

**State of Karnataka Vs. M/S Megha Engineering & Infrastructure Limited**

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**Court :** Karnataka Dharwad

**Decided On :** Feb-15-2017

**Judge :** Dr.Vineet Kothari and Sreenivas Harish Kumar

**Appeal No. :** STRP 100023/2016

**Appellant :** State of Karnataka

**Respondent :** M/S Megha Engineering & Infrastructure Limited

**Judgement :**

1/7 Date of Order 15.02.2017, STRP. No.100023/2016 State of Karnataka Vs. M/s. Megha Engineering & Infrastructure Ltd. IN THE HIGH COURT OF KARNATAKA DHARWAD BENCH R DATED THIS THE15H DAY OF FEBRUARY 2017 PRESENT THE HONBLE DR. JUSTICE VINEET KOTHARI AND THE HONBLE MR. JUSTICE SREENIVAS HARISH KUMAR S.T.R.P. No.100023/2016 BETWEEN: STATE OF KARNATAKA, REP. BY ITS COMMISSIONER OF COMMERCIAL TAXES, VANIJYA THERIGE KARYALAYA-01, GANDHINAGAR, BENGALURU-09. (BY SRI M. KUMAR, GOVERNMENT ADVOCATE) ...PETITIONER AND: M/S MEGHA ENGINEERING & INFRASTRUCTURE LIMITED, HOUSE NO.376, 3RD FLOOR, AKSHAY COLONY, II PHASE, VIDYANAGAR, HUBBALLI. ... RESPONDENT THIS STRP IS FILED U/SEC. 65(1) OF THE KARNATAKA VALUE ADDED TAX, 2003, AGAINST THE

ORDER

DATED:14.01.2016 PASSED IN ST A NO.1913/2014 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL, BENGALURU, PARTLY ALLOWING 27 Date of Order 15.02.2017, STRP. No.100023/2016 State of Karnataka Vs. M/s. Megha Engineering & Infrastructure Ltd. THE APPEAL FILED UNDER SECTION 63 OF THE KARNATAKA VALUE ADDED TAX ACT, 2003. THIS PETITION COMING ON FOR ADMISSION, THIS DAY, DR. VINEET KOTHARI, J, MADE THE FOLLOWING:

## ORDER

Mr. M. Kumar, Govt. Adv. for petitioner.

1. This Sales Tax Revision Petition has been filed under Section 65 of the Karnataka Value Added Tax Act, 2003 (for short, the Act) against the order passed by the learned Karnataka Appellate Tribunal on 14.01.2016, M/s. Megha Engineering and Infrastructure Ltd. vs. State of Karnataka, by which, the learned Karnataka Appellate Tribunal has held that the awarder of the contract, namely, Karnataka Water Supply Board is not Government, and therefore, the Running Bills prepared by the Board cannot be construed as Tax Invoices within the meaning of Rule 27(2) Proviso of Karnataka Value Added Tax Rules, 2005 (for short, KVAT Rules). 3/7 Date of Order 15.02.2017, STRP. No.100023/2016 State of Karnataka Vs. M/s. Megha Engineering & Infrastructure Ltd.

2. The reasons assigned by the learned Tribunal below for negating this contention of Revenue are quoted as under:- 15. By harmonious conjoint reading of Sections 9 & 9-A of the Act and Proviso to Rule 27(2), in case of the appellant the RA Bills issued by the Board are regarded as tax invoices. Hence, the tax deducted in the RA Bills is to be considered as the amount of tax collected for the purpose of Rule 3(2) (h) and only to that extent the appellant is entitled for deduction. The contention of the appellant that the tax component incorporated in the contract price amount has to be segregated for the purpose of deduction is not acceptable for the reason that it is the appellants duty to have informed the concerned statutory body to deduct the tax at source as per his calculation. This burden is cast on the appellant as per Section 9-A (3) of the Act. Section 9-A has been reproduced above but still the relevant sub-section is reproduced once

again hereunder:- (3) The deduction under sub- section (1) shall be made by an authority on the basis of tax payable as calculated by the dealer. 4/7 Date of Order 15.02.2017, STRP. No.100023/2016 State of Karnataka Vs. M/s. Megha Engineering & Infrastructure Ltd.

## ORDER

1 Appeal is allowed in part.

2) It is held that the RA Bills prepared by the Board are to be construed as tax invoices for the purpose of computing the tax collected amount.

3) It is further held that the actual tax deducted at source in the RA Bills as the amount of tax collected for the purpose of deduction under Rule 3(2)(h).

4) The matter is remanded to the assessing authority to examine the RA Bills to allow such deductions as held above.

5) The Registrar of the Tribunal is directed to comply regulation 53 (b) of Chapter - IX of Karnataka Appellate Tribunal Regulations, 1979 by communicating this order to the persons mentioned therein.

6) The Office is directed to send back the lower authorities records immediately by registered post with acknowledgement due.

3. The relevant Rule 27(2) and Proviso of KVAT Rules are quoted below for ready reference:- 27(2).Notwithstanding anything contained in sub-rule (1) and Rule 29, every registered dealer executing a civil works contract shall issue 5/7 Date of Order 15.02.2017, STRP. No.100023/2016 State of Karnataka Vs. M/s. Megha Engineering & Infrastructure Ltd. in duplicate, tax invoice or where he has opted to pay tax by way of composition under Section 15 a bill of sale at the time of receipt of any amount including an amount paid as advance falling under Explanation to sub-rule (1) of Rule 3 as the consideration for transfer of property in goods involved in the execution of such works contract whichever is earlier and the original of such tax invoice or bill of sale issued shall be delivered to the person paying such amount or liable to make such payment and the copy thereof retained by the registered dealer : Provided that in the case of a registered dealer

executing a civil works contract awarded by Government, the running account bill prepared by such Department shall be deemed to be a tax invoice or bill of sale issued by the registered dealer for the purpose of the rule.

4. Having heard the learned Government Counsel, we are satisfied that no question of law arises in the present case and there is no merit in the argument raised by the learned Government Counsel that the Karnataka Water Board, which is creation of a Statute, namely Bangalore 6/7 Date of Order 15.02.2017, STRP. No.100023/2016 State of Karnataka Vs. M/s. Megha Engineering & Infrastructure Ltd. Water Supply and Sewerage Act, 1964, cannot be treated as Government within the meaning of said Proviso to Rule 27(2) of the KVAT Rules. The purpose of the said Proviso giving the status of Tax Invoices or Bill of Sale even to the Running Account Bills to the awarders of the work contract to be executed by contractors by the Government or its departments is obviously to allow such contractors to take input tax credit on the basis of such tax invoices. Since running bills are prepared during the currency of the execution of contract itself since the final bill is not made at that point of time. The said Proviso in Rule 27(2) of the KVAT Rules was enacted by the State Legislature to allow the contractor to avail the benefit of input tax credit even on the basis of running bills prepared by such Government Departments as per the said Proviso to Rule 27(2) of the Rules.

5. We find no reason to hold that the Karnataka Water Board, in question, is not a Department of the Government or so as to fall outside the ambit and scope of the said Proviso to Rule 27(2) of the KVAT Rules. Therefore, we do not 7/7 Date of Order 15.02.2017, STRP. No.100023/2016 State of Karnataka Vs. M/s. Megha Engineering & Infrastructure Ltd. find any question of law arising in the present case and in view of the Tribunal appears to be just and proper. The present Sales Tax Revision Petition filed by the State is accordingly dismissed. No costs. Copy be sent to the respondent - assessee. Sd/- JUDGE Sd/- JUDGE yan

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