(2009) 09 KL CK 0030

In the High Court Of Kerala

Case No : S.T. Rev. No''s. 57 and 61 of 2009

State of Kerala — APPELLANT

Vs

Silpi Constructions Contractors — RESPONDENT

Date of Decision : 16-09-2009

Acts Referred:
Kerala General Sales Tax Act, 1963 — Section 5(1)

Citation : (2011) 40 VST 371

Hon'ble Judges : V.K.Mohanan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : Mohammed Rafiq, Government Pleader, for the Appellant; V.P. Sukumar, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—Question raised in the connected revisions filed by the State is whether the Tribunal was justified in sustaining the first appellate order wherein the appellate authority held that the rate of tax payable on the sale of timber and plywood involved in the execution of works contract is at two per cent as against eight per cent assessed under item Nos. 18 and 19 of the Fourth Schedule to the Kerala General Sales Tax Act, 1963. We have heard Government Pleader appearing for the Petitioner and counsel appearing for the Respondent and have also perused the orders including that of the Tribunal.

2. The Respondent is engaged in civil construction work and for construction of buildings and other civil construction work, they have purchased timber, plywood, etc. These items fall under the Fifth Schedule to the KGST Act attracting tax at two points of sale. The rate applicable at the last point of sale of the goods in the State is at 2.5 per cent up to December 31, 1999 and thereafter at the rate of two per cent. The Respondent admittedly purchased timber and plywood by paying tax at the point of first sale in the State. There is no dispute that the items purchased are resold, but in the execution of works contract on which tax is payable by the Respondent. However, the question raised is whether tax payable is at the rate of 2.5 per cent or two per cent as provided in the Fifth

Schedule or at the rate of eight per cent as provided in entries 18 and 19 of the Fourth Schedule to the KGST Act. In order to consider the question raised, we have to necessarily refer to the charging Section on works contract which as contained in Section 5(l)(iv) is as follows:

5. Levy of tax on sale or purchase of goods.--(1) Every dealer (other than a casual trader or agent of a non-resident dealer) whose total turnover for a year is not less than two lakh rupees and every casual trader or agent of a non-resident dealer, whatever be his total turnover for the year, shall pay tax on his taxable turnover of that year,--

....

(iv)(a) In the case of transfer of goods involved in the execution of works contract where transfer is in the form of goods at the rates and at the points specified against such goods in the First, Second or Fifth Schedule ;

(b) In the case of transfer of goods involved in the execution of works contract (where the transfer is not in the form of goods but in some other form) specified in the Fourth Schedule, at the rate specified against such contract in the said Schedule:

....

3. It is clear from Sub-clause (a) of Clause (iv) above that tax on goods is payable at the rate prescribed under First, Second or Fifth Schedule only when the transfer of goods in the execution of works contract takes place in the same form. The Respondent has no case that the timber and plywood purchased are sold or supplied as such to the awarders. Normally timber and plywood are used in civil construction work for making doors, windows, ceiling, panelling work, etc. Therefore, what is done is appropriation of the goods for the work required for the customer. In other words, there is no sale of timber or plywood in the form in which it is purchased. Therefore, Clause (a) providing for levy of tax at the rate prescribed under the Fifth Schedule is not applicable for the timber or plywood purchased and used in execution of works contract. Even though counsel for the Respondent relied on proviso to Sub-clause (iv) of Section 5(1) and has also relied on decision of this Court in Symon v. State of Kerala (1995) 97 STC 283, we do not think there is anything in that judgment indicating that timber or plywood used for civil construction work is assessable under the Fifth Schedule. The contention of the counsel for the Respondent is that by virtue of the judgment abovereferred, tax on works contract is payable on the value of the goods and not on the intermediary products. We do not think there is any scope for considering this issue because it has no bearing on the rate of tax applicable and this issue has probably relevance in the determination of taxable turnover on works contract which is not an issue raised in the revision cases filed by the State. We, therefore, conclude by stating that the rate of tax applicable for works contract involving supply of timber, plywood, etc., is the rate provided under entries 18 and 19 of the Fourth Schedule to the KGST Act depending on the

nature of work. Consequently the orders of the Tribunal and that of the first appellate authority are reversed and assessment is restored on rate of tax.

