(2012) 09 KAR CK 0126

In the Karnataka High Court

Case No : STRP No. 88 of 2009

The State of Karnataka — APPELLANT

Vs

M/s. Dodasal Private Limited (Formerly M/s. Dodsal Limited) BWSSB Protect Tataguni, Bangalore — RESPONDENT

Date of Decision : 27-09-2012

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 12 A

Citation : (2012) 09 KAR CK 0126

Hon'ble Judges : K. Sreedhar Rao, J;B. Manohar, J

Bench : Division Bench

Advocate : S. Sujatha, AGA, for the Appellant; Vani H., Adv, for the Respondent

Final Decision : Allowed

Judgement

B. Manohar, J.—The State Government has filed this revision petition being aggrieved by the order dated 2-1-2009 made in STA Nos. 174 and 175/2008 passed by the Karnataka Appellate Tribunal, Bangalore setting aside the order passed by the First Appellate Authority as well as the Assessing Authority and also declaring that laying of steel pipes as per the works contract entered into by the respondent with the BWSSB falls under Entry 20(ii) of VI Schedule to the Act, for the assessment years 2002-03 and 2003-04. The revision petition has been admitted to consider the following substantial questions of law:

i) In the facts and circumstances of the case, whether the Tribunal is justified in holding that the works contract executed by the Company involving supply of pipes would fall under Entry 20(ii) of the 6th Schedule to the KST Act.

ii) In the facts and circumstances of the case, whether the Tribunal was right in not considering the fact that the transaction of the company would fall under Entry 44 of the 6th Schedule having carrying out two separate and district works in executing the works contract with BWSSB.

iii) Whether the Tribunal is right in considering the transactions of Company has being covered by under Entry 20(ii) of the 6th Schedule of the KST Act when the pipes used in the execution of works contract with BWSSB are not steel pipes in the strict sense of the term.

iv) Whether the interpretation given by the Tribunal in regard to Entry 20(i) if the 6th Schedule of the KST Act is correct and in accordance with law.

2. The assessee is a Private Limited Company engaged in the business of works contract of laying steel pipes and other allied works for BWSSB, Kaveri Water Supply Scheme, IV Stage. The assessee has filed the annual returns for the assessment years 2002-03 and 2003-04. The Assessing Authority taking into consideration the laying of steel pipes falls under Entry-20(ii) of the VI Schedule has assessed the tax. Subsequently, the assessment was reopened u/s 12A of the Act and levied tax at the rate of 12% as against 4% assessed in the original assessment order. Being aggrieved by the said assessment order, the respondent-assessee preferred an appeal before the Joint Commissioner for Commercial Taxes (Appeals). The Joint Commissioner by an order dated 17-12-2007 dismissed the appeal filed by the assessee. Being aggrieved by the same, the assessee preferred appeals before the Karnataka Appellate Tribunal. The Appellate Tribunal allowed the appeals setting aside the order passed by the Assessing Authority holding that the predominant intention and nature of the contract is to lay water pipes and the other civil works are incidental to the laying of pipes. Hence, the works contract falls under Entry-20(ii) of the VI Schedule to the Act Being aggrieved by the said order, the present revision petition has been filed. The issues raised in this revision petition are fully covered by the order made in STA No. 111/2009 disposed of on 27/09/2012 wherein this Court has held that the works contract entered into by the assessee with the BWSSB has to be treated as a composite contract involving two or more of the above categories of works falling under Entry 44 of the VI Schedule. Accordingly, the issues framed in this revision petition are held in favour of the State Government. Accordingly, the revision petition is allowed.