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Continental Builders and Developers Vs. State of Karnataka

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Court : Karnataka

Decided On : Oct-11-2007

Reported in : (2008)14VST175(Karn)

Judge : V. Gopala Gowda and ;Arali Nagaraj, JJ.

Acts : [Karnataka Sales Tax Act, 1957](#) - Sections 2(1), 5B and 17(6); [Transfer of Property Act, 1882](#); Bangalore Development Authority Act, 1976; Karnataka Development Authority Act, 1987; Karnataka Appellate Tribunal Regulations, 1979 - Regulation 54

Appeal No. : S.T.R.P. No. 22 of 2006

Appellant : Continental Builders and Developers

Respondent : State of Karnataka

Advocate for Def. : S. Sujatha, AGA

Advocate for Pet/Ap. : Kamath and ;Kamath, Advs. for ;Arvind Kamath and ;S. Koushik, Advs.

Disposition : Petition dismissed

Judgement :

ORDER

V. Gopala Gowda, J.

1. This revision petition is filed by the unsuccessful assessee questioning the correctness of the orders dated July 15, 2005 in S.T.A. No. 2601 of 2004 and March 16, 2006 in S.T.A. (Rev) No. 40 of 2005 passed by the Karnataka Appellate Tribunal (hereinafter called as, 'the Tribunal' in short) confirming the assessment order passed against the assessee for the assessment year 1999-2000, urging various legal grounds in support of the following three substantial questions of law framed at paragraphs 13, 14 and 15 in the revision petition:

13. Whether, in the facts and circumstances of the case, the Tribunal was right in dismissing the appeal in S.T.A. No. 2601 of 2004 despite knowing that a coordinate Bench of the Tribunal had, in its judgment dated September 11, 2003, recorded a contrary finding in respect of the appeal filed by the very same petitioner for earlier assessment period ?

14. Whether, in the facts and circumstances of the case, the Tribunal was justified in rejecting the review petition although it had committed an error apparent on the face of the record by dismissing the appeal in S.T.A. No. 2601 of 2004 by dissenting from the judgment of a coordinate Bench of the Tribunal ?

15. Whether, in the facts and circumstances of the case, charges received for creation of common amenities that are not sold to any person but only a right to use thereof is provided, would be liable to tax under the provisions of the [Karnataka Sales Tax Act, 1957](#)?

2. The brief facts of the case are, the petitioner is a proprietary firm engaged in real estate business and is also a developer. It has proposed to form two residential townships in an extent of 113 acres on Bellary Road belonging to one Fabian B. L. Colaco. For that purpose, it has entered into two separate agreements with the prospective buyers-(i) one for sale of plots and (ii) the other for development of barren lands by providing amenities like common road, culverts, drains, etc. The petitioner received sale consideration towards the sale of plots under the sale agreement and development charges under the development agreement. It is stated that the amenities like roads, parks, open spaces and civic

amenities have been handed over to local gram panchayat and they are not sold to the purchasers of the plots but only easementary right is provided. According to the petitioner, the same does not fall within the definition of 'works contract'. Therefore, for the assessment year 1999-2000, the petitioner filed 'nil' turnover under the [Karnataka Sales Tax Act, 1957](#). The assessing authority rejected the claim of the petitioner and held that the developmental charges received by the petitioner are liable for tax under Section 5B read with Section 17(6) of the Act. Aggrieved by the same, the petitioner filed first appeal but it was dismissed. The petitioner filed second appeal before the Karnataka Appellate Tribunal. The Tribunal also concurred with the assessing authority and dismissed the second appeal also.

3. Even the revision petition filed was also dismissed by the Tribunal ; the present petition is filed questioning the correctness of these orders. The learned Counsel for the petitioner contended that even though there is use of materials such as sand, jelly, cement, etc., to carry out the developmental works only easementary rights is provided for which no consideration is received from the purchasers. Therefore there is no 'sale' as defined under Section 2(1)(t) of the KST Act in terms of the [Transfer of Property Act, 1882](#). Hence fastening liability under Section 5B read with Section 17(6) of the Act is not legal and valid. The counsel further contended that the assessment order passed by the assessing authority, confirmed by the first appellate authority and the Tribunal is vitiated in law as the same is contrary to Section 2(1)(t) of the KST Act and the TP Act and the assessee is not liable to pay sales tax under Section 5B read with Section 17(6) of the Act and therefore learned Counsel for the petitioner submits that the question Nos. 14 and 15 would arise for our consideration to answer the same in favour of the assessee. That apart, the Tribunal has not followed its own earlier decision in S.T.A. Nos. 239-243 of 2003 disposed of on September 11, 2003 to which the District Judge Member was a party and therefore the same is contrary to Regulation 54 of the Karnataka Appellate Tribunal Regulations, 1979. Therefore, it is contended that questions of law framed in paragraph 13 of this petition would arise for our consideration and Mr. Kamath, learned Counsel for the petitioner, has requested this Court to answer the said question in favour of the assessee by allowing the revision petition and set aside the impugned orders.

4. Smt. Sujatha, the learned Additional Government Advocate, on behalf of respondent justified the impugned orders contending that the execution of civil works for the formation of layout is admitted by the assessee but the contention that there is no transfer of the same in favour of the purchasers as it is only for common usage, this contention is wholly untenable in law. She further submits that any layout formed shall be in accordance with the provisions of either Bangalore Development Authority Act, 1976 or Karnataka Development Authority Act, 1987 and providing common facilities to the residents of the layout is mandatory in a residential layout. Therefore, she submits that there is transfer of common facilities also in favour of the buyers and the same falls within the definition of Section 2(1)(t) of the KST Act and in terms of the TP Act. Thus, fastening of liability on the assessee, which is confirmed by the two authorities, is in accordance with law and the same does not warrant interference.

5. With reference to the above legal rival contentions, we have to answer questions framed in paragraphs 14 and 15 against the assessee for the following reasons:

The Tribunal, with reference to the rival legal contentions and the undisputed facts urged by the learned Counsel for the parties, has answered the point framed by it against the assessee by recording reasons at paragraph 8 of the impugned order after referring to the undisputed facts with regard to common facilities such as putting-up compound wall, drainage, constructing club house, stores, servant quarters, providing street lighting and laying electrical and telephone lines. It is not in dispute that the materials such as sand, jelly, cement, etc., were used for construction of the common facilities referred to supra and provided the same facilities to the residents of the layout. It is also not in dispute that the sites carved out in the layout are sold to the prospective purchasers. The price of sites collected includes the developmental charges to be incurred for providing the above civic amenities. Therefore, the stand of the assessee was rightly rejected by the assessing authority and the appellate authorities that the developmental charges agreement is only for the easementary right and there is no transfer of property by way of sale such as road and park in terms of Section 2(1)(t) of the KST Act and the TP Act to the residents of the layout. The contention urged by the

learned Counsel for the assessee that the assessee is not liable to pay tax under Section 5B read with Section 17(6) of the KST Act is wholly untenable in law and therefore we cannot accept the same.

6. No material is produced by the assessee before the assessing authority to show that the expenditure incurred for the formation of layout and providing common facilities to the respondents is not part of the sale consideration. In the absence of common facilities in a layout nobody will buy the sites. Therefore, there is transfer of common facilities provided in the layout also along with the sale of sites/plots in favour of the residents. Therefore, the concurrent findings on fact recorded by the authorities holding that there is sale in favour of the residents as defined under Section 2(1)(t) of the KST Act and in terms of the TP Act is perfectly based on valid and cogent reasons and the transfer is for valid consideration. Therefore, the findings of fact recorded in the impugned orders are neither erroneous nor an error in law. In our considered view, questions framed at paragraphs 14 and 15 do not arise for our consideration.

7. Since we have answered the above points against the assessee, the rejection of review petition is also legal and valid. Question framed in paragraph 13 is also to be answered against the assessee. Merely because one Member of the Bench of the Tribunal took a different view earlier, the matter need not be referred to larger Bench. Such reference is required under Regulation 54(a)(2) of the Regulations, when a point of law of general importance is involved or when there is conflicting decisions of the members in a case. Such a situation does not exist in the instant case.

8. In the result, the revision petition is devoid of merit and the same is dismissed. The learned Counsel for the assessee pointed out that the earlier decision of the Tribunal was not challenged by the department on similar set of facts. On account of this, there is loss of several lakhs to the Revenue from the years 1994-95 to 1998-99. Therefore, the Chief Secretary of the State is directed to see that a detailed enquiry is conducted within two months from the date of receipt of a copy of this order, submit a report to this Court and take disciplinary action against all those who are responsible for not challenging the earlier order of the Tribunal. The

registry is directed to send a copy of this order to the Chief Secretary for compliance.

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