, J

Bench : Division Bench

Advocate : T.K. Vedamurthy, High Court Government Pleader, Advocate for the Appellant; N. Venkataraman, Senior Advocate for Sri M. Thirumalesh, Advocate for the Respondent

Judgement

Dilip B. Bhosale, J.—We have heard learned Counsel for the parties.

This group of sales tax revision petitions is arising from the order dated 28th July, 2011 passed by Karnataka Appellate Tribunal, Bangalore (for short, "the Tribunal") in STA Nos. 2445 to 2452 of 2010. The Tribunal had framed the question of law as follows and answered it in the negative:

Whether the land price will get included in the amount of total receipt on the occasion of paying tax as per conciliation scheme in building work contract?

In the present petitions, we have formulated the following substantial questions of law which need consideration:

Whether the nature of transaction/joint development agreement between the landowner and the developer, in the present case, would oblige either of them to pay tax on the transfer of goods involved in the execution of works contract in respect of developer''s share and/or landowner''s share and if yes, who has to pay the tax?

2. We have also formulated one more question with the assistance of learned

Counsel for the respondent-assessees, "whether the transaction/joint development agreement between the landowner and the developer is a barter by which, the landowner delivers the agreed upon share of the land to the builder and in consideration therefore, requires the builder to construct apartments in his (landowner''s) share of land and deliver to him as a part of consideration, amount to sale within the definition in Section 2(29) of the Karnataka Value Added Tax Act, 2003 and if yes, who is liable to pay tax on the material/goods involved in execution of the works contract?"

3. Though these questions undoubtedly arise for consideration in these matters, were admittedly not raised/considered before/by the Tribunal. In view thereof, learned Counsel for the parties, have agreed for remand of these matters to the Karnataka Appellate Tribunal with direction to consider these questions. In the circumstances, we are satisfied that these revision petitions can be disposed of by the following order:

The Tribunal shall consider and decide the substantial questions of law, aforementioned, on merits in accordance with law, as expeditiously as possible and preferably within a period of eight months from date of a receipt of this order. It is needless to mention that the Tribunal shall decide these questions after giving an opportunity of being heard to both the sides. It is open to the parties to place all the materials, if they so desire, before the Tribunal including judgments of High Courts and the Supreme Court, if any, in support of their contentions. We hope and trust that the Tribunal shall decide the questions after considering the material that will be placed before it by the parties within the stipulated time. All contentions on these questions are kept open. It is further needless to mention that while dealing with the question framed by us it is open to the Tribunal to deal with connected questions/issues, if any, raised in the course of hearing of the appeal and record its finding on all such questions/issues.

The principle question that is raised in these revision petitions, in respect of land value is admittedly covered by the judgment of the Supreme court in Larsen and Toubro Limited and Another Vs. State of Karnataka and Another, , and in view thereof, that stands answered against the State and in favour of the respondent-assessee.

With these observations, the sales tax revision petitions are disposed of. No costs.

