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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ST.APPL. 24/2015

HS POWER PROJECTS PVT. LTD.

..... Petitioner

Through: Ms P. L. Bansal, Senior Advocate with
Mr Ruchir Bhatia, Advocate.

versus

**COMMISSIONER OF TRADE & TAXES,
DELHI**

..... Respondent

Through: Mr Peeyoosh Kalra, ASC for GNCTD
with Ms Mahua Kalra, Advocate.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE VIBHU BAKHRU

ORDER

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14.01.2016

Dr. S. Muralidhar, J.:

1. This is an appeal by the Assessee under Section 81 of the Delhi Value Added Tax Act, 2004 against the order dated 23rd May, 2014 passed by the Appellate Tribunal, Value Added Tax, Delhi ('Tribunal') in Appeal No.637/ATVAT/08-09 for the Assessment Year ('AY') 2004-05.

2. The Assessee is engaged in the business of executing pure labour contracts, under which the Assessee supplies skilled and unskilled labour for excavation work. The Assessee also executes contracts which involves transfer of property in goods and the same are exigible to tax under the provisions of The Delhi Sales Tax on Works Contract Act, 1999 ('Act').

The Assessee is a registered dealer with the Department of Trade and Taxes.

3. The Assessee submitted its Sales Tax Return on 30th June, 2005 for the AY 2004-05 declaring a turnover of Rs. 3,49,99,618/-. Later the Assessee revised the said return declaring a gross turnover of Rs. 4,73,32,324/-. According to the Assessee the said sum represented two distinct amounts – Rs. 1,10,76,390/- was on account of civil works relating to laying of cables, taxable as ‘works contract’ under the Act and Rs. 3,62,55,934/- purely on account of supply of labour, trenching and excavation works which according to the Assessee was not amenable to tax under the Act.

4. The Assessee opted for the composition scheme under Section 6 of the Act and paid 4% tax on Rs. 1,10,76,390/- which worked out to Rs. 4,43,056/-.

5. By an order dated 22nd March, 2006 the Assessing Authority (‘AA’) held that once the dealer had availed the benefit of composition and offered to be taxed on the lump sum payment such dealer ‘cannot now be permitted to wriggle out of obligation in respect of one any contract’. Accordingly, the tax was computed @ 4% on the entire gross turnover of Rs. 4,73,32,324/-.

6. After the dismissal of its appeal by the first Appellate Authority by an order dated 8th December 2008, the Assessee went in appeal before the Tribunal by filing Appeal No. 637/ATVAT/08-09. By the impugned order dated 23rd May 2014, the Tribunal upheld the view of the AA and the Appellate Authority but granted limited relief only in respect of the TDS Certificate submitted by the Assessee.

7. While admitting this appeal on 27th November, 2015, this Court framed the following questions of law for determination:

- “(i) Whether the labour contracts in question could be subject to levy of sales tax under Sections 4, 5 and 6 of the Delhi Sales Tax on Works Contract Act, 1999?
- (ii) Whether the Tribunal erred in including receipts on account of supply of manpower/labour in the gross turnover of the Appellant?”

8. The Court has heard the submissions of Ms. Prem Lata Bansal, learned Senior Counsel appearing for the Appellant and Mr Peeyoosh Kalra, learned counsel for the Respondent.

9. Before discussing the issues that arise, it is necessary to examine the relevant provisions of the Act. The Act was enacted essentially for the levy and collection of tax on “the transfer of property in goods whether as goods or in some other form involved in the execution of a works contract in the National Capital Territory of Delhi”. The expression ‘works contract’ has been defined under Section 2 (1) (u) of the Act to include “any agreement for carrying out for cash or for deferred payment or for any valuable consideration, the building construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement repairing or commissioning of any movable or immovable property but shall not include such contracts as may be prescribed.” The expression ‘dealer’ has been defined under Section 2(1)(f) to mean “any person, who whether for valuable consideration, commission, remuneration or otherwise, while executing a works contract transfer property in goods (whether as goods or

in some other form) involved in the execution of such works contract and includes any State Government and the Central Government which so transfers such property in goods, and any society, club or association of persons which so transfers the property in goods to its members.”

10. Section 3(1) of the Act provides that every dealer whose turnover of sales during the relevant year preceding the commencement of the Act exceeds the taxable quantum shall be liable to pay tax on his “taxable turnover effected by him” on or after such commencement. Section 4 spells out the liability of the dealer and states that tax shall be levied on the “taxable turnover involving transfer of property in goods in the execution of works contract commenced or continued for execution on or after the commencement of this Act, whether such contract was entered into prior or subsequent to such commencement”.

11. Under Section 5(1) tax @ 8% on the net turnover of sales is liable to be paid by every dealer on the “taxable turnover of sales or transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract.

12. The Act provides for composition of tax. Section 6(1) of the Act which is relevant for the above purposes reads as under:-

“6 (1) Subject to such condition and in such circumstances as may be prescribed, the assessing authority of the area may, if a dealer, liable to pay tax under this section so elects, accept in lieu of the amount of tax payable by him under section 5 of this Act during the year by way of composition an amount at the rate of four per cent of his total amount of the contract or the total aggregate value of the contracts received or receivable

towards the execution of works contract.”

13. The above provisions have to be read along with the Delhi Sales Tax on Works Contract Rules, 1999 (‘Rules’). Rule 5 thereof talks of computation of taxable turnover of sales. Rule 5 envisages two kinds of works contract. One is a works contract which only deals with transfer of property in goods. The other is a 'composite' works contract where it is not possible to ascertain the value of charges towards labour, service, etc. Rule 5(1) states that in computing the taxable turnover certain amounts as specified in Rule 5 (1) (a) to (e) shall be deducted from the total turnover of the dealer. This includes turnover of goods included in the execution of works contract transfer in the course inter-state sales [sub-clause (a)], amounts paid to a sub-contractor [sub-clause (b)], and charges towards labour, service and other like charges [sub-clause (e)]. Rule 5(2) states that where the amounts referred to in the Rule 5 (1) (a) to (e) are not ascertainable, then the turnover of the sales of the dealer for the purposes of Section 5 will be determined after deducting certain amounts calculated at a fixed percentage, towards labour and service for the different types of contract, in terms of a table set out thereunder.

14. When it comes to availing the benefit of composition of tax under Section 6 of the Act, the dealer who elects for such composition is required, in terms of Rules 6 (1) of the Rules, to submit an application in Form-VII to the AA. Under Rule 6(2)(i) the AA has to conduct verification before permitting the dealer to avail of the benefit of composition.

15. A combined reading of the above provisions indicates that the Act does

not intend to bring to tax anything other than the value of the goods transferred whether as goods or in some other form in the execution of a works contract. The value of labour and services and other like charges are kept out of the ambit of the taxable turnover. Where their value is not clearly ascertainable, as in the case of a composite works contract, Rule 5 (2) provides for a deduction from the total turnover a fixed percentage in terms of the table set out thereunder. However, when a dealer avails of the benefit of composition under Section 6(1) of the Act, he is expected to pay tax at the lower rate of tax @ 4% on the “total amount of the contract or the total aggregate value of the contracts received or receivable towards the execution of the works contract”. In other words, where the contract is a composite works contract and the dealer avails of the benefit of composition in terms of Section 6(1), he would be expected to pay tax @ 4% of the entire value of the composite works contract.

16. The stand of the AA that, once the dealer opts for composition, he is required to pay tax on the aggregate value of all the contracts, including pure labour contracts does not appear to be based on a correct understanding of the provisions of the Act. When the provisions are read as a whole, and in the context of the object and purpose of the Act, it is seen that the legislative intention was not to bring pure labour contracts within the purview of the Act, much less within the purview of Section 6 (1) of the Act.

17. Similar provisions in the taxing statutes relating to works contracts in certain other states have been interpreted by the respective High Courts. In ***H. S. Chandra Shekhar Hande v. State of Karnataka (2013) 57 VST 234***

(*Karn.*) the High Court was called upon to interpret Section 17(6) of the Karnataka Sales Tax Act, 1957 ('KST Act') which corresponds to Section 6 of the Act. There the Assessee was engaged in erection of structural works as a works contract and opted for the composition scheme under Section 17 of the KST Act. It was explained by the High Court that where it was a composite works contract which pertained to labour charges, the Assessee would have to pay the reduced rate of tax in terms of the said provision on the entire value of the contract. It was further elucidated that "[h]owever, if he enters into purely labour contract where no aspect of sale is involved and consideration received in the labour contract is outside the claim of Sales Tax Act, no portion of that labour charges is liable to tax under the KST Act." It was reiterated that "a works contract is a composite contract which includes payment of labour contract plus payment of material, in respect of that labour charges [sic] under Section 17(6) tax is payable on the total consideration in the works contract."

18. The Kerala High Court interpreted Section 8(a)(1) of the Kerala Value Added Tax Act, 2003 (Kerala VAT Act) which corresponds to Section 6 of the Act. *In Geogy George v. State of Kerala (2014) 71 VST 510 (Ker)* the High Court explained as under:

"16.....Section 8 (1) (a) only refers to tax payable on the whole contract amount without referring to turnover. Once he chooses to seek the benefit under Section 8 to pay concessional rate of tax, it has to be done on the whole amount which would mean value of entire contract done by him in respect of a particular contract or with respect of the work done in a year, without any bifurcation claiming exemption. But, in an instance where during an assessment year the assessee does only labour contract for one person and composite work for another person,

there is no obligation to pay compounded tax for the said labour work, but in respect of the composite work, the compounded tax has to be paid.

.....

21. We have already dealt with the issue, as to the circumstances under which compounded tax is payable. The liability to pay compounded tax arises only if there is a liability to pay tax. If it is a composite contract involving a labour contract and supply of materials, the assessee will become liable to pay tax. If the labour contract is pure and simple there is no liability to pay tax and consequently there is no liability to pay compounded tax as well.”

19. In that view of the matter, Question no. (i) framed by the Court for consideration is answered by holding that pure labour contracts would not be subject to levy of tax under Section 5 or 6 of the Act. However, where a composite works contract includes a demand of labour charges, service charges and the like, then the dealer availing of the benefit under Section 6(1) of the Act would have to pay the reduced amount of 4% tax in terms thereof on the entire value of the composite works contract.

20. Turning to Question no. (ii) it is seen that in the present case the Assessee itself first offered for tax a higher turnover and later contended before the AA that some part of that turnover was not amenable to tax since it constituted the value of pure labour contracts executed by it. From the record it appears that before the Tribunal the Assessee did not produce copies of the composite works contract executed by it on which it paid the reduced amount of 4% tax in terms of Section 6(1) of the Act. The Tribunal

in the impugned order dated 23rd May, 2014 specifically notes in para 10 that the “Appellants contract was for supply of labour as well as other works contract of which copies are not filed on record”. Again in para 15 it notes: “As already observed the appellant has not placed on record the works contract though turnover thereof was included in the Return.”

21. During the course of the hearing today, Ms Bansal produced before the Court a copy of the composite works contract dated 10th December, 2004 entered into between the Assessee and BSES Yamuna Power Limited and stated that this was the composite works contract on the value of which tax was paid by availing of the benefit of composition under Section 6(1) of the Act. She, however, stated that in order to obviate any confusion that may have arisen during the course of the assessment proceedings on account of the Assessee not having produced the copies of the relevant contracts, the Assessee is prepared once again to produce the relevant works contract as well as the pure labour contracts executed by it before the AA to enable the AA to examine whether any of the pure labour contracts stemmed from the execution of the works contract in question.

22. The Court is of the view that an opportunity ought to be given to the Assessee to produce all the relevant contracts before the AA to enable the AA to pass a fresh order on the issue. This would not unduly prejudice the Respondent.

23. Consequently, the Court sets aside the assessment order dated 22nd March, 2006 and remands the matter to the AA for a fresh examination of the issue subject to the Assessee producing before the AA copies of the

works contract executed by it during the AY in question as well as copies of the pure labour contracts stated to have been executed by it so that the AA can pass a fresh order in terms of the law explained by this Court. The AA will, in particular, examine whether the labour contracts which the Assessee states are pure labour contracts were executed independent of the composite works contract.

24. The corresponding order dated 8th December 2008 of the Appellate Authority and the impugned order dated 23rd May 2014 Tribunal are to the above extent also set aside. The appeal is disposed of in the above terms.

S.MURALIDHAR, J

VIBHU BAKHRU, J

JANUARY 14, 2016
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