(2009) 09 KL CK 0031

In the High Court Of Kerala

Case No : S.T.R. No. 303 of 2008

State of Kerala APPELLANT

Vs

Thrimathy Contracting Company RESPONDENT

Date of Decision : 08-09-2009

Acts Referred:
Kerala General Sales Tax Act, 1963 — Section 5(1), 7(7)

Citation : (2009) 4 KLT 982 : (2011) 44 VST 70

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

Bench : Division Bench

Advocate : Mohammed Raffiq, Government Pleader, for the Appellant; R. Ramadas, for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—The question raised in the Sales Tax Revision filed by the State is whether the Tribunal was justified in holding that the work executed by the respondent, viz., supplying and applying hot white thermoplastic road marking paint, marking of pedestrian crossing, zebra crossing etc. with white and yellow paints on road constitute civil works within the meaning of Section 7(7) of the Kerala General Sales Tax Act, 1963 (for short ''the K.G.S.T. Act), entitling the respondent for payment of tax at compounded rate at 2%. We have heard learned Government Pleader appearing for the petitioner and Sri. Ramadas, appearing for the respondent.

2. The work involved is awarded to the respondent by the Kerala Public Works Department for marking of National Highway with hot white and yellow thermoplastic road marking paint. Under the work schedule, payment is for every square feet of painting work done on road in terms of the instructions of the PWD. Admittedly, paint marking on road is through the middle and at pedestrian crossings with zebra marking and also arrow indications on the road. While the case of the State is that the road marking through thermoplastic paint is a painting work done after construction of the road and an independent contract,

awarded to and executed by the respondent, the case of the respondent is that the road work was done by the Managing Partner of the respondent-firm and even though the work is separately awarded, it constitutes an integral part of the road construction work. The Tribunal accepted the contention of the respondent that marking with paint is a requirement for the National Highway and so much so, the construction of the road is said to be complete only when markings are done on the road and accordingly, declared the respondent''s entitlement for payment of tax at compounded rate, at 2%. Since the question pertains to respondent''s entitlement for compounding u/s 7(7) of the K.G.S.T. Act, we extract hereunder the said Section with Explanation thereto.

7. Payment of tax at compounded rates.-

xxx xxx xxx

(7) Notwithstanding anything contained in Sub-section (1) of Section 5, every contractor in civil works may, at his option, instead of paying tax in accordance with Clause (iv) of that Sub-section, pay tax at the rate of two per cent on the whole amount of contract.

Explanation: For the purpose of this section "civil works" means construction or repair or maintenance of buildings, bridges, roads, runways, dams, canals, wells, ponds, swimming pools, water tanks or culvert including any masonry work or any other work of the like nature as may be notified by Government in this behalf, from time to time, but shall not include any improvement or upgradation of such civil work by means of fixing or laying of all kinds of floor tiles, mosaic tiles, slabs, stones, marbles, glazed tiles, painting, polishing, partitioning, wall panelling, interior decoration, false sealing, carpeting, electrification, air conditioning or any other improvement on an existing structure.

(emphasis supplied)

It is clear from the above provision that payment of tax at compounded rate at 2% is provided only if the work awarded is a civil work. Under the Explanation in the above definition clause, civil work includes not only construction, but repair or maintenance of buildings, bridges and roads, runways, dams, canals, wells, ponds, swimming pools and similar works notified by the Government. It is to be noted that the Explanation provides for exclusion of certain items from the scope of civil work which includes painting. However, it is very clear from the Explanation that exclusion of certain items of work are those carried out to the existing structures. Therefore, the exclusion clause obviously does not cover construction work, but only covers such work which falls within the description of repair or maintenance. In other words, even though the items of work like replacement of floor tiles, painting, polishing etc. could be rightly called maintenance work, those are excluded from the scope of civil work by virtue of the specific provision contained in the Explanation. However flooring, painting, polishing etc. forming part of the construction contract will still be regarded as civil work, if such work is an integral part of the original contract awarded for construction. In other words, if a contract is awarded for construction of the building where the work involves laying of floor tiles, painting and polishing the building, then the entire work including these items will be treated as a civil work, entitling for payment of tax at compounded rate u/s 7(7) of the K.G.S.T. Act.

3. The next question to be considered in this case is whether the work executed by the respondent is part of the construction of the road, which alone will entitle the respondent for confessional rate of tax under the scheme of compounding provided u/s 7(7) of the K.G.S.T. Act, because the work done is not in the nature of repair or maintenance of the road. Government Pleader submits that construction of the road is complete in all respects prior to the road marking work done by the respondent with the application of special type of paints under a separate contract. Counsel for the respondent, on the other hand, contended that without marking with paint, the construction in the National Highway will not be complete and only after making the markings on the Highway, it is open for traffic. Even though we agree with the contention of Counsel for the respondent that paint marking on the Highway is a requirement for opening the Highway for traffic under the instruction issued by the Ministry of Surface Transport, we are of the view that such marking does not constitute part of the construction of the road. In the first place, marking is done after completion of the construction of the road and it is awarded under separate contract. In fact, existing roads are also marked with paints and it is invariably done when the road is declared as National Highway or State Highway. Therefore, paint marking is essentially a regulation introduced for smooth and safe vehicular traffic and it is not a part of road as a structure. In fact, ever so many roads are constructed and maintained in the State without any paint marking, whatsoever. It cannot be said that such roads are maintained without completion of the construction. In our view, marking of the road is not part of the construction of the road and it is a post construction work done for safe vehicular movement and the purpose is to guide the drivers and pedestrians using the road.

We, therefore, allow the Sales Tax Revision by reversing the order of the Tribunal and by confirming the assessment sustained in the first appeal.

