(2009) 10 KL CK 0112

In the High Court Of Kerala

Case No : S.T. Rev. No''s. 159, 162 and 167 of 2009

State of Kerala APPELLANT

Vs

Unitech Machines Ltd. RESPONDENT

Date of Decision : 13-10-2009

Acts Referred:
Central Sales Tax Act, 1956 — Section 3

Citation : (2010) 32 VST 80

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

Bench : Division Bench

Advocate : K. Vinod Chandran, Government Pleader, for the Appellant; T.M. Sreedharan, V.P. Narayanan and C.K. Shein, for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—These connected revision cases are filed by the State challenging the orders of the Sales Tax Appellate Tribunal issued in the case of the respondent/assessee for the assessment years 1997-98, 1998-99 and 1999-2000.

2. We have heard the Government Pleader appearing for the petitioner and advocate Sri T. M. Sreedharan appearing for the respondent.

3. The respondent-assessee was awarded contracts for supply and installation of fire fighting equipment by Bharat Petroleum Corporation Ltd., in the NTPC power plant at Kayamkulam in Kerala. Another order of similar type was issued to the respondent by the Indian Oil Corporation for setting up of fire fighting equipment, fire protection device, etc. in their LPG bottling plant installation at Kozhikode in Kerala. The respondent, after signing the contracts with these awarding companies, set up the offices at the respective sites of the awarders at Kayamkulam and Kozhikode. The respondent also took registration under the Kerala General Sales Tax Act as well as the Central Sales Tax Act in Kerala. The question that arose in the course of assessment is whether the goods purchased

and brought by the respondent from outside the State of Kerala and used for the execution of works contract represent inter-State sales to the awarders u/s 3(a) of the Central Sales Tax Act, 1956 or whether the value of the said goods should be included in the turnover on works contract assessable under the Kerala General Sales Tax Act, 1963. On the facts, it is admitted that the equipment made or fabricated outside Kerala was purchased by the respondent against the issue of C forms which obviously means that the goods were intended for resale in the State, which in this case is in the course of execution of works contract. The further finding of the Tribunal is that the awarders also treated the amounts paid to the respondent as consideration for works contract and so much so, they deducted tax at source from the bills raised by the respondent on the entire value of the contract and made payment of the balance amount only. The assessments completed treating the whole transaction as works contract were the subject-matter of the appeal before the first appellate authority before whom the respondent took the stand that the value of the goods brought from outside Kerala has to be excluded from the turnover of the works contract for the reason that the sales of those items were inter-State in nature. The first appellate authority dismissed the appeals and confirmed the assessments against which the assessee/respondent filed second appeals before the Tribunal. The appeal for the year 1998-99 was separately taken up by a Bench consisting of three members. While the majority accepted the respondent''s contentions and allowed the appeal, the third member held that the assessment of the entire turnover as works contract is absolutely tenable. However, the appeals pertaining to the assessment years 1997-98 and 1999-2000 went before another Bench of the Tribunal, which, on the merits, though held against the respondent, by upholding the finding in the assessment confirmed in the first appeal, still allowed the appeals for the reason that another Bench had on earlier occasion allowed the respondent''s appeal for 1998-99. The revision petitions filed by the State for the years 1997-98 and 1999-2000 are within time and the revision for 1998-99 is filed with delay. However, since we found merit in the contention of the State and since there is a dissenting order by one member of the Tribunal, we condoned the delay in filing the revision for the year 1998-99 by a separate order and entertained the same revision as well.

4. The Government Pleader contended that the work awarded to the respondent by the oil companies in Kerala did not provide for any inter-State sale of goods. Further, he also contended that the respondent also has not made any inter-State sales to the awarders. On the other hand, it is the admitted position that the goods from outside the State were purchased by the respondent for resale in the execution of works contract in Kerala and for this purpose, the respondent availed of concessional rate of tax under the Central Sales Tax Act by issuing C form declarations obtained from Kerala to the outside suppliers. The awarders also understood the contracts awarded by them as purely work orders and consequently, they have deducted tax from contract amounts while making payment to the respondent. These are facts clearly found by the Tribunal for the

assessment years 1997-98 and 1999-2000 and also by the member who wrote the dissenting order in the appeal filed for the year 1998-99. We are unable to uphold the majority decision of the Tribunal for the year 1998-99 for the reason that they have relied on a decision of this Court in Siemens Ltd. v. State of Kerala [2001] 122 STC 1 where the facts are entirely different inasmuch as the contractor-company in that case made inter-State sale of goods by invoicing the goods from outside the State to the awarders in Kerala. On the other hand, in this case, admittedly the respondent purchased equipment from outside Kerala and brought the same to Kerala for use in execution of works contract which is a subsequent sale after inter-State purchase. Even though counsel for the respondent relied on several decisions to canvass for the proposition that the works contract can involve inter-State sale, we do not think any such decision is applicable in this case because the two contracts given here are for supply and installation of fire fighting equipment at the site of the awarder to their satisfaction. In fact, the awarder has not contracted for the purchase of any particular equipment and on the other hand, the contract is for installation of a system of a particular kind to suit the requirement of the customer. Admittedly, the transfer of said equipment takes place only when the materials are incorporated to the work at site of the customer and the awarder will accept the work only when the respondent, after installation, commissions the fire fighting equipment to prove its performance in terms of the contract. The equipment and materials for the fire fighting were purchased by the respondent within Kerala and from outside Kerala as well. In fact, all the materials so purchased were brought to the site and it is the respondent, who incorporated the same to form the fire fighting equipment on the site of the awarders. Therefore, the concept of inter-State sale does not apply to the facts of the two works executed by the respondent referred to above. The respondent''s argument that the turnover of works contract should be assessed only for the value of the materials purchased or made in Kerala after excluding the value of the goods brought from outside Kerala because there is no provision in the KGST Act pertaining to works contract to exclude so much of the value of the goods from the turnover of the works contract, merely because such goods were brought from outside Kerala or from outside the country. We also notice that what weighed with the Tribunal to exclude the value of the goods brought from outside the State from the turnover on works contract is that the respondent is essentially based in Delhi. We do not think the base of the contractor has any relevance for deciding whether turnover on part of the works contract representing the value of goods brought from outside Kerala was inter-State sales. As found by all the authorities, the work executed by the respondent was with materials purchased in Kerala and from outside Kerala and the sale for these items took place from the respondent to the awarders only in the course of execution of the works contract in terms of the contracts and not at any time anterior to that. The awarding companies have no case that they made any inter-State purchase of any equipment and issued the same to the respondent-contractor for incorporation in the works. On the other hand, the scope of the work covered procurement of the entire materials at the site and setting up of the system by the contractor. We, therefore, allow the revision petitions filed by the State by reversing the order of the Tribunal and by restoring the assessment confirmed in the first appeals.

