(2014) 02 KAR CK 0083

In the Karnataka High Court

Case No : STRP. No''s. 215 and 435-477 of 2013

The State of Karnataka APPELLANT

Vs

M/s. Mahaveer Willow RESPONDENT

Date of Decision : 13-02-2014

Acts Referred:

Citation : (2014) 78 KarLJ 305

Hon'ble Judges : Dilip B. Bhosale, J;B. Manohar, J

Bench : Division Bench

Advocate : T.K. Vedamurthy, HCGP, for the Appellant; M. Thirumalesh, for the Respondent

Judgement

Dilip B. Bhosale, J.—Heard learned counsel for the parties. These revision petitions are placed before us for admission. By consent, they are heard for final disposal at this stage. Learned Counsel appearing for the respondent, at the outset, invites our attention to a recent judgment of the Supreme Court in Larsen and Toubro Limited and Another Vs. State of Karnataka and Another, and submits that the principle question raised in these petitions is squarely covered by the said judgment.

2. Having confronted with this, learned HCGP appearing for the petitioner does not dispute the submission advanced by learned counsel for the respondent. According to him, out of seven, only two questions i.e., question Nos. 1 and 3 only need to be considered in these revision petitions. In other words, he submits that the other questions though raised need not be considered and answered. His statement is recorded and accepted.

3. The submission of learned HCGP for the petitioner has not been disputed by learned counsel for the respondent. Therefore, the questions that fall for our consideration, read thus:

1. Whether on the facts and in the circumstances of the case, and in law the Karnataka Appellate Tribunal was justified in holding that Iron and Steel used by

the Respondent for the execution of works contract being transferred not as goods but in some other form should be taxed at 4% and not 12.5% especially in the light of the ratio of the Apex Court in Builders Association case as reported in (1993) 88 STC 248 ?

2. On the facts and in the circumstances of the case, and in law whether the Tribunal was right in holding that the developer/contractor is entitled to the claim of deduction towards land value from the total turnover to arrive at taxable turnover in a Joint Development Agreement with the land owner to construct the building for him?

4. Insofar as the first question is concerned, learned counsel for the parties are ad-idem that it is covered by the judgment of this Court in STRP No. 240/2011 and connected revision petitions decided on 10-12-2013. In view thereof, learned HCGP appearing for the petitioner submits that the first question may be answered in favour of the respondent-assessee and against the petitioner.

5. Learned counsel appearing for the respondent-assessee also confirms that the first question involved in these revision petitions and in STRP No. 240/2011 and connected revision petitions is identical and is answered by the Division Bench against the petitioner-State and in favour of the respondent-assessee.

6. In the circumstances, we answer the first question, in view of the judgment of this Court in STRP 240/11 and connected revision petitions, decided on 10.12.2013, in favour of the respondent-assessee and against the petitioner-State.

7. Insofar as the second question of law is concerned, the observations made by the Supreme Court in paragraph-100 and the conclusion drawn in sub- paragraph (xi) of para-101 of Larsen and Toubro Ltd. (supra), is clear answer to the said question. We do find ourselves in agreement with learned counsel for the respondent that the second question is squarely covered by the judgment of the Supreme Court in Larsen & Toubro Ltd. (supra). Learned HCGP appearing for the petitioner fairly states that the second question is covered by the judgment in Larsen and Toubro Ltd. Hence, we answer the second question of law in favour of the respondent- assessee and against the Revenue. Before we part, we record the statement of learned counsel for the respondent, made on instructions from his instructing client, who is present in the Court, that the respondent-developer has paid VAT/Sales Tax on the entire material cost that was used for construction of the building. His statement is accepted and recorded. It is open to the petitioner, if they so desire and find it necessary to verify correctness of the statement and if they find it incorrect, they may take appropriate steps against the assessee in accordance with law.

With these observations, this group of sales tax revision petitions is disposed of. Consequently, IA. 1/13 filed for stay also stand disposed of. No costs.

