(2014) 07 KAR CK 0083

In the Karnataka High Court

Case No : Sales Tax Revision Petition Nos. 436 to 438 of 2012

State of Karnataka — APPELLANT

Vs

Zen Projects and Construction Private Limited — RESPONDENT

Date of Decision : 09-07-2014

Acts Referred:
Karnataka Value Added Tax Act, 2003 — Section 39(1)

Citation : (2014) 79 KarLJ 669

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

Bench : Division Bench

Advocate : S. Sujatha, Additional Government Advocate, Advocate for the Appellant; M. Thirumalesh, Advocate for the Respondent

Judgement

N. Kumar, J.—The Revenue has preferred these revision petitions challenging the order passed by the Tribunal holding that transformers are the constituents of the Hydel Project and therefore they fall within the classification of renewable energy device and liable to tax at 4% as it finds entry in Entry 80 in Third Schedule of the Karnataka Value Added Tax Act, 2003. The assessee is a private limited engaged in the supply of goods for erection, testing and commissioning of equipments for power transmission lines, power house, etc., and registered as a dealer under the provisions of the Karnataka Value Added Tax Act, 2003 (hereinafter referred to as "the Act"). It is borne on file of the LVO-200, Mysore.

2. The assessee supplied transformers to Atria Brindavan Private Limited, Bangalore in whose favour M/s. KPTCL had awarded a contract for construction of Mini Hydel Power Project. In terms of the contract, the assessee supplied iron and steel structures, transformers, distribution boxes, etc. In the reassessment proceedings initiated u/s 39(1) of the Act, the Deputy Commissioner of Commercial Taxes levied taxes at the rate of 12.5% in respect of the sale of transformers. Aggrieved by the same, the assessee preferred an appeal to the Joint Commissioner of Commercial Taxes who rejected the claim of the assessee and dismissed the appeal. It is against the said orders, the assessee preferred

appeal to the Karnataka Appellate Tribunal.

3. The Tribunal on consideration of the rival contentions and also taking note of the clarification issued by the Karnataka Renewable Energy Development Limited held that the transformers supplied by the assessee is one of the constituents of the Hydel project, which is classified as renewable energy device. The assessee is entitled to the benefit of tax at 4% and therefore, it set aside the order passed by the lower authorities. Aggrieved by the said order, the Revenue is in revision.

4. The question that arise for our consideration in these revision petitions is as under:

"On the facts and in the circumstances of the case, and in law whether the Tribunal is right in holding that the levy of tax at 4% is correct in respect of sale of transformers used in construction of Mini Hydel Project fall under Entry 80 of Third Schedule of Karnataka Value Added Tax Act, 2003 (renewable energy devices)?"

5. The learned Counsel appearing for the State assailing the impugned order contended that the transformer is not a renewable energy device. The transformer is available in the market and therefore, merely because such a transformer is used in running the renewable energy device, it would not fall within Entry 80 of Third Schedule and therefore, the Tribunal was not justified in setting aside the orders passed by the lower authorities.

6. Per contra, the learned Counsel appearing for the assessee submitted that the transformer which is supplied to their clients by the assessee is clients'' specific. The transformers are manufactured keeping in mind, the requirement of the client for setting up a renewable energy device and therefore, it falls under Entry 80 of Third Schedule of the Act. Therefore, he submits that the order of the Tribunal is proper and do not call for any interference.

7. It is not in dispute that the assessee is in the business of manufacturing goods for erection, testing and commissioning of equipments for power transmission lines, power house, etc. In pursuant to the contract entered by the assessee with Atria Brindavan Private Limited, it supplies iron and steel structures, transformers, distribution boxes, etc. and the renewable energy device is erected using the materials supplied by the assessee. One such material goods supplied is transformer. The transformer is a part of renewable energy device. The said transformer is manufactured keeping in mind the need of the clients. In other words, it is clients'' specific. It is not available in the open market. This renewable energy device is erected to run the hydel project whereby using water electricity energy. The energy is produced. The Karnataka Renewable Energy Development Limited, a Government of Karnataka Enterprise, which is expert body dealing with renewable energy device has also opined that the electro mechanical equipments like turbines, generators, gear boxes, cables, control panel, transformers, switch gear and hydro mechanical gates are renewable energy devices.

8. This Court in the case of Enercon (India) Ltd. Vs. State of Karnataka, , held at paragraph 19 that the electrical work and transformers are vital parts of a windmill and the windmill cannot be put to use and it would not be functional device without the electrical works and the transformers. The said observation equally applied to setting up a hydel project, where without a transformer a hydel project cannot be made functional. In paragraph 20 of the judgment it is observed as under:

"We do agree that the Karnataka Renewable Energy Development Limited, a Government of Karnataka Enterprise is an expert body dealing with the windmills and its opinion on the wind mill is expert''s opinion on the subject-matter of windmills. Due weightage requires to be given to their opinion. In the present case, admittedly, it has clarified that among others, foundation work, transformers and electrical work form part of the windmill. The said opinion cannot be taken as a guide for the purpose of understanding and interpreting an Entry in the Schedule to the Act. At the most, its opinion may be taken as a piece of information to understand the function of a windmill and what are the components that are the inputs required to make the windmill fully functional".

In this case also, we have the opinion as set out above. Under these circumstances, we are satisfied that the Tribunal was justified in holding that the transformers supplied by the assessee along with other machinery for setting up a hydel project constitute a part of a renewable energy device and it falls within Entry 80 of Third Schedule and therefore, the order passed by the Tribunal cannot be found fault with. Accordingly, the question of law is answered in favour of the assessee and against the Revenue.

No merit, the petitions are dismissed.

