(2009) 08 KL CK 0064

In the High Court Of Kerala

Case No : S.T. Rev. No. 153 of 2009

V. Govindankutty	APPELLANT
Vs	
State of Kerala	RESPONDENT

Date of Decision : 07-08-2009

Acts Referred:
Kerala General Sales Tax Act, 1963 — Section 2, 7(7), 7(7A)

Citation : (2010) 34 VST 443

Hon'ble Judges : C.N. Ramachandran Nair, J;C.K. Abdul Rahim, J

Bench : Division Bench

Advocate : V.P. Sukumar and Kuryan Thomas, for the Appellant; Mohammed Rafiq, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—The question raised in the S. T. revision case filed by the petitioner is whether the supply of track ballast for the railways in terms of the order issued by the railways is a civil work for the petitioner to opt for payment of tax at compounded rate u/s 7(7) of the Kerala General Sales Tax Act, 1963. It is seen from the records that the assessing officer accepted the petitioner''s claim that the railways'' order is a works contract. However, according to the officer it is not a civil contract falling u/s 7(7) of the KGST Act. He has in fact permitted payment of tax at the compounded rate u/s 7(7A) which provides for other contracts. In appeal filed by the petitioner, the first appellate authority as well as the Tribunal confirmed the assessment and hence this revision. We have heard counsel appearing for the petitioner and Government Pleader appearing for the respondents.

2. During preliminary hearing, we wanted to know the exact nature of work done by the petitioner for the railways and in this regard we called for a copy of the purchase order/work order issued by the railways, which is produced by the counsel before us today. Even though the name of work in the heading is written as "collection and training out of track ballast in Wadakancheri Depot", we find

that the order is essentially one for supply, stacking and delivery of stone ballast on either side of the railway track in terms of the instruction issued by the engineer. The order in the form given by the railways is as follows:

-- S. N. Description of work App. Rate Unit Amount Qty. -- 1. Collection and supply of approved 12000 3811 10 cum. 45,73,200 quality machine crushed track ballast as per latest revised specification from outside the Railway limit and stacking for measurements at locations in Wadakancheri station yard with all lead and lifts, loading and unloading, conveyance from the place of availability, crossing the track wherever required, etc., complete using contractor''s labour, vehicle and consumables. (Payment by stack measurements without any deduction for voids) -- 2. Loading of ballast stacked at 1200 550 10 cum. 6,60,000 Wadakancheri station yard to railway wagons and hoppers by using contractor''s mechanised equipment, labour, etc., and unloading the ballast in Trichur/Chalakudi P. Way sections as directed by the Engineer- in-charge of the work. (The work may be carried out during night also for which no extra payment is admissible). (Payment by stack measurements without any deduction for voids.) --

3. From the above it is clear that the rate fixed for stone ballast supplied by the petitioner is based on the quantity supplied in cubic metres, the agreed rate of which is mentioned in the supply order. Under item 1 of the supply order, the petitioner is required to bring and stock the stone ballast of the required size at the Wadakkancherry Station in the railway track. Measurement will be taken for the purpose of making payment at the rate at which the order is issued. The next item of work given to the petitioner is loading the stone ballast stacked at the railway station in the railway wagons and hoppers by using contractor''s equipments, men and labour, transport it through the railway line and unload it in the permanent way sections between Thrissur and Chalakkudy. It is to be noted that training out which is laying the stone ballast in a pattern, is not required to be done by the petitioner, even though the heading of the work order mentioned so. On the other hand the petitioner has to only train the ballast into the track side in terms of the instruction given by the site engineer. Obviously the purpose is to replenish the deficiency in stone ballast on the railway track as part of maintenance work. However, the little technical work of laying the unloaded ballast in the required pattern to call it training out is the work probably done by the railways and it is not part of the work assigned to the petitioner. Therefore, the petitioner''s claim that the work involves training out of the supplied stone ballast and so much so, it is maintenance of railway track which is a civil work falling u/s 7(7) is unacceptable. We are of the view that the order is just a purchase order and the stacking is provided at a particular station to verify the actual quantity supplied by the petitioner and the balance work also

forming part of the supply order requires the petitioner to carry the goods in the wagons or hoppers supplied by the railway and deliver it on either side of the railway track specified in the supply order in terms of the instruction of the site engineer. Therefore, this is sale of goods with instruction to deliver the commodity at a particular spot. The sale price includes not only the rate paid for stacking at the railway station, but includes the cost of delivery, i.e., labour, whether mechanised or otherwise, used for delivering it on the sides of the railway track. Explanation 2(i) to Section 2(xxvii) providing for turnover takes in any sums charged for anything done by the dealer in respect of the goods sold at the time or before the delivery thereof. So much so, the labour and the other cost incurred by the petitioner until delivery of goods including the cost of delivery will form part of the turnover attracting sales tax. In view of this finding by us, we hold that the order given by the railway is one for pure supply, i.e., sale of goods and not for executing any works contract as claimed by the petitioner and found by the officer. Two decisions of the Karnataka High Court, an old one in State of Mysore v. S.R. Bhide [1969] 24 STC 446 (Mys) and the later decision in H.Y. Jadhav v. Commissioner of Commercial Taxes in Karnataka [1994] 94 STC 205 (Karn) were cited before us. While the earlier decision holds the view that training out is a works contract, a different view was taken in the later judgment whereunder the transaction was found to be sale of goods. We do not think we should express our opinion as to whether training out which is laying stone ballast on the railway track in a particular pattern is a works contract or not because in this case the question does not arise and we have already noticed that it is only a pure sale of goods and training out, if any, was done by the railway. However, it is to be seen from Section 7(7) that Railway track maintenance is also treated as a civil work by the Legislature. Certainly the training out is a maintenance work of the railway track as it helps to retain the sleepers on the track and the railway lines intact. In fact, the Department cannot have a case that the training out is not a maintenance work when the railway track maintenance is included in the definition clause of "civil works" u/s 7(7). However, assessment as a contract for railway track maintenance can be claimed only when indivisible work order is issued for track maintenance and not when the order is issued for payment for the ballast supplied at a rate fixed for every cubic metre and a separate rate for delivery charges. Even though we dismiss the revision petition holding that the work is not a civil work as claimed by the petitioner for payment of tax at compounded rate u/s 7(7) of the KGST Act, we simultaneously hold that assessment of the work as "other contract" u/s 7(7A) is also not correct. However, since the assessment has become final, we do not want to disturb the same. The sales tax revision case is accordingly dismissed, but with direction to the officer not to repeat the mistake for later years.