Dickenson Fowler Ltd. Vs. Additional Commissioner of Commercial Taxes

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Court : Karnataka

Decided On : Jan-14-2008

Reported in : (2009)26VST454(Karn)

Judge : K.L. Manjunath and; A.S. Bopanna, JJ.

Acts : Karnataka Sales Tax Act - Sections 22A

Appeal No. : S.T.A. No. 3 of 2006

Appellant : Dickenson Fowler Ltd.

Respondent : Additional Commissioner of Commercial Taxes

Advocate for Def. : Gangadhar Sangoli, High Court Government Adv.

Advocate for Pet/Ap. : G. Sarangan, Sr. Counsel for; H. Vani, Adv.

Disposition : Appeal allowed

Judgement :

K.L. Manjunath, J.

1. This appeal is by the assessee challenging the order passed by the Additional Commissioner of Commercial Tax dated September 21, 1995 passed in case No. SMR/KST/BD/CR-02/2005-06. The assessee herein entered into an agreement with the ITC Limited on March 5, 2001 for setting up a cut tobacco and cigarette

manufacturing facility at Meenakunte village, Bangalore North Taluk, including, inter alia, the primary manufacturing department consisting of new plant, machinery, equipment and apparatus as well as certain items of new plant, machinery, equipment, apparatus relocated from its existing facility at Pulikeshinagar, Bangalore, which requires the supply, refurbishment, delivery, installation, testing and commissioning at site of all material, plant, machinery, equipment, apparatus, structures, tools supplies and such other goods as well as refurbishment and relocation as aforesaid, which together would constitute the scope of the aforesaid agreement.

2. For the assessment year 2001-02, the assessing officer by his order dated January 27, 2005 passed an order rejecting the claim of the assessee for composition of tax and he further held that the work executed by the assessee has to be treated as a contract for sale and not a works contract. Aggrieved by the order passed by the assessing officer, the assessee filed first appeal before the Joint Commissioner of Commercial Tax (Appeals), which appeal came to be allowed on April 30, 2005. While allowing the appeal, the first appellate authority directed the assessing officer to issue the revised notice of demand extending the benefit of composition of assessment as it relates to the works contract execution to ITC Limited. Thereafter, the Additional Commissioner invoking the provision under Section 22A of the Karnataka Sales Tax Act held that the order passed by the first appellate authority was erroneous and prejudicial to the Revenue for the reasons stated therein and called upon the assessee to file his objections. Accordingly, the assessee filed its objections and also sought a personal hearing. The Additional Commissioner after hearing the assessee, relying upon the judgment of the Supreme Court in the case of State of Andhra Pradesh v. Kone Elevators (India) Ltd. [2005] 140 STC 22, set aside the order of the first appellate authority and directed the assessing authority to issue a revised demand notice as ordered by him. This order is called in question by the assessee raising questions of law as stated in the memorandum of appeal.

3. We have heard the learned Counsel appearing for the parties.

4. Sri Sarangan, learned Senior Counsel for the assessee contends that the Additional Commissioner of Commercial Tax without considering the agreement entered into between the assessee and the ITC Limited and without considering the nature of the work executed by the assessee has wrongly reversed the findings of the first appellate authority and called upon the assessee to pay the tax. He contends that when the assessee undertakes the works contract, viz., dismantling, shifting and relocating the existing factory situated at Pulakeshinagar, Bangalore, to Minakunte village of Bangalore North Taluk and also manufacturing and establishing a new unit, it has ordered the specification of the contract. The Additional Commissioner of Tax ignoring the terms and conditions of the contract and nature of the work executed by the assessee has wrongly set aside the order passed by the assessing officer. Therefore, he contends that the order passed by the authority has to be set aside and the order passed by the first appellate authority has to be restored.

5. Per contra, Sri Sangolli, learned Government Advocate for the Revenue, contends that the Additional Commissioner was justified in rejecting the contention of the assessee that it is a works contract. According to him, it is a contract for sale as it undertakes manufacturing, supply, location of machinery and a new plant and machinery at Minakunte village, Bangalore North Taluk and relocating the existing factory is only incidental to the same. He further contends that erection and commissioning, testing of the new plant is only incidental to the supply of new machinery. Therefore, it cannot be considered as a works contract. In the circumstances, he requests the court to dismiss the appeal filed by the assessee.

6. Having heard the learned Counsel for both the parties, we have noticed that the assessee, mainly relying upon the contract entered with the ITC Ltd., is contending that it is a works contract and not a contract for sale. As a matter of fact, he sought composition of the tax based on the work executed by the assessee.

7. Whether the nature of work executed by the assessee amounts to works contract or contract for sale, it was the duty of the appellate authority so also the other authorities to look into the terms and conditions of the agreement. Taking into consideration the nature of the document executed by the assessee, it was for

the authorities to give its finding whether it is a works contract or contract for sale to reject the case of the assessee for composition and calling upon the assessee to pay the tax at a higher rate. It is unfortunate that all the authorities, without examining the contents of the agreement, have passed the orders. Therefore, we are of the opinion that without answering the questions of law framed in this appeal, the matter has to be reconsidered by the assessing officer afresh by considering all the contentions raised by the assessee in accordance with law.

8. In the result, we allow this appeal and set aside all the orders passed by the authorities below. The matter is remanded to the assessing officer for fresh consideration in accordance with law by giving reasonable opportunity for the assessee and a liberty is given to the assessee to raise all such contentions and also to produce the agreement entered into by it with ITC Ltd. The assessing officer shall take up this matter for further consideration on February 20, 2008 and that he is not required to issue any fresh notice to the assessee as the assessee's counsel has undertaken to appear before the assessing officer on the said date.