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**(2011) 08 AP CK 0080**

**In the Andhra Pradesh High Court**

**Case No : T.R.E.V.C. No"s. 181, 185 and 194 of 2009**

Veeaar Constructions

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

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**Date of Decision : 27-08-2011**

**Acts Referred:**

Andhra Pradesh General Sales Tax Act, 1957 — Section 22(1), 4, 5, 5F, 6  
Andhra Pradesh General Sales Tax Rules, 1957 — Rule 6(2)  
Constitution of India, 1950 — Article 366

**Citation : (2011) 08 AP CK 0080**

**Hon'ble Judges : Raja Elango, J;A. Gopal reddy, J**

**Bench : Division Bench**

**Advocate : S. Dwarakanath, for the Appellant; A.V. Krishna Koundinya, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

A. Gopal Reddy, J.—These revision petitions u/s 22(1) of the Andhra Pradesh General Sales Tax Act, 1957 (for brevity, "the Act"), by a dealer registered under the provisions of the Act, are directed against the orders of the Sales Tax Appellate Tribunal, Hyderabad, dated 30.01.2009, in T.A. Nos. 1272, 1273 and 1274 of 2003.

2. The brief facts leading to the disposal of these revision cases are stated as follows:

The Petitioner was a dealer engaged in works contract and registered under the provisions of the Act and is an Assessee under the rolls of Commercial Tax Officer-I, Kadapa. In the course of its business activities, he undertakes various civil construction works as a competitive price quoted by it for the execution of the entire work, which in the sales tax parlance is termed as a works contract, and the consequence insofar as the Act is concerned, is when the dealer like the Petitioner executes a works contract, the value of the taxable goods involved in the execution of the works contract attracts tax liability under the provisions of

the Act and the machinery for determination of the tax liability is set in motion and quantified, and the dealer called upon to pay the corresponding tax. The Petitioner dealer, who was assessed by the Commercial Tax Officer-I, Kadapa for the years 1998-1999, 1999-2000 and 2000-2001 was granted exemption in the turn over of Rs. 8,79,695/-under the following heads:

1.

Depreciation on vehicle

:

Rs.1,41,855/

2.

Maintenance expenses on Tipper

:

Rs.3,37,423/

3.

Consumables

:

Rs.4,00,417/

Rs.8,79,695/

The Deputy Commissioner, Commercial Tax Officer, Chittoor Division revised the order of the assessing authority and issued a show cause notice, dated 21.04.2003, proposing to restrict the deductions allowed by the Commercial Tax Officer on the ground that the Petitioner is not eligible for deduction in the turnover under the heads viz., depreciation on vehicles and tripper maintenance and that the Petitioner has not furnished the details of cost of consumables used in the execution of works contract. Though the Petitioner has filed its objections, dated 18.06.2003, the Deputy Commissioner has passed order, dated 31.07.2003, holding that the Assessee is not eligible for exemption under Rule 6(2) of the A.P. General Sales Tax Rules, 1957 (for brevity, "the Rules") and liable to tax u/s 5(f) of the Act including the amounts which were given exemption by the Commercial Tax Officer viz., depreciation on vehicles, maintenance expenses on tippers and consumables. On appeals being filed by the Petitioner, the Sales Tax Appellate Tribunal by the impugned order dismissed the appeals confirming the order of the Deputy Commissioner. Hence, the present revisions.

3. Sri S. Dwarakanath, learned Counsel for the Petitioner, contends that the proviso to Section 5(f) and IV Schedule of the Act deals with exemption of tax on the goods involved in the execution of the works contract. The entire controversy

is how to determine the value of the goods. Relying upon Rule 6(3)(ii) of the Rules, he contends that when the dealer is not maintaining accounts to determine the value of the goods, the assessing authority can decide the same. Rule 6(2) of the Rules is not exhaustive but it is only illustrative. It was further contended that though Rule 6(2) of the Rules enumerates certain categories of amounts, that are to be deducted from the turn over, still the assessing authority, depending on the facts of each case can deduct the amounts which are similar to the categories mentioned in (a) to (i), though had different nomenclature. But the assessing authority must give detailed reasons. The directions issued under the Sales Tax manual are binding on the assessing authority as well as the Deputy Commissioner for granting exemption. The contractor has to spend certain amounts for maintenance of trippers owned and used in execution of contract and, therefore, the same is liable to be deducted. To buttress the said submission, reliance is placed on:

1) Gannon Dunkerley and Company, v. State of Rajasthan (1993) 088 STC 0204.

2) Larsen and Toubro Limited v. State of Karnataka (2010) 034 VST 0053.

4. Sri A.V. Krishna Koundinya, learned Counsel for the Department, contended that the court cannot expand the scope of Rule 6(2) of the Rules, since the same has to be interpreted strictly. The Petitioner/assessee has not put any efforts to establish the depreciation on vehicles, the expenses incurred and the cost of consumables. Under Rule 6(2)(f) of the Rules, exemption can be claimed to the cost of establishment of the contractor to the extent it is relatable to supply of Labour and Services. Under Rule 6(2)(d) exemption can be claimed towards the charges paid for obtaining the machinery on tools used in the execution of the works contract on hire, but not otherwise. Therefore, the impugned order does not call for any interference.

5. The question that falls for consideration in these tax revision cases is whether the dealer, who is executing the works contract, is entitled for the deduction of amounts pertaining to the depreciation on trippers, maintenance expenses of trippers and consumables, used in the execution of works contract under Rule 6(2) of the Rules or not?

6. Section 5F of the Act, which deals with levy of tax on transfer of property in goods involved in the execution of works contract, is as follows:

Section 5F:- Levy of tax on transfer of property in goods involved in the execution of works contract: -

Notwithstanding anything contained in Section 5 or Section 6, every dealer shall pay a tax under this Act for each year, on his turnover of transfer of property in goods whether as goods or in some other form, involved in the execution of works contract, at the rate of eight paise on every rupee of his turnover.

Rule 6(2) of the A.P.G.S.T. Rules reads as under:

6. (2):- Notwithstanding anything contained in Sub-rule (1) the tax u/s 5-F, shall be levied on the turnover of a dealer who transfers property in goods, whether as same goods or in some other form, involved in the execution of works contract. In determining the turnover of a dealer liable to tax, the amounts specified in Clauses (a) to (i) shall, subject to the conditions specified therein, be deducted from the total turnover of the dealer.

(a) to (c) ...

(a) Charges for obtaining on hire or otherwise machinery and tools used for the execution of the works contract;

(b) ...

(c) Cost of establishment of the contractor to the extent it is relatable to supply of labour and services;

(d) to (i) ....

Para 11.2 of the Sales Tax Manual on which reliance is placed, reads as follows:

11.2 Though Rule 6(2) enumerates certain categories of amounts, that are to be deducted from the turnover, still the assessing authority, depending on the facts of each case can deduct the amounts which are similar to the categories mentioned in (a) to (i), though had different nomenclature. But detailed reasons must be given.

7. It is the contention of the learned Counsel for the Petitioner that once the Assessee is entitled to benefit, when he hired the machinery from the third parties, he cannot be in a disadvantageous position by using his own vehicles. Therefore, the expenditure incurred for maintenance of the vehicle can be treated as hire charges. Therefore, he is entitled to the benefit of exemption.

8. In *Gannon Dunkerley and Company*,<sup>1</sup> the Supreme Court after elaborately discussing the legislative power to impose tax on sale or purchase of goods under entry 54 of list II of Schedule VII to the Constitution of India read with Article 366(29-A)(b) etc., under the head Measure of Tax, held that the measure for the levy of the tax contemplated by Article 366(29-A)(b) is the value of the goods involved in the execution of a works contract, but has not accepted the contention advanced by the assessee/contractors, that the value of the goods for levying the tax can be assessed only on the basis of the cost of acquisition of the goods by the contractor. It was further held that the assessing authority has to take the value of the works contract as a whole and deduct therefrom the cost of labour and services rendered by the contractor during the course of execution of the works contract. Similarly, for the purpose of ascertaining the value of goods which are involved in the execution of a works contract for the purpose of imposition of tax, the cost of transportation of the goods to the place of works has to be taken as part of the value of the said goods and ultimately concluded under conclusion Nos. 4 and 5 as under:

(4) The tax on transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract falling within the ambit of article 366(29-A)(b) is leviable on the goods involved in the execution of a works contract and the value of the goods which are involved in the execution of works contract would constitute the measure for imposition of the tax.

(5) In order to determine the value of the goods which are involved in the execution of a works contract for the purpose of levying the tax referred to in article 366(29-A)(b), it is permissible to take the value of the works contract as the basis and the value of the goods involved in the execution of the works contract can be arrived at by deducting expenses incurred by the contractor for providing labour and other services from the value of the works contract.

9. In *State of Jharkand and Ors. v. Voltas Limited* (2007) 007 VST 0317, the Supreme Court agreeing with the view taken by the Patna High Court, held that it is not merely the labour charges which are deductible from the value of the works contract, but all other charges/amounts also, except the value of the goods sold in execution of the works contract. This is because only the value of the goods sold can be taxed as sales tax.

10. A similar question arose before the Karnataka High Court in *Larsen and Toubro Limited's* case (2 supra), wherein on question No. 1 with regard to the deduction in respect of depreciation on plant and machinery owned and used by the Petitioner therein for executing the works contract, while repelling the contention of the Government pleader, the "depreciation" is conspicuously absent either in Rule 6 particularly, Explanation 1 to Sub-rule (4) of Rule 6 the claimant is entitled to the deduction, held that even assuming that Rule 6 when read in its entirety does not contain the word depreciation but nevertheless should necessarily take the hue from the permitted deductions as indicated by the Supreme Court in Clause (d) occurring at page 235 of the judgment which reads as "charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract and examining the scope of Explanation 1 to Sub-rule (4) of Rule 6 of the rules construed in the background and answered the question as under:

We say so, for the reason that it is the goods of the Assessee for the purpose of execution of the works contract, which the Assessee otherwise, could have hired the machinery and tools, instead of utilizing its own machinery and tools and in the process of execution of the work, the machinery and tools are worn down and depreciate in value and as the end price, i.e., the value of the contract is fixed or determined by the contractor factoring this wear and tear to the machinery and tools as a consequence of using them for the execution of the works contract, the value of the proportionate wear and tear of the machinery which is otherwise identified as depreciation has to be necessarily permitted as a deduction on the premise that it is equivalent to the hire charges as it otherwise provided in Clause (d) and for such purpose one has to understand the same even in terms of the language of Explanation I as quoted above and particularly,

to be one within the scope of other similar expenses relatable to supply of labour and services.;

and further, rejected the contention advanced by the learned Additional Government Advocate that the rule not having expressly enabled the dealer to claim a deduction of this nature, the assessing officer was not right in permitting a deduction of this nature and the revisional authority was right in allowing the deduction; and, accordingly, answered question No. 1 in favour of the Assessee.

11. In the case on hand, we are concerned with the interpretation of Rule 6(2) (d) i.e., the charges for obtaining on hire or otherwise machinery and other tools used for the execution of the works contract. Normally ejusdem generis rule will apply to penal statute. Whether the rule ejusdem generis has to be construed in interpreting the Rule 6(2)(d) or not and whether the words "or otherwise" used in Rule 6(2)(d) is a disjunctive that marks an alternative, which generally corresponds to the word either or not, are the main questions.

12. In para 11.2 of the sale tax manual it has been clarified that the assessing authority depending upon the facts of each case can deduct the amounts which are similar to the categories mentioned in (a) to (i), though had different nomenclature. The legislature used the words "or otherwise" apparently intended to cover other cases which may not come within the meaning of the preceeding clause i.e., charges for obtaining on hire. Hence, far from using the words ejusdem generis with the preceding clauses of the Rule 6(d), the legislature or the rule making authority used those words in all inclusive sense i.e., amount spent on machinery and tools in any form.

13. The principle, which should govern such a case in my opinion, has been clearly set out in "Randall on Cardinal Rules of Legal Interpretation Third Edition, at page 355, they are in these words:

General words in a statute are prima facie to be taken in their usual sense.

General words following specific words in a statute are prima facie to be taken in their general sense unless the reasonable interpretation of the statute requires them to be used in a sense limited to things ejusdem generis with those which have been specifically mentioned before.

If the particular words exhaust the whole genus the general word must refer to some larger genus.

14. In Trade Links Limited, New Delhi and Others Vs. State of Uttar Pradesh and Others, while interpreting Section 30(2) of the Uttar Pradesh Excise Act (4 of 1910) (as amended by U.P. Amending (Re-enactment and Validation) Act (5 of 1976), it was held that the sum payable under Sub-section (1) may be determined either by auction or by calling tenders or otherwise. It was further held that having regard to the phrase "or otherwise" occurring in the provision it is impossible to accept the contention that only one method to the exclusion of the others could be adopted by the Respondents for granting the licence or that

one type of fee appropriate to that method could alone be charged."

15. In view of the same, we have no hesitation in coming to the conclusion that the Assessee is entitled for exemption not only on the charges for obtaining on hire or otherwise machinery and tools used for execution of the works contract but also on the amounts spent by the contractor on such machinery as a consequence of using them for the execution of the works contract including the value of the proportionate wear and tear of the machinery which is otherwise identified as depreciation on the premise that it is equivalent to the hire charges spent otherwise. The dominant idea for exempting the said charges should be use of the machinery for execution of the works and the amounts spent by the contractor on such machinery. Otherwise, there is no necessity to use the word "or otherwise" under Rule 6(2)(d). In view of the above discussion and conclusions reached by us, the revised order passed by the Deputy Commissioner, dated 31.07.1993, as confirmed by the Sales Tax Appellate Tribunal by order, dated 30.01.2009, are hereby set aside and the order passed by the Commercial Tax Officer, granting exemption under the heads viz., depreciation on vehicle, maintenance expenses on tipper and consumables, is restored.

16. Accordingly, the Tax Revisions Cases are allowed. There shall be no order as to costs.