

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6905 OF 2008
(Arising out of S.L.P.(C) No.10123/2008)

M/s. Continental Builders & Developers

through its Proprietor

...Appellant(s)

Versus

State of Karnataka thr. C.C.T.

...Respondent(s)

ORDER

Leave granted.

A dispute arose before the Tribunal in the context of sales tax liability towards development charges received by the appellant-builder.

We quote hereinbelow para 9 of the Order of the Tribunal.

“The appellant has placed reliance over the decision of this Tribunal in respect of the same appellant in STA No.239 to 243 of 2003 dated 11.09.2003. We are all unable to follow the said decision as with due respects to the said bench we are of the opinion that the law is not properly applied to the set of similar facts obtaining as in this case and for this year.”

As stated above, the Tribunal observed that it was not in agreement with the view expressed by its earlier coordinate bench in S.T.A.Nos.239-243/2003, dated 11th September, 2003. We are surprised that despite the existence of the Regulation 54(a)(i) stipulating that in the event of

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conflict of decisions, the matter is required to be referred to the Chairman, that was not done in this matter. In that connection, we quote Regulation 54(a) in extenso as follows:

“54(a) The Members of a Bench shall refer any proceeding before them to the Chairman with a recommendation that it may be placed before a Full Bench:-

- (i) When they consider that the decision which they propose to take in the proceeding involves a substantial departure from the previous decision of the Tribunal; or**
- (ii) When the case involves a point of law of general importance; or**
- (iii) When conflicting decisions of the Tribunal are brought to their notice; or**
- (iv) When they differ in opinion on any point material for the decision of the case.**

While making the recommendation for constitution of Full Bench, the Members shall formulate the specific points for determination by the Full Bench.”

In the above circumstances, without expressing any opinion on the merits of the case and keeping contentions on both sides expressly open, we direct the S.T.A.No.2601/2004 to be placed before the Chairman, who is requested to constitute a special Bench in view of the conflicting opinions of the coordinate Benches of the Tribunal in terms of Regulation 54(a)(i).

Before concluding, we request the Tribunal to dispose

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of the matter as expeditiously as possible. We make it clear that the departmental enquiry ordered to be held by the High Court is not being interfered with despite our present order of setting aside the impugned judgment of the High Court.

Civil Appeal stands allowed accordingly, with no order as to costs. Consequently, the impugned judgment of the High Court is set aside.

.....J.
(S.H. KAPADIA)

.....J.
(B. SUDERSHAN REDDY)

New Delhi,
November 28, 2008.

