
(2006) 02 KAR CK 0021
In the Karnataka High Court
Case No : CRP No. 1852 of 2001

The State of Karnataka

APPELLANT

Vs

Wipro GE Medical Systems Ltd.

RESPONDENT

Date of Decision : 02-02-2006

Acts Referred:

Karnataka Tax on Entry of Goods Act, 1979 — Section 3, 3 (1), 3 (2)

Citation : (2006) ILR (Kar) 1659

Hon'ble Judges : P. Vishwanatha Shetty, J;N. Kumar, J

Bench : Division Bench

Advocate : S. Sujatha, AGA, for the Appellant; V.S. Arbatti, for P.M. Vasudev, for the Respondent

Final Decision : Allowed

Judgement

N. Kumar, J.—The petitioners have challenged in this revision petition the order passed by the Karnataka Appellate Tribunal in KTEG No. 112/97 allowing the appeal and setting aside the levy of entry tax on a value of Rs. 3,22,18,000/- relating to the sale of technical electronic medical equipments which were brought into local area, Bangalore.

2. The brief facts leading to this petition are as hereunder:

The respondent-company is engaged in the manufacture and sale of sophisticated medical diagnostic imaging equipment required by various hospitals and medical practitioners. The goods manufactured by the respondent are considered by the lower authorities as machinery which is one of the goods liable for entry tax under the provisions of Karnataka Tax on Entry of Goods Act, 1979 (for short, hereinafter referred to as the Act). The respondent's business premises is near Whitefield which is not a local area during the assessment year under appeal. On the ground that, at the instance of the respondent, entry of goods have been caused into the local area, where customers are located and where respondent-company is required to install such equipment, the Assessing

Authority has imposed entry tax on the total value of the goods supplied, namely, Rs. 3,22,18,000/-. Aggrieved by the said order of the Assessing Authority the respondent preferred an appeal before the Joint Commissioner of Commercial Tax (Appeals), City Division, who dismissed the said appeal by its order dated 25.3.1997.

3. Aggrieved by the same, the respondent preferred a second appeal to the Karnataka Appellate Tribunal. The Appellate Tribunal looking into the terms and conditions of the contract between the parties where it had been categorically stipulated that, the prices quoted by the respondent for equipments are FOR destination which means "free or rail" up to the point of destination and also that the company shall provide transit insurance for the. supply covered on behalf of the buyers till the goods are; installed, held that no inference could be drawn to the effect that the respondent has mused entry of scheduled goods into local area or at the instance of the respondent the entry of goods is caused into the local area. They recorded a finding that it. is clear from the terms of contract, regarding delivery, that nil risks and title shall pass and vest, with the purchasers upon shipment of the equipment which means upon delivery of the goods to the carrier which even takes place outside the local area. Therefore, when at the instance of the buyers the goods entered into local area even though the respondent-company had arranged for transit insurance but that is on behalf of the buyer for which amounts are recovered in the bills, it cannot be held that the assessee is liable to pay entry tax having brought the said goods into the local area. Accordingly, the appeal was allowed. Levy of entry tax was set aside. Aggrieved by the same, the State has preferred this revision petition on the ground that the Tribunal has decided erroneously on question of law u/s 3(2) of the Act.

4. We have heard the learned Counsel for the parties.

5. Section 3 is a charging Section. Sub-section (1) of Section 3 provides for levy of tax on entry of goods specified in the First schedule at such rates not exceeding 5% of the value of goods as may be specified in the notification by the State Government. Sub-section (2) deals with the person who is liable to pay the aforesaid tax which reads as under:

The tax levied under Sub-section (1) shall be paid by every registered dealer or a dealer liable to get himself registered under this Act who brings or causes to be brought into a local area the goods whether on his own account or on account of his principal or any other person or who takes delivery or is entitled to take delivery of such goods on its entry into a local area.

Explanation - Where the goods are taken delivery of on its entry into a local area or brought into a local area by a person other than a dealer, the dealer who takes delivery of the goods from such person shall be deemed to have brought or caused to have brought the goods into the local area.

6. The language employed in the aforesaid provision is clear and unambiguous.

The tax is liable to be paid by every registered dealer or a dealer liable to get himself registered under the Act. Such liability is foisted on such dealer, if he brings or causes to be brought into local area the goods. The dealer may bring the goods in to the local area on his own account or on account of his principal. It may be also on account of any other person or who takes delivery or is entitled to take delivery of such goods on its entry into a local area. The explanation clarifies the intention of the legislature visa vis the position of a carriers or persons of similar nature. The carrier is not a dealer, but in practice, it is the carrier who actually causes entry of the goods into the local area. It may be at the instance of the seller or purchaser, both of whom are dealers under the Act. Therefore, it is made clear that if the entry of the goods to the local area is not caused at the instance of the manufacturer or seller, and the goods are taken delivery on its entry into a local area or brought into a local area by a person other than a dealer, the dealer who takes delivery of the goods from such person, by a legal fiction, is deemed to have brought or caused to have brought the goods into the local area and liable to pay entry tax. Therefore, the test is not where the sale took place and title to the goods passed. The test is who caused entry into the local area. It is the dealer who causes entry into the local area who is liable to pay tax. It is purely a question of fact to be decided on the facts and circumstances of each case.

7. In this back ground, if we look into the facts of the case, it is not in dispute that the assessee is a registered dealer. He undertook to deliver the goods after it is sold at its place at Whitefield outside local area, to the place of the purchasers. The assessee arranged for transportation. He also arranged for insurance of these goods for a period of 60 days and the insurance policy was taken in his name. These are in terms of the stipulations contained in the agreement between the parties. Relying on these very terms the Assessing Authority and the First Appellate Authority have rightly come to the conclusion that it is the respondent who caused entry of these goods into the local area and therefore the respondent is liable to pay entry tax. However, the Appellate Tribunal having noticed these stipulations, but without noticing the significance of the words used in Section 3(2) of the Act, erroneously came to the conclusion that sale was completed outside the local area and goods were delivered to a carrier at the instance of the purchasers, the entry of the goods into local area was at the instance of the purchasers and therefore the assessee was not liable to pay the tax. The inference drawn by the Appellate Tribunal is contrary to the material on record and the express stipulation contained in the agreement between the parties. From the terms of the contract, it is not possible to take the view that the entry of the goods was caused by the purchasers and not by the assessee. In that view of the matter the finding recorded by the Appellate Tribunal is liable to be set aside. The orders passed by the Assessing Authority as well as the First Appellate Tribunal requires to be restored.

For the aforesaid reasons we pass the following:

ORDER

CRP is allowed.

The impugned order passed by the Appellate Tribunal is set aside

The order passed by the Assessing Authority which is confirmed by the First Appellate Authority are restored.

No order is made as to costs.