

Venkateshwara Engineering Works Vs. the Additional Commissioner of Commercial Taxes

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Court : Karnataka

Decided On : Oct-29-2004

Reported in : [2006]146STC681(Kar)

Judge : H.L. Dattu and ;Manjula Chellur, JJ.

Acts : [Karnataka Sales Tax Act, 1957](#) - Sections 5C

Appeal No. : S.T. Appeal Nos. 21-22/2000

Appellant : Venkateshwara Engineering Works

Respondent : The Additional Commissioner of Commercial Taxes

Advocate for Def. : B. Anand, Govt. Adv.

Advocate for Pet/Ap. : A. Sathyanarayana, Adv.

Disposition : Appeal dismissed

Judgement :

H.L. Dattu, J.

1. The appellant is a partnership firm engaged in the business of diesel generating sets. It is registered as a dealer under the provisions of the Karnataka Sales Tax

Act ('Act' for short). The assessee leases the diesel generating sets for hire.

2. The assessee had filed its annual returns before the assessing authority, declaring the total turnover at Rs. 9,26,410/- and had claimed exemption on the entire turnover for the assessment years 1994-95 and 1995-96

3. The assessing authority after rejecting the returns filed by the assessee, had issued a pre-assessment notice proposing to levy tax at 5% on the rentals received for leasing diesel generating sets. In response to the pre-assessment notice, the assessee had filed its objections, and in that, had specifically contended that the income derived from the leasing of Diesel Generator sets is not one of the items enumerated in the VII Schedule to the KST Act up-to 31.3.1996 to become liable to pay tax under Section 5C of the Act. The assessing authority has dropped the proposal made in the pre-assessment notice following the notification No.FD43.CSL.94(iii) dated 30.3.1994 issued by the State Government in exercise of its powers under Section 8A of the Act. However, had levied turnover tax under Section 6B of the Act on the lease rentals received on the leasing of Diesel Generators. The operative portion of the order passed by the assessing authority reads as under:

'It is seen from the seventh schedule appended to Section 5C of the KST Act 1957 that the leasing receipts received by the leasing D.G Sets is not covered specifically in the seventh schedule and hence, no tax under Section 5C can be levied. The assessee has stated that the D.G.sets are purchased earlier to 94-95 from local registered dealers'.

Considering the above facts, the levy of sales tax proposed in the proposition notice under Section 5C of the Act is dropped. However, the levy of turnover tax at 1.25% on leasing rentals received from hiring diesel generating sets is liable to tax on turnover of Rs. 16,22,140.00.

4. The assessee, aggrieved by the levy of turnover tax by the assessing authority on leasing rental receipts on lease of diesel generating sets, had filed appeals before the first appellate authority in appeal Nos. 263 & 264/98-99. The first appellate authority has allowed the appeals by its order dated 16.1.1999 on the

ground that the diesel generating sets would come under entry 56 of the V Schedule and therefore, the assessee is not liable for payment for the turnover tax.

5. The revising authority being of the view that the order passed by the assessing authority as well as the first appellate authority is erroneous and prejudicial to the interest of the revenue, had issued a notice to the assessee proposing to set aside the order of the Assessing Authority and the first appellate authority and had proposed to direct the assessing authority to levy tax under Sections 5C and 6B of the Act on the lease rentals received during the year 1994-95 and 1995-96.

6. After receipt of the notice issued by the revising authority, the assessee had filed its objections. In that, apart from others, the assessee had specifically contended, that, the assessing authority and the first appellate authority were justified in giving a finding that the lease rentals received on the diesel generator sets would not fall under any of the 15 items enumerated in the VII Schedule to the Act and therefore, the order passed are not erroneous and the proposal made in the notice issued under Section 22-A(I) of the Act be dropped.

7. The revising authority by its impugned order dated 19.4.2000 has set aside the assessment order passed by the assessing authority for the assessment years 1994-1995 and 1995-1996 and the common order passed by the first appellate authority dated 16.1.1999 by giving a finding that the Diesel Generator Sets constitute 'Plant and machinery' and since this item is enumerated in Entry 3 of VII Schedule to the Act, they are liable for levy of tax under Section 5C of the Act and therefore, they are not 'Plant and Machinery' and they are electrical Goods not liable for levy of tax under Section 5C of the Act requires to be rejected and the notification No.FD.43.CSL94(iii) dated 30.3.1994 on which reliance was placed by the assessing authority for granting exemption on the lease rentals received for leasing Diesel Generator sets is improper, since the notification exempts only the sale of diesel generating sets to persons other than the industrial units located in Karnataka and does not exempt from levy under Section 5C of the Act. It is the correctness or otherwise of this order is called in question in these appeals by the assessee being aggrieved by the same.

8. Sri Sathyanarayana, learned Counsel appearing for the appellant vehemently contends before this Court that the diesel generating sets cannot be included under the 'plant' and 'machinery' of the VII Schedule to the Act and therefore, the revising authority is not justified in setting aside the orders passed by the assessing authority as well as the first appellate authority. Learned Counsel would further contend that the diesel generating sets would fall under entry 56 of the V Schedule to the Act and therefore, the first appellate authority was justified in setting aside the levy of turnover tax levied by the assessing authority.

9. Per contra, Sri Anand, learned Government Advocate ably justified the order passed by the revising authority.

10. The question that requires to be considered and decided by this Court is whether the revising authority is justified in holding that the Diesel Generating Sets is a plant and machinery and therefore would fall under Entry 3 of VII Schedule to the Act?

11. It is well settled principle that in the absence of such definition, the terms and concepts appearing in taxing Statutes should be understood in their popular meaning and as per the definition in the market on commercial parlance. In common parlance, 'Electric Generator' is understood as a device in which the mechanical power is converted into electric power. In the recent times, the diesel generating sets are used to generate electricity. Now the question is whether the diesel generating sets used in the business of the assessee is a plant and machinery so as to attract tax under Section 5C of the Act?

12. Section 5C of the Act is also a charging Section under the Act. This section provides for levy of tax on the transfer of the right to use any goods. Under this Section, every dealer is liable to pay tax under the Act on his taxable turnover in respect of the transfer of the right to use any goods mentioned in column (2) of the Seventh Schedule for any purpose at the rates specified in the corresponding entry in column (3) of the Seventh Schedule.

13. The assessing authority while computing the tax liability of the appellant/assessee for the relevant assessment years had exempted the turnover

of the assessee in so far as lease rentals received on the leasing of the diesel generating sets by applying the notification issued by the State Government dated 30.3.1994. The language of the notification is clear. Alternatively it is not ambiguous. However, the assessing authority applies the notification and grants exemption on the lease rentals received by the assessee. A perusal of the notification would clearly indicate that what is exempted under the notification is the sale of diesel captive generation units to persons other than industrial units located in the State of Karnataka and not the rentals received for leasing the diesel captive generation units. Therefore, the assessing authority had committed a mistake, which really called for correction by a superior forum.

14. In the appeals filed, the assessee had questioned the levy of turnover tax under Section 6B of the Act by the assessing authority for the relevant assessment years. The first appellate authority has allowed the appeals only on the ground that the assessing authority having given a finding that the receipts from leasing diesel generating sets as not one of the goods enumerated in the seventh schedule, could not have levied turnover tax under Section 6B of the Act in view of Clause (1) of proviso to Section 6B(1) of the Act, since the transfer of the right to use goods other than those specified in the Seventh Schedule falls under Fifth Schedule to the Act.

15. The revising authority has taken exception to both the orders passed by the assessing authority as well as the first appellate authority on the ground that the Diesel Generating Units are 'machinery' and the rentals/hiring charges received from leasing the machinery would attract tax under entry 3 of Seventh Schedule to the Act.

16. The expression ' Plant and Machinery' is not defined under the Act. But the meaning of these two expressions is explained by the Apex Court and other Courts. In the case of SCIENTIFIC ENGINEERING HOUSE PVT. LTD v. COMMISSIONER OF INCOME-TAX (ANDHRA PRADESH), : [1986]157ITR86(SC) has explained the meaning of the expression 'plant'. In the said decision, the Court has observed as under:

'(iii) That 'plant' was not necessarily confined to an apparatus which was used for mechanical operations or process or was employed in mechanical or industrial business. But in order to qualify as 'plant', the particular article had to have some degree of durability. The test to be applied was: Did the article fulfill the function of a plant in the assessee's trading activity? Was it a tool of his trade with which he carried on his business? If the answer was in the affirmative, it would be a 'plant'.'

17. The term 'Machinery' is also not defined under the Act and in the absence of such statutory definition, the word has to be given the ordinary meaning. The expression 'Machinery' in the common parlance is understood as some Mechanical Contrivances which by themselves or in combination with one or more other mechanical contrivances, by the combined movement and interdependent operation of their respective parts generate power, etc. Even otherwise also, the Diesel Generating unit is a self contained unit capable of being put to use in the assessee's business and therefore, it could be a Machinery.

18. In view of the meaning of the expressions 'plant' and 'machinery' as explained by the Apex Court and other Courts, in our opinion, the diesel generating sets could be a plant, since it is a tool in the hands of the assessee since he carries on his business activity by leasing out the Diesel Generating units for hire. Even otherwise also, the Diesel Generating Units are 'Machinery' in view of our discussion in the earlier paragraph of our order. Therefore, the revisional authority is justified in coming to the conclusion that the diesel generators constitute 'Plant and Machinery' and though they are used to generate electrical energy but by themselves are not electrical goods.

19. In view of the aforesaid finding, we are of the view that the revisional authority is justified in cancelling the order passed by the assessing authority for the assessment years in question and the common order passed by the first appellate authority dated 16.1.1999. Accordingly, we do not see any good grounds to interfere with the order passed by the revisional authority. Therefore, appeals are rejected. Ordered accordingly.