(2010) 07 KAR CK 0015

In the Karnataka High Court

Case No : Sales Tax Revision Petition No. 95 of 2009

State of Karnataka APPELLANT

Vs

L and T Finance Limited RESPONDENT

Date of Decision : 20-07-2010

Acts Referred:

Citation : (2011) 43 VST 139

Hon'ble Judges : N. Kumar, J;B.V. Nagarathna, J

Bench : Division Bench

Advocate : Vedamurthy, High Court Government Pleader, for the Appellant; G. Rabinathan and M. Thirumalesh, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar J.

1. This sales tax revision petition is by the Revenue challenging the order passed by the Karnataka Appellate Tribunal, which has modified the order passed by the first appellate authority and remitted the matter back to the assessing authority for fresh disposal.

2. The facts of the case leading to the filing of this revision petition are that during the financial year 1995-96, the respondent-company was a nonresident registered under the Karnataka Sales Tax Act, 1957 (hereinafter, referred to as "the Act", for brevity), engaged in financing activity against hire-purchase of machinery and also the respondent/assessee was engaged in leasing activities in respect of lease of photo copiers and other machineries. The respondent had claimed exemption from the levy of tax in respect of hire-purchase receipts to an extent of Rs. 9,22,784. It also had claimed exemption from the levy of tax on receipts from leasing of equipment to the extent of Rs. 32,29,368. The assessing authority partly rejected the exemption claimed and enhanced the total taxable turnover at Rs. 1,06,10,618 and Rs. 96,49,673, respectively. The claims of the appellant towards exemption on lease receipts as being in the course of inter-

State trade were also rejected by the assessing authority.

3. Aggrieved by the said order, the assessee preferred an appeal. The appellate authority set aside the assessment order and remitted the matter back to the assessing authority for fresh disposal. The assessing authority, after such remand virtually restored the order, which was set aside. Again, an appeal was filed before the first appellate authority. The first appellate authority partly allowed the said appeal and deleted the enhancement made in respect of hire-purchase transactions and affirmed the taxable turnover determined in respect of lease transactions, inasmuch as the total and taxable turnover stood determined at Rs. 41,52,152. Aggrieved by the same, the assessee preferred an appeal to the Tribunal.

4. The Tribunal on a careful consideration of the rival contentions held that insofar as the hire-purchase transaction was concerned, whether the impugned transaction answered the requirement of law as explained in various judgments was an intricate question which had to be decided based on a detailed examination of the relevant factual evidence. Only a part of such evidence had been produced before the Tribunal. Therefore, the Tribunal was of the view that it was appropriate to remit this issue for detailed scrutiny of the relevant documentary evidence with regard to the claim of exemption in respect of the impugned hire-purchase transaction of the assessee executed in favour of M/s. Electrex (India) Ltd., Bangalore. Therefore, the levy of tax u/s 5C was deleted and the matter was remanded back to the appellate authority for fresh consideration.

5. Insofar as the lease receipts are concerned, relying on the judgment of the apex court in the case of 20th Century Finance Corpn. Ltd. and Another Vs. State of Maharashtra, it was held that, notwithstanding the execution of the relevant agreement at Bangalore the transfer of right to use goods in this case had to be field as having occasioned the inter-State sale of goods and for that reason such transactions which were to the extent of Rs. 22,68,423 were declared as being exempted from levy of tax u/s 5C of the KST Act. For the same reasons, the levy of tax on lease was to the extent of Rs. 9,60,945 in respect of Modi Xerox Ltd., was also ordered to be deleted. Aggrieved by this order, the Revenue is in appeal.

6. We have heard the learned counsel for the parties.

7. Though the learned counsel for the Revenue contended that the approach of the Tribunal in setting aside the levy of tax on hire-purchase transaction is erroneous, we are of the view that as the entire matter is now remitted back to the assessing officer for a fresh assessment and order, after going through the entire factual aspects as contained in the document relied on by the parties, no case for interference with the said portion of the order is made out.

8. Insofar as the challenge to the deletion of lease receipts is concerned, the same is based on the law declared by the apex court in 20th Century Finance Corpn. Ltd. case [2000] 119 STC 182 (SQ; [2001] 50 KLJ 245. In the aforesaid

judgment it is held as under (at pages 207 and 208 of STC) :

40. A perusal of Explanation 3(d) to section 2(1)(t) shows that the transfer of right to use any goods would be deemed to have taken place in the State of Karnataka if the goods are for use within the State irrespective of the place where the contract of transfer of right to use the goods is executed. The said Explanation 3(d) to section 2(1)(t) widens the ambit of definition of ''sale'' by including sales outside the State of Karnataka and the sales which occasioned import of goods into India, merely on the premise that goods put to use are located within the State of Karnataka irrespective of the place where the contract or transfer has taken place. This Explanation is in excess of legislative power under entry 54 of List II of the Seventh Schedule. Another important aspect to notice is that the provision of section 5(3) which provides for single point taxation has been omitted in its application to section 5C. Therefore, Explanation 3(d) to section 2(1)(t) of the Act has to be held in excess of legislative power conferred to the State Legislature under entry 54 of List II of the Seventh Schedule to the Constitution following the reasoning given while discussing the Maharashtra Act. We, accordingly, direct that Explanation 3(d) to section 2(1)(t) of the Act shall be read down to this effect that it would not be applicable to the transactions of transfer of right to use any goods if such deemed sale is (i) an outside State sale, (ii) sale in course of the import of the goods into or export of the goods out of the territory of India and (iii) an inter-State sale.

9. In view of the aforesaid declaration of law, Explanation 3(d) to section 2(1)(t) are held to be not applicable to a transaction of transfer of right to use any goods, if such sale is an outside State sale, or the sale in the course of the import of the goods into or export of goods out of territory of India. In the instant case, it was an inter-State sale as rightly held by the Tribunal. In that view of the matter, we do not see any merit in the appeal.

10. In the result, we dismiss the appeal at the stage of admission.

