(2010) 09 KL CK 0007

In the High Court Of Kerala

Case No : STRV No''s. 118, 123, 147, 151, 180, 181, 191 and 192 of 2010

State of Kerala APPELLANT

Vs

Pathrose George Karamen RESPONDENT

Date of Decision : 14-09-2010

Acts Referred:
Kerala General Sales Tax Act, 1963 — Entry 22

Citation : (2012) 51 VST 53

Hon'ble Judges : K. Surendra Mohan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : Mohammed Rafeeq, Government Pleader, for the Appellant; Mohammed kutty K.B. and S. Anil Kumar, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The question raised in all these revision cases is whether the Tribunal was justified in holding that pipe laying contracts executed by the assessees in all these cases fall under the residuary entry 22 of Schedule IV of the Kerala General Sales Tax Act, 1963 which provides for assessment of works contracts not specifically mentioned in items 1 to 21 of the Schedule. The Contracts involved which are claimed to be civil works by the assessee are essentially pipe laying works done by them for the Kerala Water Authority in which pipes were also supplied by the assessees. Overruling assessee''s claim, the assessments were done treating the work as falling under entry 15 of the Fourth Schedule and the same was confirmed in first appeal. However, in the second appeals filed by the assessees, though the Tribunal did not accept their claim it reversed the findings of the first appellate authority and the assessing authority and held that the work falls under the residual entry 22 of the Fourth Schedule which provides for assessment of work contracts not specifically covered by any other entry in the Schedule. It is against this decision of the Tribunal, both the assessees as well as the Department filed revisions, STRV Nos. 118; 123, 180 and 181 of 2010 for the assessment years 2003-04 and 2004-05. In the case of other two assessees (STRV No. 147 of 2010 and 151 of 2010), there is no Department appeal, because irrespective of the classification of the work adopted by the Tribunal, the assessee got the benefit of lower rate of tax on account of the compounding allowed for contracts of the value below Rs. 50 lakhs. We have heard senior counsel Mohammedkutty K.B. and Mr. S. Anil Kumar, the counsel appearing for the respondent and Sri Mohammed Rafeeq, the Government Pleader appearing for the petitioners. The counsel for the assessees have relied on the decision of the Tamil Nadu Taxation Special Tribunal in Indian Hume Pipe Co. Ltd. v. Commercial Tax Officer reported in (2001) 124 STC 311 (TNTST) and contended that pipe laying work should be treated as canal work because the purpose in both is for flow of water. The Government Pleader on the other hand relied on the Division Bench judgment of this court in the case of S. Philipose v. State of Kerala reported in (2002) 126 STC 210 and contended that pipe laying work executed by the assessees for water authority falls under entry 15.

2. Since the assessments were made treating the work as falling under entry 15, we have to consider whether the assessment is tenable or not and if so, we have to necessarily reverse the order of the Tribunal by allowing the revision cases. The residual entry applies only to cases which are not covered by any of the specific entries. Entry 15 is extracted hereunder :

Supply and erection of sanitary fittings and articles for pumping, drainage, sewages, etc.

3. We find that the issue is squarely covered by our decision in the case of S. Philipose reported in (2002) 126 STC 210 (Ker) referred above. Even though the counsel for the assessees contended that pipe laying work for the water authority involves digging of canals and laying of pipelines on stable bed of land and both pipes and canals are used for flow of water, we do not think the contention is acceptable because the entry as stated above specifically covers pipe laying work irrespective of whether pipes laid are used for flow of drinking water or for drainage or sewage purposes. What is clear from the entry is that pipes laying done for pumping, drainage, sewage, etc., are covered thereunder. Pumping, necessarily requires installation of pump and laying of pipeline to take, water to the destination. Without laying pipeline, water cannot be pumped to the destination. So much so, pipe laying done for pumping water falls within the ambit of entry 15. In Water Authority''s case, the pipe line laid is for pumping water to the destination of the consumers. The civil construction work involved that is making trenches for laying the pipeline is essentially incidental to the pipe laying work and after pipes are laid, the trenches are also filled and closed. So much so, the work is essentially laying pipeline on the surface of the ground or beneath it for carrying water from one place to another. The decision of the Special Tribunal at Madras relied on by the petitioners, in our view, does not lay down the correct position of law and the order is also not rendered in the context of any entry similar to entry 15 of the Fourth Schedule to the Kerala General Sales Tax Act referred above. We are also of the view that entry 15 is a general entry which covers all types of sanitary, drainage, sewage and water supply work

involving laying and fixing of pipes and pipe fittings.

4. The counsel for the petitioner in STRV No. 147 of 2010 and STRV 151 of 2010 contended that some items of work involved are construction of pump house and water tanks. Of course, if separate works are awarded for construction of water tanks and buildings to house pumps and if the works are done with bricks, concrete, etc., such works are assessable as civil works. However, we do not find any findings on this in the Tribunal''s order and no such question is raised in the revisions also. In view of our above findings, the two revisions filed by the State (STRV Nos. 118 of 2010 and 123 of 2010) are allowed reversing the orders of the Tribunal and by confirming the assessments. The revisions filed by the assessees will stand dismissed.