(2009) 12 KL CK 0075

In the High Court Of Kerala

Case No : S.T. Rev. No''s. 284, 286 and 287 of 2009

T.P. Tony — APPELLANT

Vs

State of Kerala — RESPONDENT

Date of Decision : 21-12-2009

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 46A(1), 7(7)

Citation : (2010) 1 KLJ 152 : (2010) 30 VST 44

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

Bench : Division Bench

Advocate : P.N. Damodaran Namboodiri, for the Appellant; P.K. Shamsudeen, Government Pleader, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The question raised is whether driving of bore-well is civil construction work entitling the petitioner to pay tax at compounded rate at two per cent u/s 7(7) of the Kerala General Sales Tax Act, 1963. We have heard Counsel appearing for the petitioner and Government Pleader appearing for the respondent.

2. In the definition of "civil construction work" construction of "well" was not originally included. However, through a later amendment several items of civil work including construction of well are brought under the scope of "civil construction work". This Court in the decision in ST. Rev. No. 160 of 2002 held that the later amendment is clarificatory in nature and therefore the several items of civil work later brought under the definition Clause should also be treated as "civil construction work" for periods prior to the amendment also. Relying on this decision, Counsel for the petitioner submitted that since construction of well is brought within the meaning of "civil construction work" through later amendment and since this Court has already held that later amendment is clarificatory in nature, and since the purpose of bore-well is the same as well, the petitioner is entitled to payment of tax at compounded rate on the turnover of construction of bore-well as "civil construction work".

3. After hearing both sides, we feel the provisions of tax on works contract cannot be applied to bore-wells in the same way it applies to other wells. A well is normally constructed by digging and removing earth to sufficient depth for collection of water. Digging and removing of earth does not involve supply of any materials and so much so, the digging of well as such does not involve any tax on works contract. The position is the same so far as bore-well is concerned because the difference between ordinary well and bore-well is only on dimension and probably depth. Driving of bore-well is a mechanical process and the driller while driving the bore brings out earth and form the bore-well at the desired depth. Like ordinary well, driving of bore-well also does not involve supply of any goods and so much so there cannot be any sales tax on works contract. However, invariably in the construction of well as well as bore-well, contractor may be required to make construction involving supply of materials and even installation of motor. Tax liability arises only on these activities and if a well is protected through protective walls inside or outside, it is civil construction work which attracts tax. If the contract is a combined one, involving digging and construction of wall, then the same is a civil construction work on which tax liability could be settled at compounded rate u/s 7(7) of the Act. However, in respect of bore-well normally civil construction is not involved, but in the course of or after driving the well, sometimes pipes are inserted inside the tube-well to give inside protective wall to the bore-well which is to prevent side walls caving in. This is invariably done at at least up to the level soil formation is found and discontinued or is not required when bore-well is made on solid rock formation. The installation of pipe inside the bore-well, we understand is called "casing". However, if bore well is made without involving driving of pipe casing inside then the same does not involve tax liability. However, if contract work for bore-well involves supply of casing, motor or construction of pump house and the like, then depending upon the nature of work done tax has to be levied at the appropriate rate. In other words, if the materials supplied are not civil construction materials such as PVC pipes, GI pipes and installation of motor, etc., then rate of tax at compounded rate u/s 7(7) is not applicable. On the other hand, if the construction of bore-well involves construction of any room above it or a motor house or the like, the same should be treated as civil construction work on which tax liability could be settled at the compounded rate u/s 7(7) of the Act.

4. In view of our finding and observations above, and since none of the authorities below has considered the above aspects of the matter, which will be clear from the copies of contract, work bills issued by the petitioner and payments approved by the water authority and awarders we allow the revisions by setting aside the order of the Tribunal and remand the matter to the assessing officer for recomputation of liability after verifying the contract. We also direct the assessing officer to verify from the water authority about the reimbursements of tax made by the water authority to the petitioner and if collection or reimbursement of tax is in excess of tax assessed, then such excess

will be forfeited u/s 46A(1) of the Act in accordance with the procedure contained therein. The petitioner will produce copies of contract, work bills raised and approved by the water authority and also details of payment received by them for the assessing officer to issue revised assessment.

