

M/S Fortious Infradevelopers Llp vs the Additional Commissioner of

M/S Fortious Infradevelopers Llp vs the Additional Commissioner of

SooperKanoon Citation : sooperkanoon.com/1767521

Court : Karnataka

Decided On : Apr-02-2025

Judge : Krishna S Dixit,Ramachandra D. Huddar

Appeal No. : STA/18/2022

Appellant : M/S Fortious Infradevelopers Llp

Respondent : The Additional Commissioner of

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF APRIL, 2025 PRESENT THE HON'BLE MR JUSTICE KRISHNA S DIXIT AND THE HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR SALES TAX APPEAL NO. 18 OF 2022 C/W SALES TAX APPEAL NO. 19 OF 2022, SALES TAX APPEAL NO. 20 OF 2022 IN STA No. 18/2022: BETWEEN: M/S FORTIOUS INFRADEVELOPERS LLP LEVEL FOUR, RAHEJA PARAMOUNT, RICHMOND CIRCLE, BENGALURU-560 025. (REPRESENTED BY SRI GOPIKRISHNAN K Y PARTNER OF M/S FORTIOUS INFRADEVELOPERS LLP) APPELLANT (BY SRI. V RAGHURAMAN.,

SENIOR COUNSEL FOR Digitally signed by CHETAN B SRI. RAGHAVENDRA C R.,ADVOCATE) C Location: HIGH AND: COURT OF KARNATAKA

1. THE ADDITIONAL COMMISSIONER OF COMMERCIAL TAXES (ZONE)-1, DEPARTMENT OF COMMERCIAL TAXES, GOVERNMENT OF KARNATAKA, GANDHINAGAR, BANGALORE-560 001.

2. THE ASSISTANT COMMISSIONER OF COMMERCIAL TAXES (AUDIT)-1.1, DGSTO-1, YESHWANTHPURA, BENGALURU-560 022. - 2-

3. THE UNDER SECRETARY FINANCE DEPARTMENT (C.T-1), KARNATAKA GOVERNMENT SECRETARIAT, VIDHANA SOUDHA, BENGALURU-560 001. RESPONDENTS (BY SRI.ADITYA VIKRAM BHAT.,AGA FOR R1-R3) THIS STA FILED UNDER SECTION 66(1) OF KARNATAKA

VALUE ADDED TAX ACT 2003 AGAINST THE ORDER DATED 12.10.2022 PASSED IN ORDER No.ZAC-1/BNG/SMR-25/202122 ON THE FILE OF THE ADDITIONAL COMMISSIONER OF COMMERCIAL TAXES, ZONE-1, GANDHINAGAR, BENGALURU, SETTING ASIDE THE REASSESSMENT ORDER DATED 29.06.2019 PASSED IN CAS ORDER NO. 378160946 BY THE ASSISTANT COMMISSIONER OF COMMERCIAL TAXES (AUDIT 1-1) DGSTO - 1 BENGALURU, FILED UNDER SECTION 39(1), OF HE KVAT ACT 2003 FOR THE TAX PERIODS OF APRIL 2016 TO MARCH 2017. IN STA NO. 19/2022: BETWEEN: M/S FORTIOUS INFRADEVELOPERS LLP LEVEL FOUR, RAHEJA PARAMOUNT, RICHMOND CIRCLE, BENGALURU-560 025. REPRESENTED BY SRI GOPIKRISHNAN K Y PARTNER OF M/S FORTIOUS INFRADEVELOPERS LLP) ...APPELLANT (BY SRI. V RAGHURAMAN., SENIOR ADVOCATE FOR SRI. RAGHAVENDRA C R.,ADVOCATE) AND:

1. THE ADDITIONAL COMMISSIONER OF COMMERCIAL TAXES(ZONE)-1, -3- DEPARTMENT OF COMMERCIAL TAXES, GOVERNMENT OF KARNATAKA, GANDHINAGAR, BANGALORE-560 001.

2. THE ASSISTANT COMMISSIONER OF COMERCIAL TAXES(AUDIT)-1.1, DGSTO-1, YESHWANTHPURA BENGALURU-560 022.

3. THE UNDER SECRETARY

FINANCE DEPARTMENT(C.T-1) KARNATAKA GOVERNMENT SECRETARIAT, VIDHANA SOUDHA, BENGALURU-560 001. ...RESPONDENTS (BY SRI.ADITYA VIKRAM BHAT.,AGA FOR R1-R3) THIS STA FILED UNDER SECTION 66(1) OF KARNATAKA VALUE ADDED TAX ACT 2003 AGAINST THE

ORDER DATED 12.10.2022 PASSED IN ORDER No.ZAC1/BNG/SMR-24/2021-22 ON THE FILE OF THE ADDITIONAL

COMMISSIONER OF COMMERCIAL TAXES, ZONE-1, GANDHINAGAR, BENGALURU, SETTING ASIDE THE REASSESSMENT ODER DATED 25.06.2019 PASSED IN CAS NO.388156128 BY THE ASSISTANT COMMISSIONER OF COMMISSIONER TAXES, (AUDIT) 1.1, DGSTO - 1, BENGALURU, FILED UNDER SECTION 39(1) OF THE KVAT ACT 2003 FOR THE TAX PERIODS OF APRIL 2015 TO MARCH 2016.

IN STA NO. 20/2022: BETWEEN: M/S FORTIUS INFRADEVELOPERS LLP LEVEL FOUR, RAHEJA PARAMOUNT, RICHMOND CIRCLE, BENGALURU-560 025. (REPRESENTED BY SRI GOPIKRISHNAN K Y PARTNER OF M/S FORTIUS INFRADEVELOPERS LLP) ...APPELLANT (BY SRI. V RAGHURAMAN., SENIOR ADVOCATE FOR SRI. RAGHAVENDRA C R.,ADVOCATE) -4- AND:

1. THE ADDITIONAL COMMISSIONER OF COMMERCIAL TAXES (ZONE) -1, DEPARTMENT OF COMMERCIAL TAXES GOVERNMENT OF KARNATAKA, GANDHINAGAR, BANGALORE-560 001.

2. THE ASSISTANT COMMISSIONER OF COMMERCIAL TAXES (AUDIT)-1.1, DGSTO-1, YESHWANTHPURA, BENGALURU-560 022.

3. THE UNDER SECRETARY FINANCE DEPARTMENT (C.T-1) KARNATAKA GOVERNMENT SECRETARIAT VIDHANA SOUDHA, BENGALURU-560 001. ...RESPONDENTS (BY SRI.ADITYA VIKRAM BHAT.,AGA FOR R1-R3) THIS STA FILED UNDER SECTION 66(1) OF KARNATAKA VALUE ADDED TAX ACT 2003 AGAINST THE

ORDER DATED 16.11.2022 PASSED IN ORDER No.ZAC1/BNG/SMR-23/2021-22 ON THE FILE OF THE ADDITIONAL

COMMISSIONER OF COMMERCIAL TAXES, ZONE-1, GANDHINAGAR, BENGALURU, SETTING ASIDE THE REASSESSMENT ORDER DATED 26.04.2019 PASSED IN CAS ORDER NO.304129708 BY THE ADDITIONAL COMMISSIONER OF COMMERCIAL TAXES (AUDIT) - 1.1., DVN -01, BANGALORE UNDER SECTION 39(1) OF THE KVAT ACT 2003 FOR THE TAX PERIODS OF APRIL 2014 TO MARCH 2015.

THESE SALES TAX APPEALS COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER: CORAM: HON'BLE MR JUSTICE KRISHNA S DIXIT AND HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR -5-

ORAL JUDGEMENT

(PER: HON'BLE MR JUSTICE KRISHNA S DIXIT) These three Sales Tax Appeals by the Assessee are filed u/s 66 of the Karnataka Value Added Tax Act, 2003, for laying a challenge to the following SMR orders. STA No. SMR Order Period Tax demand Interest Penalty Total demand

18/	CAS	order	no.	April 2016	2,48,97,811	2,6
19/	CAS	order	no.	April 2015	30,82,820	4,1
20/	CAS	order	no.	April 2014	6,41,44,099	64,

2. FOUNDATIONAL FACTS:

2.1 Appellant-Assessee is a Limited Liability Partnership (LLP) engaged in the business of executing civil works, building residential & commercial complexes and performing other allied works. For FY 2015 -16, it had filed VAT returns and paid taxes. The 2nd Respondent vide

Reassessment Notice dated 26.06.2018

declared in VAT 120 and VAT 240 returns was raised; the claim of deduction towards sub-contractors is liable to be disallowed for the lack of producing certificates mandated under Rule 3(2)(i-1) of KVAT Rules, 2005; in the absence - 6- of particulars of tax collected, the deduction claimed towards tax collection is disallowed; the details of interState purchases as per VAT 120 is to be accepted as against the ones declared in VAT 240; failure of the Assessee to declare purchases made from the unregistered dealers (URD) and therefore, such purchases are estimated at 10% of the receipts. The notice proposed to levy interest under section 36 and penalty under section 72(2) of the Act. 2.2 Appellant-Assessee filed a detailed reply dated 07.07.2018 denying the allegations in the above notice and stuck to his stand in variance with the one that would collectively emerge from the contents and as a result of such notice. The 2nd Respondent vide order dated 25.06.2019 concluded the reassessment proceedings with the following indicea: (i) The turnover declared in VAT 240

return is true & correct; (ii) the payment of Rs.13,02,82,107/- made to the sub-contractor is allowed and the remaining claim of Rs.75,63,738/- is bought to tax at 4% for not producing certificates mandated under Rule 3(2)(i-1) of KVAT Rules, 2005; (iii) after verification of documents, the exemption on the claim of collection of tax

is allowed; (iv) Assessee had not made any URD purchases and hence the proposal of demand of 10% of URD purchases is dropped; (v) Assessee had claimed -7- deduction on the service tax paid and therefore, the said claim is allowed.

2.3 Consequently, notice was issued quantifying the total demand payable including interest and penalty of Rs. 4,77,562/-. The Assessee paid the tax arrears

to the tune of Rs. 2,88,557/- vide challan dated 19.07.2019 and availed the benefit of Karasamadhana Scheme for waiver of interest & penalty. The benefit of Karasamadhana scheme has been availed only for STA Nos.19/2022 &

2.4 Respondent No.1 issued a notice bearing No.ZAC1/BNG/SMR-24/2021-22 dated 24.01.2022 alleging that the Assessee having opted for the Composition Scheme, the only allowable deduction is for payments to subcontractor and the taxes collected; the deduction towards land cost is not permissible in terms of section 15 of the Act; hence, the total receipts of Rs.28,06,53,150/- to be considered for payment of VAT. Further, the notice also proposed to verify the details of purchase of materials and URD purchases.

2.5 Assessee filed reply dated 16.02.2022 inter alia, contending that the total turnover including tax collected for the period 2015-16 is Rs.5,61,16,709/- after deducting land cost, tax collected, sub-contractor payment and the -8- turnover adopted by the Respondent No.1 in a sum of Rs.28,06,53,150/- is incorrect.

3. Aggrieved by the revisional orders, Assessee has filed

these Appeals on the following Substantial Questions of Law, although section 66 read with section 65 of the Act mentions questions of law, the adjective substantial being conspicuously absent: a. Whether on facts and circumstances, the Respondent No.1 is justified in invoking powers of suo moto revision under section 64 of the Act and thereby, setting aside the reassessment orders, in the absence of satisfying the twin conditions adumbrated by Legislature?

b. Whether levying tax on receipt for land cost i.e., immovable Scheme of KVAT is sustainable? c. Whether the assessment proceedings for the period 2014-15 and 2015-16 which have attained finality under the Karasamadhana Scheme, 2019 can be reopened by invoking revisional powers under section 64 of the Act? -9-

4. SUBMISSIONS AT THE BAR:

4.1 Learned Sr. Advocate appearing for the Appellant- Assessee argues that in the absence of twin test being satisfied, there was no scope for SMR; in any event, the Act does not provide for including the land cost while working out value of works contract and therefore, the impugned orders structured on contra premise are flawsome. Learned AGA appearing for the Revenue makes submission in justification of the impugned orders and the reasons on which they have been structured by the SMR authority. He also adds that the questions of law which the Assessee has raised in these appeals do not arise for consideration.

5. Having heard learned Sr. Advocate appearing for the Assessee and the learned AGA appearing for the Revenue, we are inclined to grant indulgence in these matters for the following reasons:

5.1 Under the VAT Scheme of taxation, more particularly in view of Article 366(29A)(b) of the Constitution of India, which provides for tax on the sale or purchase of goods, - 10 -

the immovable properties cannot be roped in directly or indirectly. Article 366 (29A) creates legal fiction of sale to levy tax on transfer of property in goods while executing the works contract. The said clause does not purport to tax the activity of transfer of immovable property vide *LARSEN & TOUBRO vs. STATE OF KARNATAKA*¹. To put it succinctly, levy of tax under the Act is on sale of goods or transfer of property in goods, and not on immovable property. Therefore, the impugned orders which take into account the land cost, are apparently wrong & unsustainable.

5.2 Learned Sr. Advocate appearing for the Assessee is right in telling us that for exercising suo moto revisional jurisdiction, the satisfaction of twin conditions namely the

order to be revised is erroneous and the said order is

prejudicial to the interest of the Revenue is a sine qua non vide *CIT vs. CHEMSWORTH (P) LTD*². On no count, the orders subjected to SMR at the hands of 1st Respondent were not demonstrably erroneous, be it in law or on

facts. Similarly, there was no case made out as to the said orders being prejudicial to the interest of Revenue, either.

2014 (303) ELT 3 (SC)

[2020] 119 taxman.com 358 (Karnataka) - 11 -

5.3 The prescribed authority having verified all the documents, vouchers and the ledgers, accepted the total turnover. When value of land is not exigible to VAT, the authority took the turnover excluding the value of land. This cannot be said to be prejudicial to the interest of Revenue merely because cash flow to the Exchequer to that extent is diminished. After all, no tax can be levied except by the authority of law. What should flow to the Exchequer is what is legally authorized & permissible and not every flow of money, regardless of the legality of its exaction.

5.4 With respect to exemption claimed on sub-contractor payment of Rs.75,63,738/-, the reassessment order itself had disallowed the same. Added, there is no material to show that the turnover was different from the one declared by the Assessee and the same turnover has been used by both the authorities. In respect of URD purchases that were disallowed, the Assessee had filed its reply specifically stating that there was no URD purchase. The re-assessment order though does not in so many words give any finding but does not deny or disallow the claim of Assessee. Therefore, question of error or prejudice does not arise.

5.5 It hardly needs to be stated that the change of opinion cannot be a ground for invoking suo moto - 12 - revisional powers vide CIT vs JAIN CONSTRUCTION CO3. In the instant case, when all the documents were already submitted by the Assessee at the time of reassessment, what the revisional authority has done is

nothing but a mere change of opinion, which is impermissible. The 1st Respondent in the impugned orders has observed that there is no attempt made by the 2nd respondent to levy tax on consideration received towards services, labour or land cost, which is apparently outside the scheme of taxation under the Act. He is also incorrect in observing that under the Composition Scheme, there is no deduction granted towards value of labour or land cost. Thus, the impugned orders have

erroneously disallowed the deduction claimed towards land cost from the total receipts.

5.6 It must be noted that separate agreements are entered into for sale of undivided share of land and works contract. What is contemplated by the statute is that the former agreement for sale of land would not be a subject matter of the tax, and the aggregate of works contracts agreements only would be taken into account as they represent the total consideration for the works contract. Further, in terms of section 15(4) of the Act, the only item that is excluded is input tax credit as composition schemes

[2013] 34 taxman.com 84 (Rajasthan) (para 26) - 13 -

are normally done to tax turnover without input tax as a simple alternative to regular tax payments. Composition schemes cannot be converted into a scheme to tax turnovers not falling within the legislative competence.

5.7 The Respondent No.1 in impugned order has erroneously stated that the Assessee has executed the works contract as a builder under JDA agreement and that the reassessment order does not refer to the receipts from the prospective buyers towards land value, services etc., and further that there is no proof of issue of any receipt or bill to the payer denoting the amount received as land cost. In the instant case, obviously there is no JDA

inasmuch as the Assessee himself has undertaken construction activity on his own land, as recorded in the reassessment order dated 25.09.2019. Further, documents for purchase of land and the entire set of agreement to sell and agreement for construction along with copy of invoices were produced at the time of reassessment.

5.8 In Circular No. 11/2019-10 (KSA.CR.121/09-10) dated 07.12.2009, it is clarified that while computing total turnover or the total consideration on which dealer is liable to pay tax under composition scheme, the same would not include the amount received from the customer towards their undivided share in land. However, in case of joint

- 14 - development projects, this exclusion would not be applicable. Since the subject matter herein is own land, this circular is binding on the authorities, as well vide K.P. VARGHESE vs ITO4.

6. The assessment proceedings for the period 2015-16

has attained finality under comprehensive Karasamadhana Scheme 2019 (CKSS 2019), the same cannot be reopened by invoking revisional powers in terms of Section 64 of the Act. 6.1. The reassessment orders were passed demanding tax, interest & penalty. Later, the State Government

promulgated comprehensive Karasamadhana Scheme, 2019, granting waiver of arrears of penalty & interest subject to payment of full arrears of taxes. Assessee sought the benefit of this scheme for waiver of penalty & interest. Respondent No.2 after verifying the application, issued order dated 26.07.2019 waiving penalty & interest. Accordingly, the Assessee made the payment of full tax

arrears. Once the issue is settled & closed under Karasamadhana Scheme, no fresh proceedings can be initiated by invoking revisional powers under Section 64 of the Act, by banking upon. Commissioners clarificatory

(1981) 4 SCC 173 - 15 -

order No.KSA.CR-04/2019-20 dated 15.07.2019, which

wrongly provides something that runs counter to the statutory Scheme. This clarification in itself undermines a legislative scheme and should be considered non est in law.

In view of above discussion, the questions of law framed in these appeals, are answered in favour of the Assessee and against the Revenue; therefore, these appeals succeed and impugned orders are set at naught, costs having been reluctantly made easy. Sd/- (KRISHNA S DIXIT) JUDGE Sd/- (RAMACHANDRA D. HUDDAR) JUDGE AM/cbc List No.: 1 Sl No.: 35

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com