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Rcc Builders Vs. Additional Commissioner of Commercial Taxes, Belgaum Zone

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Court : Karnataka

Decided On : Sep-29-1997

Reported in : [1998]110STC575(Kar)

Judge : G.C. Bharuka and ;V. Gopala Gowda, JJ.

Acts : [Karnataka Sales Tax Act, 1957](#) - Sections 5B, 17, 17(6), 22A and 24(1)

Appeal No. : Sales Tax Appeal Nos. 70, 71 and 73 of 1997

Appellant : Rcc Builders

Respondent : Additional Commissioner of Commercial Taxes, Belgaum Zone

Advocate for Def. : Smt. Sujatha, High Court Government Pleader

Advocate for Pet/Ap. : Indra Kumar, Adv.

Judgement :

G.C. Bharuka, J.

1. These three appeals have been filed under section 24(1) of the [Karnataka Sales Tax Act, 1957](#) (in short, 'the Act') against the common order dated June 18, 1996, pertaining to three periods of assessment passed under section 22A of the Act by

the Additional Commissioner of Commercial Taxes, Belgaum Zone, by which he has set aside the appellate order and has restored the assessment orders passed by the assessing authority.

2. The appellant is a partnership-firm. It is engaged in the business of executing civil works like that of constructing bridges etc. It is registered as a dealer under the Act. The three periods involved herein are the years ending on June 30, 1986, June 30, 1987 and March 31, 1988.

3. The assessing officer concluded the assessment for the aforesaid periods under section 17(6) of the Act extending the benefit of composition tax. But, while doing so, he disallowed the claim of the appellant for deduction of labour charges out of the total consideration received by the appellant in respect of the works contract executed by it in respective periods. Being aggrieved by the said assessment orders the appellant went in appeal before the Additional Joint Commissioner of Commercial Taxes (Appeals) who partly allowed the appeals under his common order dated February 24, 1993 by allowing the following claims of deduction towards labour charges out of total consideration amount.

Sl. No.	Period	Total Labour charges
1	1-4-1986 to 30-6-1986	3,28,902.00
2	1-7-1986 to 30-6-1987	98,670.00
3	1-7-1987 to 31-3-1988	21,98,983.00
4	1-4-1988 to 31-3-1989	6,59,695.00
5	1-4-1989 to 31-3-1990	33,80,862.00
		6,11,200.00
		4,37,144.00

4. Subsequently, the Additional Commissioner of Commercial Taxes, by invoking his revisional powers under section 22A, has set aside the appellate order by holding that under section 17(6) of the Act, the expression 'total turnover' relating to transfer of property in goods (whether as goods or in some other form) can only mean 'the gross receipt of the works contract executed'. Therefore, according to his understanding of the provisions of section 17(6) of the Act, as it stood prior to its amendment by Karnataka Act 7 of 1997, no deduction could have been given towards labour charges involved in the execution of a works contract.

5. Section 17 of the Act provides for composition of tax, Sub-section (6) thereof relates to works contract. This sub-section was amended by Karnataka Act No. 7 of 1997 making it retroactive from April 1, 1988. The said sub-section as it stood before and after the amendment is being reproduced hereunder :

Till 31-3-1988 :

17(6)(i) : Notwithstanding anything contained in sub-section (1) to (3), but subject to such conditions and in such circumstances as may be prescribed, the assessing authority of the area may, if a dealer liable to tax under section 5B in respect of the works contract specified in column (2) of the table below so elects, accept in lieu of the amount of tax payable by him during the year under this Act, by way of composition an amount at the rates specified in the corresponding entries in column (3) of the table on his total turnover relating to transfer in goods (whether as goods or in some other form) involved in the execution of such works contract.

From 1-4-1988 : 17(6)(i) : Notwithstanding anything contained in sub-section (1) to (3), but subject such conditions and in such circumstances as may be prescribed, the assessing authority of the area may, if a dealer liable to tax under section 5B in respect of the works contract specified in column (2) of the table below so elects, accept in lieu of the amount of tax payable by him during the year under this Act, by way of composition an amount at the rates specified in the corresponding entries in column (3) of the table on the total consideration received or receivable by him in respect of such works contract executed by him in that year in the State.

TABLE-----	Sl. No.	Total turnover
Rate-----	1	2
3-----	1.	6. Civil works like
construction of building, bridges,	2	per centroads,
etc.-----		

6. In view of the amendment made to sub-section (6) of section 17 of the Act 7 of 1997, it cannot be seriously disputed that if a person intends to take the benefit of composition of tax, he has to pay the same at the rate specified in the table on the total consideration received or receivable by him in respect of the works contract executed by him. But so far as the periods ending prior to April 1, 1988 are

concerned, the composition tax is payable only on his total turnover relating to transfer of property in goods (whether as goods or in some other form) involved in the execution of such contract.

7. The above expression has been bodily listed from sub-clause (b) of clause (29A) of article 366 of the Constitution of India. The said expression had fallen for interpretation before the Supreme Court in the case of Builders Association of India v. Union of India : [1989]2SCR320 . In the said case after tracing out the history and purpose of incorporation of clause (29A) in article 366 with regard to the interpretation of the above referred phrase it has been held that :

'Sub-clause (b) of clause (29A) states that 'tax on the sale or purchase of goods' includes among other things a tax on the transfer of property in the goods (whether as goods or in some other form) involved in the execution of a works contract. It does not say that a tax on the sale or purchase of goods included a tax on the amount paid for the execution of a works contract. It refers to a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract. The emphasis is on the transfer of property in goods (whether as goods or in some other form). The latter part of clause (29A) of article 366 of the Constitution makes the position very clear. While referring to the transfer, delivery or supply of any goods that takes place as per sub-clauses (a) to (f) of clause (29A), the latter part of clause (29A) says that 'such transfer, delivery or supply of any goods' shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made. Hence, a transfer of property in goods under sub-clause (b) of clause (29A) is deemed to be a sale of the goods involved in the execution of works contract by the person making the transfer and a purchase of those goods by the person to whom such transfer is made. The object of the new definition introduced in clause (29A) of article 366 of the Constitution is, therefore, to enlarge the scope of 'tax on sale or purchase of goods' wherever it occurs in the Constitution so that it may include within its scope the transfer, delivery or supply of goods that may take place under any of the transactions referred to in sub-clauses (a) to (f) thereof wherever such transfer, delivery or supply becomes subject to levy of sales tax. So construed the

expression 'tax on the sale or purchase of goods' in entry 54 of the State List, therefore, includes a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract also. The tax leviable by virtue of sub-clause (b) of clause (29A) of article 366 of the Constitution thus becomes subject to the same discipline to which any levy under entry 54 of the State List is made subject to under the Constitution.'

8. Keeping the amended and unamended provisions in juxtaposition and even independent of that, in view of the law laid down by the Supreme Court, it is not open for the Revenue to contend that the expression 'total turnover' relating to transfer of property as appearing in section 17(6) of the Act as it stood prior to April 1, 1988 should be read as 'total turnover' relating to the value of the works contract. Such an interpretation cannot be given by applying any known and established rule of construction of statutes. Accordingly, it is held that the appellants are liable to pay tax at the rate of 2 per cent on the total turnover relating to transfer of property in goods (whether as goods or any other form) involved in execution of the works contract undertaken by them and not on the entire value of such contract.

9. Accordingly, impugned revisional order is set aside for the three periods, i.e., the year ending on June 30, 1986, June 30, 1987 and March 31, 1988.

10. In the result, S.T.A. No. 70 of 1997, S.T.A. No. 71 of 1997 and S.T.A. No. 73 of 1997 are allowed. Anyhow, there will be no order as to costs.

11. Appeals allowed.