REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s) 8898 OF 2011

M/S CRAFT INTERIORS(P) LTD. ....Appellant(s)

VERSUS

THE JOINT COMMISSIONER OF COMMERCIAL TAXES (INTELLIGENCE) & ANR. ....Respondent(s)

J U D G M E N T

Rastogi, J.

1. The civil appeal arises out of the judgment of the Division Bench of the High Court of Karnataka dismissing the writ petition and upholding the validity of Rule 6(4)(m)(i) of the Karnataka Sales Tax Rules, 1957(hereinafter referred to as "KST Rules") read with Explanation III to Rule 6(4) of the said rules.

2. The question which has been raised in the instant appeal is whether the condition of 'use in the same form in which such goods are purchased' under Rule 6(4)(m)(i) of the KST Rules expands the scope of charging section i.e. Section 5B under KST Act, 1957.

3. The brief facts of the case relevant for the purpose are that the appellant is a private limited company engaged in the business of interior decoration and other types of work. The appellant had purchased various goods from registered dealers under the KST Act, 1957 and used them in the execution of works contracts. The appellant claimed deduction from the total turnover of such purchases in terms of Rule 6(4)(m)(i) of the KST Rules, 1957 as per which all amounts received or receivable in respect of goods purchased from registered dealers and used in the execution of works contracts in the same form in which goods are purchased, can be claimed as deduction from the total turnover.

4. The assessing Officer issued notices for provisional assessment for the years 1998-99, 1999-2000, 2000-2001, 2001-2002 and 2002-2003 to deny the deduction of the value of timber, purchased from the local registered dealers claimed under Rule 6(4)(m)(i) on the ground that the timber was not used in the same form in which such goods were purchased, while executing the works contract. It was further observed that for

carrying out the interior decoration, the appellant purchased timber in log forms, plaster of paris, plywood, glass sheets and the said purchases have been manufactured to produce the goods which are necessary for interior decoration. The Assessing Officer further observed that as per Rule 6(4)(m)(i), the registered dealer purchases deductible from the works contract receipts is limited to transfer of the purchased goods in the same form. As per Explanation III of the said Rule "in the same form" do not include the registered dealer purchases which are either consumed or manufactured of other goods which are used in the execution of the works contract. Hence, there shall be no deductions as claimed.

5. It has been informed to this Court that five notices were issued by the Assessing Officer on 8th November, 2002 for different assessment years under Section 28(6)(iii) of the KST Act, 1957 and reply was submitted by the appellant but the matter has not been proceeded thereafter any further because of pendency of the litigation. Being aggrieved, the appellant preferred writ petition, assailing the five show cause notices served upon the appellant/assessee and also the constitutional

validity of Rule 6(4)(m)(i) read with Explanation III to Rule 6(4) of the said rules.

6. The writ petition came to be dismissed by the learned Single Judge of the High Court vide its Order dated 7th January, 2003 placing reliance on the judgment of ***E.C.I.E. Pvt. Ltd. Vs. Additional Deputy Commissioner, Commercial Taxes(Kar.) and Another*** 1999(114) STC 309 in which the High Court of Karnataka has upheld the constitutional validity of the said Rule. So far as the order of the Joint Commissioner of Commercial Taxes (Intelligence) dated 6th November, 2002 is concerned, granted permission to the authority to take up the provisional assessment in furtherance to the notices dated 8th November, 2002 and to pass an appropriate order after hearing the parties in accordance with law. Against the Order of the learned Single Judge dated 7th January, 2003, the unsuccessful appellant preferred LPA which also came to be dismissed with supportive reasons vide judgment impugned dated 16th September, 2006 which is a subject matter of challenge in appeal before us.

7. The main thrust of submission of the learned counsel for the appellant, Mr. Charanya Lakshmikumaran, is that the condition under Rule 6(4)(m)(i) of goods purchased be used "in the same form" is beyond the charging section(Section 5B) of the KST Act, 1957. The charging section does not restrict the form in which the goods are to be transferred in a works contract. However, the Rule restricts the deduction available on the form in which the goods are used in the execution of works contract. According to learned counsel, the Rule referred to is overstepping the substantive provision being unconstitutional is liable to be struck down.

8. Learned counsel further submits that the High Court of Andhra Pradesh in the case of ***Media Communications Vs. Government of Andhra Pradesh*** 1997(105) STC 227(AP) struck down a pari materia provision (Section 5F of the A.P. General Sales Tax Act, 1957) on the premises that the said levy is contrary to the single point system of tax and cannot be accepted. Appeal filed by the Government of Andhra Pradesh against the said Order in SLP(C) Nos. 6804-6849 of 1998 has been dismissed by this Court on 29th October, 1998 and in the

light of the judgment of the High Court of Andhra Pradesh, Rule 6(4)(m)(i) read with Explanation III is not sustainable and deserves to be quashed.

9. Learned counsel further submits that provisional assessment under Section 28 of the KST Act cannot be invoked unless there is an assessment pending either for finalisation or assessment for escaped turnover under Section 12A for the assessment years 1998-1999 and 1999-2000. The assessment stood finalised on 25th February, 2002. The notice for provisional assessment was issued on 8th November, 2002. In the given circumstances, there was no occasion to invoke Section 28 when notice should have been issued under Section 12A, if upon going through the records and the books of accounts, the assessing officers/intelligence officers felt that the deduction under Rule 6(4)(m)(i) has been wrongly allowed and hence the turnover of the appellant has escaped assessment.

10. According to the learned counsel, in the present case, no notice was issued under Section 12A for the assessment years 1998-1999 and 1999-2000 and further assessments under

Section 12 had already been finalised. Thus, Section 28(6) of the Act could not have been invoked since there was no pending assessment which sought to be revised by way of the provisional assessment. At least for the two assessment years, the very action initiated by the respondent is not in conformity with the mandate of law and deserves to be interfered with by this Court.

11. Per contra, Mr. Devadatt Kamat, learned AAG supporting the judgment of the High Court submits that Section 5B of the KST Act and Rule 6(4)(m)(i) of KST Rules operate in different spheres. Section 5B is a charging provision for levy of sales tax, whereas Rule 6(4)(m)(i) is a provision for deduction. Under Section 5B, tax can be levied on transfer of property in goods (whether as goods or "in some other form"), whereas Rule 6(4)(m)(i) provides for a deduction in respect of goods which have already suffered tax and which are used "in the same form". Thus, Rule 6(4)(m)(i) is in conformity with the charging provision and does not militate against charging Section 5B and submits that the very contention advanced by the appellant is misconceived and has been examined by the High Court in the impugned judgment needs no further consideration by this Court.

12. Learned counsel further submits that Explanation III appended to Rule 6(4) clarifies the expression "in the same form" used in Rule 6(4)(m)(i) and the same goods can be taxed only once and the same goods cannot be made subject matter of multiple incidence of tax. However, if the goods which have suffered taxation undergoes transformation into a different commodity altogether and is then used in the execution of a works contract, the same being a different commercial commodity, is indeed liable to be taxed and this being in the domain of the legislative competence of the authority cannot be held to be ultra vires as prayed for.

13. Learned counsel further submits that the judgment of ***Media Communications*** **Vs.** ***Government of Andhra Pradesh***(supra) is wholly misplaced. In ***Media Communications***(supra), the High Court relied on ***Telangana Steel Industries and Others*** **Vs.** ***State of A.P. and Others*** 1994 Supp(2) SCC 259 and recorded a finding that the first and second proviso to Section 5F of the A.P. General Sales Tax Act are ultra vires of the main provision. The fact is the High Court in

Media Communications(supra) failed to notice that this Court in ***Telangana Steel Industries and Others***(supra) has held that 'if two goods at hand be different commodities", the single point taxing principle would not debar realisation of tax once again.' This what has been observed would not be construed as finding in affirmance in ***Media Communications*** case(supra) merely on dismissal of the special leave petition(s) preferred by the State of Andhra Pradesh.

14. Learned counsel further submits that whether the assessee/appellant was eligible under Rule 6(4)(m)(i) is a question of fact which will have to be determined in pending proceedings initiated pursuant to the impugned notices served upon the appellant. Since the provisional assessment has not been finalised due to the pendency of the instant proceedings, the Department be given liberty to complete these proceedings obviously in accordance with law.

15. We have heard learned counsel for the parties and with their assistance perused the material available on record.

16. Before we proceed with the matter further, it will be apposite to take note of the relevant provisions of the KST Act, 1957 and KST Rules, 1957:-

> **"5-B. Levy of tax on transfer of property in goods (whether as goods or in some other form) involved in the execution of works contracts.**- Notwithstanding anything contained in sub-section (1) or sub-section (3) or sub-section (3-C) of section 5, but subject to sub-section (4), (5) or (6)] 2 of the said section, every dealer shall pay for each year, a tax under this Act on his taxable turnover of transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract mentioned in column (2) of the Sixth Schedule at the rates specified in the corresponding entries in column (3) of the said Schedule."
>
> (emphasis supplied)

> "6(4). In determining the taxable turnover, the amount specified in clauses (a) and (p) shall, subject to the conditions specified therein, be deducted from the total taxable turnover of a dealer as determined under clauses (a) to (e) of sub-rule (1).
>
> > (m). in the case of works contract specified in serial numbers 1,2,3,4,5,6,7,8,9,10, 11,12,17,26,27,35,36,40 and 42 of the Sixth Schedules:
> >
> > > (i) All amounts received or receivable in respect of goods other than the goods taxable under sub-section (1A) or (1B) of section 5 which are purchased from registered dealers liable to pay tax under the Act and used in the execution of works contract **in the same form in which such goods are purchased."**
> >
> > (emphasis supplied)

17. Explanation III to Rule 6(4) of the KST Rules, which clarifies the expression "*in the same form*" used in Rule6(4) (m)(i) reads as under:

> "Explanation III: For the purposes of sub-rule (4), the expression "in the same form" used in sub-clause (i) of clause (m) shall not include such goods which, after being purchased, are either consumed or used in the manufacture of other goods which in turn are used in the execution of works contract."
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> (emphasis added)

18. From the bare perusal of the provision of the KST Act and KST Rules, 1957 indicated above, it clearly envisages that Section 5B of the KST Act is a charging provision which empowers the State to levy tax on the transfer of property in goods involved in works contract. At the same time Rule 6(4)(m)(i) read with Explanation III to Rule 6(4) of the KST Rules clarifies that the same goods can be taxed only once and cannot be made subject matter of multiple incidence of tax and the goods which have suffered taxation undergoes transformation into a different commodity altogether and is then used in the execution of a works contract, the same being a different commercial commodity is liable to be taxed. The justification which has been tendered by the appellant in reference to five notices impugned in the instant proceedings for the assessment years 1998-1999 to

2002-2003 is a question of fact to be examined by the assessing authority who has served him the notices.

19. We are clear, in our view, that Section 5B of the KST Act and Rule 6(4)(m)(i) of the KST Rules operate in different spheres. Section 5B is a charging provision for levy of sales tax whereas Rule 6(4)(m)(i) is a provision for deduction from tax. Under Section 5B, tax can be levied on transfer of property in the goods whether as goods or in some other form whereas Rule 6(4)(m)(i) provides for a deduction in respect of the goods which have already suffered tax and which are used in the same form. Thus, in our view, it appears to be in clear consonance with the charging provision and does not militate against Section 5B of KST Act, 1957.

20. This Court in ***State of Tamil Nadu Vs. Pyare Lal Malhotra and Others*** 1976(1) SCC 834 has held that if the separate commercial commodities emerge out of the goods already taxed earlier, the new commercial commodity is liable to sales tax provided there is a law to this effect. The relevant para is as under:-

> "**10.** As we all know, sales tax law is intended to tax sales of different commercial commodities and not to tax the production or manufacture of particular substances out of which these commodities may have been made. As soon as separate commercial commodities emerge or come into existence, they become separately taxable goods or entities for purposes of sales tax. Where commercial goods, without change of their identity as such goods, are merely subjected to some processing or finishing or are merely joined together, **they may remain commercially the goods which cannot be taxed again, in a series of sales, so long as they retain their identity as goods of a particular type.**"
>
> (Emphasis supplied)

21. Taking note of the exposition of legal principles laid down in ***Pyare Lal Malhotra and Others*** (supra), it brings out two basic principles governing sales tax law:

i. Sales tax can be levied on the same goods only once so long as they retain their identity of goods of a particular type, and

ii. If separate commercial commodities emerge out of the (goods already taxed earlier), then the said new commercial commodity is liable to sales tax.

This is what has been conferred in Rule 6(4)(m)(i) read with Explanation III to Rule 6(4) of which a reference has been made.

22. In ***Vasantham Foundry Vs. Union of India and Others*** 1995(5) SCC 289, this Court reiterated the ***Pyare Lal Malhotra and Others***(supra) principle in para 25 as under:-

> **"25.** Therefore, in our view "cast iron casting" in its basic or rough form must be held to be 'cast iron'. But, if thereafter any machining or polishing or any other process is done to the rough cast iron casting to produce things like pipes, manhole covers or bends, these cannot be regarded as "cast iron casting" in its primary or rough form but products made out of cast iron castings. Such products cannot be regarded as 'cast iron' and cannot be treated as "declared goods" under Section 14(iv) of the Central Sales Tax Act. This view is not in conflict with the view taken in the case of *Bengal Iron Corpn.* [1994 Supp (1) SCC 310: (1993) 90 STC 47], but it is in consonance with the decision in that case."

23. The same principle has been recently reiterated in ***B. Narasamma*** ***Vs.*** ***Deputy Commissioner of Commercial Taxes, Karnataka and Another*** 2016(15) SCC 167. In para 18 thereof, the principle of ***Pyare Lal Malhotra and Others***(supra) quoted hereinabove is considered. Rule 6(4)(m)(i) came up for consideration in ***B. Narasamma***(supra) where this Court after noting the said Rule came to the conclusion in para 23 as under:-

> **"23.** On facts in this case, it has been found that the appellant is engaged in works contracts of fabrication and creation of doors, window frames, grills, etc. in which they claimed exemption for iron and steel goods that went into the creation of these items, after which the said doors, window frames, grills, etc. were fitted into buildings and other structures. On facts, therefore, we find that the High Court's judgment *[State of Karnataka v. Anant Engg. Words,* 2006 SCC OnLine Kar 840] is correct and does not need to be interfered with inasmuch as the iron and steel goods, after being purchased, are used in the manufacture of

other goods, namely, doors, window frames, grills, etc. which in turn are used in the execution of works contracts and are therefore not exempt from tax."

24. What emerges from the scheme of the Act and Rules framed thereunder is that Rule 6(4)(m)(i) purports to grant benefit to the assessee by allowing deductions for the value of goods which have already suffered taxation and which goods substantially retain their original identity while being used in the execution of a works contract. Explanation III to Rule 6(4) clarifies it further by categorically providing that in case the goods are transformed into a different commodity which then is used in the execution of works contract, then the benefit of deduction cannot be availed.

25. It is trite law that tax provisions granting exemptions/concessions are required to be strictly construed as recently held by this Court in ***M/s. Achal Industries Vs. State of Karnataka*** AIR 2019 SC 1653.

26. In our considered view, there is no variance between Rules 6(4)(m)(i) read with Explanation III and Section 5B of the KST Act, 1957 and what is contended by the appellant in assailing the

validity of Rule impugned hereunder is misconceived and without substance.

27. The judgment in ***Media Communications***(supra) of which the learned counsel for the appellant has placed heavy reliance is of no assistance for the reason that mere rejection of special leave petitions by this Court at the motion stage would not be considered to be an approval of the view expressed by the High Court of Andhra Pradesh. That apart, para 7 of the judgment in ***Telangana Steel Industries and Others case***(supra) has been noticed by the High Court in ***Media Communications***(supra) and arrived to the conclusion that ***Telangana Steel Industries and Others***(supra) lent support to the reasoning of the High Court.

28. Para 7 of the judgment of this Court in ***Telangana Steel Industries and Others***(supra) in fact disseminate the reasoning recorded by the High Court in ***Media Communications***(supra) to invalidate the first and second proviso to Section 5B.

> **"7.** The above shows complexity of the concept of a different commercial product coming into existence because of manufacturing process undertaken. It is because of this that we do not propose to decide the

> controversy at hand, which is whether iron wires are separate commercial goods from wire rods from which they are produced, by trying to answer whether they are one commercial commodity or separate. **The point has however arisen for consideration because we are concerned with a single point sales tax, which would not allow taxing of the same commodity again. It is also not in dispute that if the two goods at hand be different commodities, the single point taxing principle would not debar realisation of tax once again from the sale of wires.** Shri Tarkunde's whole emphasis is that goods in question cannot be regarded as two different commercial commodities. Let it be seen why this stand has been take by the learned counsel on behalf of the appellants and whether the same is sound?"
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> (emphasis supplied)

29. So far as the submissions made by the learned counsel for the appellant on merits in reference to the five impugned notices of provisional assessment served under Section 28(6) is concerned, whether the assessee was eligible under Rule 6(4)(m)(i) is a question of fact which has to be determined in the assessment proceedings and since the provisional assessment has not been finalised due to pendency of the instant proceedings, it may not be advisable for this Court to dilate on the subject issue of the notices served upon the appellant at this stage and leave it open to the appellant to address before the assessing authority in the pending appropriate assessment proceedings, if so advised.

30. Consequently, in our considered view, the appeal is without substance and accordingly dismissed. It will be open for the assessing authority to proceed with the impugned assessment proceedings initiated pursuant to notices dated 8th November, 2002 independently without being influenced/inhibited by the observations made by us and conclude it, after affording opportunity of hearing to the appellant, expeditiously in accordance with law. No costs.

31. Pending application(s), if any, stand disposed of.

.....J.
(A.M. KHANWILKAR)

.....J.
(AJAY RASTOGI)

NEW DELHI
July 02, 2019