SUPRME COURT OF INDIA

Indian Dairy Machinery Co. Ltd.

Vs.

Assistant Commissioner of Commercial Taxes

C.A.No.584 of 2008

(Arijit Pasayat and P. Sathasivam JJ.)

22.01.2008

JUDGMENT

Arijit Pasayat, J.

1. Leave granted in SLP (C) Nos. 12791-12794 of 2006

2. Challenge in these appeals is to the judgment of a Division Bench of the Karnataka High Court dismissing the Revision Petition filed under Section 23(1) of the Karnataka Sales Tax Act, 1957 (in short the Act).

3. The controversy relates to assessment year 2002-2003. The appellant had filed the Revision Petitions questioning correctness of the order passed by the Karnataka Appellate Tribunal (in short the Tribunal) in STA Nos798-801 of 2003. The appeals were filed before the Tribunal under Section 22(1) of the Act against the order passed by the Joint Commissioner of Commercial Taxes (Appeals), Bangalore Division, Bangalore (here in after referred to as the Appellate Authority). The said authority confirmed the provisional assessment orders of the Assistant Commissioner of Commercial Taxes, Bangalore (hereinafter referred to as the Assessing Authority) for the months of May, June, July and September, 2002.

4. Factual position is almost undisputed and is as follows:

> "The appellant is a limited company and has its registered office at Gujarat and branch office at Bangalore, Karnataka. It is a sub-contractor for M/s Larsen and Toubro Ltd. for execution of works contract. It is registered as a dealer under the Act as well as Central Sales Tax Act, 1956 (in short the Central Act). It had opted for composition under Section 17(6) of the Act. But the benefit of composition was denied in view of the amendment to sub-section (7) of Section 17. The appellant undisputedly had

received goods from the head office situated at Gujarat for execution of the work in Karnataka."

5. Stand of the appellant before the departmental authorities and the Tribunal was that the receipt of goods from the head office does not amount to receiving of goods. The Tribunal referred to sub-section (7) of Section 17 as amended by Act No.5 of 2002 w.e.f. 1.4.2002 and held that in fact the provision clearly applied to the case of the appellant.

6. The following questions were raised before the High Court in the Revision Petition:

> "I. Whether the Karnataka Appellate Tribunal was right in concluding that the amendment to Section 17(7) of the KST Act effective from 1.4.2002 would apply to agreements entered into prior to 1.4.2002.
>
> II. Whether the Karnataka Appellate Tribunal was right in holding that even transfers to stock would be hit by the amendment to Section 17(7) of the Karnataka Sales Tax Act effective 1.4.2002?"

7. Section 17(7) of the Act which has been introduced by the Karnataka Amendment Act 5 of 2002, with effect from 1.4.2002 reads as under:

> "Nothing contained in sub-section (6) shall apply to a dealer who purchases or receives goods from outside the State for the purpose of using such goods in the execution of works contract"

8. The legislature by introducing the above amendment to sub-Section (7) of Section 17 of the Act has restricted the benefit of composition amount for a dealer liable to tax under Section 5-B of the Act. By this amended provision, the Legislature mandates that a dealer who purchases or receives goods from outside the State for the purpose of using such goods in the execution of works contract is not eligible for benefit of composition amount for the works contract executed by him in that year in the State in respect of works specified in the Sixth Schedule to the Act.

9. Rule 8-B of the Karnataka Sales Tax Rules, 1957 (for short the `Rules') provides the procedure for composition of tax in the case of dealers executing works contract. Sub-rule (1) of Rule 8-B of the Rules envisages that the assesses/dealer shall submit an application in Form 8-AA to the assessing authority each year seeking composition benefit within One hundred and twenty days from the date of commencement of the assessment year or of the business, if he has commenced the business during the course of the year.

10. Sub-Rule (2) of Rule 8-B of the Rules mandates that the Assessing Authority after receipt of such application from the dealer/assesses, and after verifying the same, may permit the dealer, subject to the conditions specified in Sub-rule (1), to pay in lieu of the amount of tax

payable by him during the year an amount by way of composition as provided in sub-section (6) of Section 17 of the Act.

11. Clause (ii) of sub-rule (2) of Rule 8-B of the Rules envisages that the Assessing Authority shall give permission for composition within thirty days from the date of receipt of the application by the dealer/assesses under Sub-rule (1) of Rule 8-B of the Rules.

12. The High Court dismissed the Revision Petition holding that sub-section (7) of Section 17 has clear application. The stand taken before the Tribunal and the High Court was re-iterated in these appeals.

13. Learned counsel for the respondent-State on the other hand supported the impugned judgment.

14. It is to be noted that if the dealer wanted the benefit of sub-section (6) of Section 17, it was required to submit an application within one hundred twenty days from the date of commencement of the assessment year. The amended provision of sub-section (7) of Section 17 came into effect from 1.4.2002. The amended provision clearly excludes the dealer from the benefit of sub-section (6) of Section 17 of the Act if he purchases or receives goods from outside the State for the purposes of using such goods in the execution of the works contract. If for any reason, the assesses had intended to opt for composition of tax under Section 17 (6) of the Act, necessarily he had to submit the application within one hundred and twenty days from the date of commencement of such year before the assessing authority to accept in lieu of tax payable under Section 5-B of the Act on the total value of the works contract being executed by him. The key words under Section 17 (6) of the Act are the tax payable during the year by way of composition an amount on the total consideration for the works executed by the contractor in that year in the year in the State. Option to be exercised for composition benefit is not dependent on the dates of the agreements entered into by the parties for execution of the works contract Under Rule 8B (1) of the Rules, the dealer/assesses is required to submit the application seeking composition benefit for each assessment year within the time prescribed from the date of commencement of such year or of the business, if he has commenced the business during the course of the year. That again means, it is irrelevant, when the parties had entered into an agreement for the execution of works contract in the State. As already noticed, the relevant assessment year in question is 2002-2003 (ending on 31.3.2003) and the assesses if it elected to compound the tax for this year, it was required to submit the application as provided under rule 8-B (1) of the rules. The amended provisions of sub-section (7) of Section 17 were given effect to from 1.4.2002. In view of the restriction imposed under the amended provision, the assessing authority could not have permitted the appellant company to elect to pay the tax under Section 17(6) of the Act, since admittedly the appellant received the goods by way of stock transfers from outside the State for the purpose of using such goods in the execution of works contract. Therefore, the first question of law raised by the appellant has been rightly answered against the assesses.

15. The language used in sub-section (7) of Section 17 is very clear. It is to the effect that if a dealer purchases or receives goods from outside the State for execution of works contract within the State it is not entitled to the benefit of composition in terms of sub-section (6) of Section17 and undisputedly, the appellant has received the goods by way of stock transfer. In view of the language employed in the amended provision, the appellant was clearly disentitled from composition for availing the benefit under sub-section (6) of Section 17. The expression receives would encompass receipt in any manner. Receipt by branch transfer is covered by the said expression. The High Court was, therefore, justified in dismissing the Revision Petition. We find no scope for taking a different view in view of the clear language of sub-section (7) of Section 17 as amended w.e.f. 1.4.2002.

16. The appeals fail and are dismissed with no order as to costs.