(1991) 05 KL CK 0015

In the High Court Of Kerala

Case No : T.R.C. No. 103 of 1990

The Deputy Commissioner — APPELLANT

Vs

P.K. Biriyumma — RESPONDENT

Date of Decision : 31-05-1991

Acts Referred:

Central Sales Tax Act, 1956 — Section 2, 8, 8(1), 8(3)
Constitution of India, 1950 — Article 366

Citation : (1991) 05 KL CK 0015

Hon'ble Judges : K.S. Paripoornan, J;K.P. Balanarayana Marar, J

Bench : Division Bench

Advocate : N.N. Divakaran Pillai, Special Government Pleader Taxes, for the Appellant; M.A. Manhu, for the Respondent

Judgement

Paripoornan, J.—The Revenue is the revision-Petitioner herein. The matter arises in connection with an amendment effected in the Registration Certificate of the Respondent/Assessee a registered dealer under the Central Sales Tax Act. The Assessee is the Proprietrix of Laxmi Wood Peelers and Shama Retreads. She sought for inclusion of certain items of equipments, used in tyre retreading business in the Registration Certificate under the C.S.T. Act. The certificate was amended on 26th September 1987, as applied for by respondent/Assessee. Thereafter, the assessing authority felt that ''Tyre Retreading'' does not amount to ''sale'' as defined in Section 2(g) of the C.S.T. Act. It was held that ''Tyre Retreading'' was only works contract. On that basis, it was held that Section 8(1) and 8(3) of the C.S.T. Act are inapplicable to the retreading activities of the Assessee/Respondent. As soon as this aspect was found out, the amendment effected to the Registration Certificate under the C.S.T. Act including items required for tyre retreading business was cancelled. The Assessee/Respondent took up the matter in appeal before the Appellate Assistant Commissioner. The appeal was dismissed. In second appeal, the Sales Tax Appellate Tribunal held that the expression ''sale'' in the C.S.T. Act includes transfer of property in the goods involved in the execution of works contract, in view of the Constitution

46th Amendment, and despite the fact that no amendment was effected to the definition of the expression ''sale'' in the C.S.T. Act. Aggrieved by the decision of the Sales Tax Appellate Tribunal dated 7th November 1989, the Revenue has come up in revision.

2. We heard Counsel for the Revenue, Special Government Pleader (Taxes) Sri N.N. Divakaran Pillai, as also Counsel for the Respondent/Assessee Mr. M.A. Manhu. Before us, it was common ground that as per the definition contained in Section 2(g) of the C.S.T. Act, as it stands at present, "works contract will not be taken, within its fold. Section 2(g) of the C.S.T. Act defines "sale" thus:

"Sale" with its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another for cash or for deferred payment or for any other valuable consideration, and includes a transfer of goods on the hire purchase or other system of payment by instalments, but does not include a mortgage or hypothecation of or a charge or pledge on goods.

Obviously, retreading business, which is a works contract, will not be taken in by the said definition. The only question is, inroad, if any, is made by the Constitution 46th Amendment, which contains the extended definition of the words "tax on sale or purchase of goods" in Article 366 Clause 29A in the following terms:

366 Definition: In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them that is to say....

29A ''Tax on sale or purchase of goods'' includes

(a) ....

(b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract,

(c) ....

(d) ....

(e) ....

(f) ....

and such transfer, delivery or supply of any goods shall be deemed to be a sale of these goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made.

The Tribunal read the definition of the word "sale" occurring in Section 2(g) of the C.S.T. Act together with the amendment effected in Article 366 Clause 29A of the Constitution and held that reading the definition ''sale'' together with the 46th amendment, it is felt that the, definition of ''sale'' as contained in the C.S.T.

Act is wider enough to take in transfer of property in goods involved in works contract also. On this basis, it was concluded that such transfer of property in goods would come u/s 8 of the C.S.T. Act. In the case of the Assessee (Appellant before it), the concessional rate of tax was denied on the ground that "sale" under the C.S.T. Act would not take in transfer of property in goods involved in tyre retreading jobs. It was held to be a clear legal error. The order of the authorities below cancelling the amendments effected to the C.S.T. Registration Certificate was annulled and the items which were deleted from the C.S.T. Registration Certificate were directed to be restored.

3. The Revenue assails the said decision of the Sales Tax Appellate Tribunal, dated 7th November 1989, on the ground that the Tribunal was in error in transplanting the definition contained in Article 366 Clause 29A of the Constitution of India in Section 2(g) of the C.S.T. Act. It was argued that the Constitution 46th amendment would certainly give authority to the competent Legislatures to make provisions for the taxation of transfer of property in execution of such contracts. But, it is essential that the appropriate law (herein the C.S.T. Act) should adopt and make appropriate provision or amendment in the definition of the word "sale" in the C.S.T. Act. That has not been done. In the absence of any amendment to Section 2(g) of the C.S.T. Act, it was erroneous to read into the said definition the content of Article 366 Clause 29A. Counsel for the Assessee submitted that when once the Constitution has been amended, its provisions should form part of the relevant statutory provision.

4. On hearing the rival pleas, we are satisfied that the decision of the Appellate Tribunal is, erroneous in law. It is common ground that Section 2(g) of the C.S.T. Act has not been amended or varied. It is true that by the 46th amendment to the Constitution, Article 366 Clause 29A has been redrafted and it gives appropriate authority to the competent Legislatures to make provisions for the taxation of transfer of property in the execution of works contract. But, the fact still remains that the appropriate Legislatures should amend the law to take within the relevant statutory provision the content of Article 366 Clause 29A. That has not been done in Section 2(g) of the C.S.T. Act. The relevant provisions of the C.S.T. Act have not been amended or varied to take within its fold the extended definition inserted in Article 366 Clause 29A of the Constitution. In other words, the authorities given to the competent Legislatures to make provisions for the taxation of transfer of property in execution of works contract, has not been made use of. Till it is so done, it is not permissible to read into the definition of "sale" [Section 2(g) of the C.S.T. Act] the ingredients of the 46th amendment of the Constitution (Article 366 Clause 29A). The Tribunal did so. This is a plain legal error. It is only on that basis the Tribunal held that the word ''sale'' as contained in the CST Act is wider enough to take in transfer of property in goods involved in works contracts also. This is plainly erroneous.

5. We hold that the reasoning and conclusion of the Appellate Tribunal is palpably wrong. The authorities below, correctly cancelled the amendments effected in the

C.S.T. Registration Certificate which included goods involved in tyre retreading jobs. We set aside the order of the Appellate Tribunal in T.A. No. 258 of 1989, dated 7th November 1989-The Tax Revision. Case is allowed.

Dated this the 31st day of May, 1991.

