REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO 811 OF 2018
(Arising out of SLP(C) No 27048 of 2013)

STATE OF KARNATAKA AND ANR ..Appellants

VERSUS

M/S DURGA PROJECTS INC ..Respondent

WITH

CIVIL APPEAL NOS 812-817 OF 2018
(Arising out of SLP(C)Nos 10570-10575 of 2015)

J U D G M E N T

Dr D Y CHANDRACHUD, J

CIVIL APPEAL NO 811 OF 2018:
(Arising out of SLP(C) No 27048 of 2013)

1 The State of Karnataka is in appeal from a judgment of a Division Bench of the High Court dated 28 September 2012. The issue before the High Court related to the rate of tax applicable to works contracts prior to 1 April 2006 when Section 21(c) was introduced by an amendment into the Karnataka Value Added Tax Act 2003 ('KVAT Act 2003').

2 The respondent is engaged in executing civil works contacts and is registered both under the KVAT Act and the Central Sales Tax Act. It purchases building materials like hardware, sand and bricks falling under the Third Schedule to the KVAT Act, declared goods under Section 15 of the CST Act and other non-scheduled goods from within and outside the State and from unregistered dealers. On 31 January 2006 it made an application before the Authority for Advance Clarification and Ruling ('AAR') for guidance on the rate of tax applicable for the execution of civil works contracts under the KVAT Act. The AAR held by its order dated 2 August 2006 that since there was no specific entry providing for the rate of tax on works contracts up to 31 March 2006, tax on goods used in the execution of works contract should be levied in accordance with the rate of tax applicable to the sale of goods under the KVAT Act 2003. The relevant part of the order is extracted below:

> "…correctly understood that there is no specific entry providing rate of tax on works contract under KVAT Act, up to 31-3-2006 and therefore, tax should be levied as per the rate applicable on the value of each class of goods involved in the execution of works contract. Therefore, as regards the rate of tax on the deemed sales of goods involved in the execution of works contract, it is to be clarified that tax is payable at the rate applicable to the Sale of Goods Act upto 31.03.2006. And by KVAT (Amendment) Act, 2006, Clause (c) has been got inserted to section 4(1) w.e.f. 1.4.2006, for levy of tax in respect of transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract, and appending VI Schedule to the Act, listing out the items/descriptions of the works contract with the rate of tax corresponding to them. As per entry 23 of the said schedule, "all other work contracts not specified in any of the above categories including composite

> contracts with one or more of the above categories" are liable to tax @ 12.5% w.e.f. 01.04.2006. The civil works contract falls under the said entry and therefore, is liable to tax @ 12.5% only. Hence, it is clarified accordingly."

3 The dealer sought a further clarification on the issues that were raised in the original application about the rate of tax on iron and steel used in the execution of civil works contracts. By its ruling dated 7 December 2006, AAR held that the rate of tax applicable on iron and steel is 4 per cent when used in the same form, otherwise the rate of tax would be 12.5 per cent.

4 Subsequently, an order was passed in revision by the Commissioner of Commercial Taxes (Karnataka), Bangalore, holding that the orders of AAR were erroneous and prejudicial to the interests of the revenue. According to the Commissioner, there is a deemed sale in the course of the execution of a works contract by incorporation of the goods into the work. This is distinct from a normal sale of goods. In the case of a works contract, it is a conglomerate of goods that is transferred and there is no sale of individual goods. According to the Commissioner, both before and after the amendment of Section 4(1)(c) with effect from 1 April 2006, tax is levied on the taxable turnover of goods involved in the execution of a works contract. Taxable turnover in a works contract is determined after allowing deductions from the total consideration admissible under Rule 3(2) of the KVAT Rules 2005. On the other hand, in the case of a normal sale of goods, the aggregate sale price paid for a particular commodity constitutes the taxable

turnover. The clarification by AAR was held to be in error in assuming that individual goods purchased for use in the execution of a works contract are transferred in the same form and in ruling that the rates of tax on taxable turnover would be the rates applicable to each of the goods purchased. The matter was kept open to be addressed by the assessing authorities in accordance with law.

5 The dealer preferred a sales tax appeal before the High Court of Karnataka, aggrieved by the revisional order of the Commissioner of Commercial Taxes. By its judgment dated 28 September 2012, the High Court allowed the appeal and while setting aside the order in revision held as follows:

> "The sale under the works contract is a deemed sale of transfer of the goods alone and it is not different from the normal sale. Hence, the tax has to be levied on the price of the goods and material used in the works contract as if there was a sale of goods and materials. The property in the goods used in the works contract will be deemed to have been passed over to the buyer as soon as the goods or material used are incorporated to the moveable property by principle of accretion to the moveable property. Hence, we are of the view that the order passed by the Commissioner is contrary to law. For the period prior to 1-4-2006, tax has to be levied as per Section 3(1) of the Act and for the period subsequent to 1-4-2006, tax has to be levied as per Section 4(1)(c) of the Act. Hence, the substantial questions of law are held in favour of the appellant."

6 The submission which has been urged on behalf of the State is that although Section 4(1)(c) was introduced with effect from 1 April 2006, all other provisions in relation to works contracts existed since the inception of the Act in 2003. The

definitions of sale (Section 2(29)), goods (Section 2(15)), turnover (Section 2(36)), total turnover (Section 2(35)) and taxable turnover (Section 2(34)) were a part of the parent legislation. The distinct mechanism for determination of total turnover in respect of a normal sale and deemed sale was also in existence prior to 1 April 2006. Consequently, it has been urged on behalf of the State by Mr Devadatt Kamat, that:

(i) There cannot be any dispute that the KVAT Act envisaged a levy of tax on works contracts even prior to 01.04.2006;

(ii) The rate of tax for works contracts prior to 01.04.2006 would fall under Section 4(1)(b), the residual entry. The residual entry prescribes the rate of tax for "other goods", that is, goods which are not specified under any of the schedules. The goods incorporated in a works contract also come within the ambit of the definition of goods under Section 2(15);

(iii) In a deemed sale, the conglomerate of the goods or the value of the contract is to be taken as the amount of goods which are sold. This is specifically incorporated in Rule 3(c);

(iv) In case of a deemed sale, the concept of 'total turnover' is the total amount of consideration for the transfer of property in the goods and the same is in contradistinction to the concept of 'total turnover' in respect of a normal sale where it is the value of each goods;

(v) The argument that prior to 01.04.2006 the rate of tax has to be levied on the individual goods comprised in the works contract would militate against the express provisions of the Act and the Rules in force which categorically lay down a distinct procedure for computation of the rate of tax in respect of works contracts [Rule 3(1)(c) read with Section 4(1), 2(34), 2(35) and 2(36)];

(vi) The contention that the tax is leviable on individual goods in a works contract will render the entire scheme of the Act prior to 01.04.2006 unworkable and would amount to abolishing the levy on works contracts prior to 01.04.2006;

(vii) The arguments of the Respondent would effectively render Section 2(29) read with Rule 3(1)(c) completely redundant and otiose. The taxable event in a deemed sale (See Section 7) is the time of incorporation of the goods in the course of execution of the works contract. Therefore, to relegate the determination of the rate of taxation to a period anterior to the taxable event would render the entire scheme of taxation under the KVAT Act otiose; and

(viii) It is well settled that there is a presumption against redundancy of a statutory provision [Balabhagas Hulaschand v State of Orissa, (1976) 2 SCC 44]. Furthermore, the suggestion that individual goods are to be taxed separately in a works contract amounts to re-writing the statute, which is against the settled cannon of interpretation that in a taxing statute nothing can be read in. [Bansal Wire Industries Ltd. V State of Uttar Pradesh, (2011) 6 SCC 545].

7 On the other hand, Mr SK Bagaria, learned senior counsel appearing on behalf of the respondent supports the reasoning of the High Court on the following grounds:

(i) In the judgment of the Court in **Gannon Dunkerly & Co** v **State of Rajasthan**[1]**,** it was held that the State legislatures may tax the goods involved in execution of a works contract at a uniform rate, which is different from the rates applicable to individual goods;

(ii) The KVAT Act was enacted in 2003 and its charging section (Section 3) came into force on 1 May 2005. Though in **Gannon Dunkerly & Co** (supra), this Court permitted State legislatures to tax goods involved in the execution of works contracts at a uniform rate, the legislature of Karnataka did not do so. No provision existed for a uniform rate on all goods involved in the execution of works contracts until 31 March 2006;

(iii) The above position was altered when Section 4 was amended with effect from 1 April 2006 by Act 4 of 2006. As a result, in terms of clause (c), subject to sections 14 and 15 of the CST Act, goods involved in the execution of works contracts are liable to a uniform rate of tax, depending upon the description of the works contract in the Sixth Schedule;

(iv) In so far as declared goods are concerned, Section 4(1)(a) (ii) provided for a rate of 4% on goods mentioned in the Third Schedule. Serial No.20 of the Third

[1] (1993) 1 SCC 364

Schedule refers to declared goods specified in Section 14 of the CST Act 1956. Hence, iron and steel which were declared goods specified in Section 14 of the CST Act were covered by the Third Schedule and were subject to tax at 4%; goods not covered by the Third Schedule were liable to tax at 12.5% under Section 4(1)(b);

(v) After 01.04.2006, Section 4(1)(c) is made subject to Sections 14 and 15 of the CST Act for declared goods. Hence declared goods involved in the execution of works contract are from 01.04.2006 taxable at the rates mentioned in Section 15 of the CST Act while all other goods are taxable at a uniform rate under the Sixth Schedule. This amendment was made with effect from 01.04.2006 and there is no dispute for the period thereafter;

(v) In so far as the rate of tax is concerned, as stated above, Section 4(1) of the KVAT Act as it stood during the relevant period i.e. upto 31.03.2006 specifically provided for the applicable rates as under:

(a) In respect of declared goods as specified in Section 14 of the CST Act @4% (Section 4(1)(a)(ii) read with Serial No.20 of Third Schedule);

(b) In respect of the goods mentioned in the Second, Third or Fourth Schedules at the respective rates mentioned in Section 4(1)(a) read with the said Schedules;

(c) In respect of other goods, i.e. goods not covered by Section 4(1)(a), @ 12.5% under Section 4(1)(b).

At that time i.e. upto 31.03.2006, there was no provision in the KVAT Act providing for a uniform rate in respect of goods supplied in execution of a works contract. In so far as the expression “other goods” in Section 4(1)(b) is concerned, it only meant and covered the goods other than those covered by Section 4(1)(a). The goods mentioned in the Second, Third or Fourth Schedules (in this case particularly iron and steel covered by Serial No.20 of Third Schedule) were specifically covered by the said Schedules and there could be no scope to consign these specific goods covered by the said Schedules to the residual entry “Other goods” in Section 4(1)(b). This position of law is well settled by the judgments of this Court in **Dunlop India Ltd.** v **Union of India**[2] and **Bharat Forge and Press Industries Pvt. Ltd.** v **CCE**[3]**.**

(vi) In **Gannon Dunkerley’s case** (supra) this Court held that it is permissible for the State Legislatures to tax all goods involved in execution of a works contract at a uniform rate. In spite of this, the KVAT Act which came into force on 01.05.2005 did not provide for a uniform rate. The provision for uniform rate in respect of goods supplied in execution of works contracts was inserted only w.e.f.01.04.2006 and consequently it is only for the period from 01.04.2006 that a uniform rate under the newly inserted Clause (c) of Section 4(1) became applicable.

[2] (1976) 2 SCC 241
[3] (1990)1 SCC 532

(vii) In so far as the declared goods under Section 14 of the CST Act are concerned, both before and after 31.03.2006, the KVAT Act makes it clear that the rate of tax, even when supplied in execution of a works contract, will be the rate mentioned in Section 15 of the CST Act. Under the KVAT Act as it stood upto 31.03.2006, this position prevailed under Section 4(1)(a) read with Serial No.20 of the Third Schedule. Under the KVAT Act as it stands after 01.04.2006, the said position has been statutorily provided for in Section 4(1)(c) itself which has been made "subject to Sections 14 and 15 of the Central Sales Tax Act, 1956".

(viii) The tax on sale or purchase of declared goods covered by Sections 14 and 15 of the CST Act, even when such goods are supplied in execution of a works contract covered by Article 366(29A)(b), shall be subject to the restrictions and conditions mentioned in Section 15 of the CST Act. This position of law has been specifically mandated in Article 286(3)(b) of the Constitution. This position has also been statutorily incorporated in the KVAT Act, both before and after 31.03.2006.

(ix) A review of the VAT enactments of other States would indicate that following the decision in **Gannon Dunkerly & Co** (supra), some States opted to levy a uniform rate of tax on all goods supplied in the execution of works contracts. Other states provided for different applicable rates. Reference can be made by way of illustration to the VAT Acts for Andhra Pradesh, Delhi, Odisha and Tamil Nadu.

8 The rival submissions have to be analysed.

9 To facilitate an analysis of the submissions which have been urged on behalf of the State in appeal, it would be necessary to advert to the provisions of the KVAT Act 2003 prior to 1 April 2006 bearing on the controversy. 1 April 2006 assumes significance because by Karnataka Act 4 of 2006, clause (c) was introduced into Section 4(1) so as to incorporate a specific rate of tax on the transfer of property involved in the execution of works contracts. The rate of tax came to be specified for works contracts of various descriptions in the Sixth Schedule. But even before 1 April 2006, as our analysis would indicate, there is no manner of doubt that works contracts were exigible to the levy of tax under the KVAT Act 2003.

10 Section 3 of the Act is the charging provision and provides as follows:

> "3. Levy of tax.- (1) The tax shall be levied on every sale of goods in the State by a registered dealer or a dealer liable to be registered, in accordance with the provisions of this Act.
>
> (2) The tax shall also be levied, and paid by every registered dealer or a dealer liable to be registered, on the sale of taxable goods to him, for use in the course of his business, by a person who is not registered under this Act."

The charge of tax is on the sale of goods. The statutory meaning of the expression "sale" is contained in Section 3(29), in the following terms:

> "(29) 'Sale' with all its grammatical variation and cognate expressions means every transfer of the property in goods (other than by way of a mortgage, hypothecation, charge or pledge) by one person to another in the course of trade or business for cash or for deferred payment or other valuable consideration and includes,-

(a) a transfer otherwise than in pursuance of a contract of property in any goods for cash, deferred payment or other valuable consideration;

(b) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(c) a delivery of goods on hire purchase or any system of payment by installments;

(d) a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration".

(emphasis supplied)

The expression 'sale' includes a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract. The expression 'goods' is defined in Section 2(15) to mean all kinds of movable property including materials, commodities and articles as well as goods involved in the execution of a works contract:

"(15) 'Goods' means all kinds of movable property (other than newspaper, actionable claims, stocks and shares and securities) and includes livestock, all materials, commodities and articles (including goods, as goods or in some other form) involved in the execution of a works contract or those goods to be used in the fitting out, improvement or repair of movable property, and all growing crops, grass or things attached to, or forming part of the land which are agreed to be severed before sale or under the contract of sale."

(emphasis supplied)

Prior to the introduction of Section 4(1)(c) on 1 April 2006, Section 4 stood in the following terms:

> "4. Liability to tax and rates thereof.- (1) Every dealer who is or is required to be registered as specified in Sections 22 and 24, shall be liable to pay tax, on his taxable turnover,
>
> (a) in respect of goods mentioned in,-
>
> (i) Second Schedule, at the rate of one per cent,
>
> (ii) Third Schedule, at the rate of four per cent, and
>
> (iii) Fourth Schedule, at the rate of twenty per cent.
>
> (b) in respect of other goods, at the rate of twelve and one half per cent."

By Karnataka Act 4 of 2006, clause (c) was introduced into Section 4(1). Clause (c) reads thus:

> "(c) in respect of transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract specified in column (2) of the Sixth Schedule, subject to Sections 14 and 15 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), at the rates specified in the corresponding entries in column (3) of the said Schedule."

Section 4 sets out the liability of every dealer to pay tax on his taxable turnover. The expression 'taxable turnover' is defined in Section 2(34) which reads thus :

> "(34) 'Taxable turnover' means the turnover on which a dealer shall be liable to pay tax as determined after making such deductions from his total turnover and in such manner as may be prescribed, but shall not include the turnover of purchase or sale in the course of interstate trade or commerce or in the course of export of the goods out of the territory of India or in the course of import of the goods into the territory of India and the value of goods transferred or despatched outside the State otherwise than by way of sale."

Taxable turnover comprises of the turnover on which a dealer shall be liable to pay tax. Taxable turnover is arrived at by making deductions from the total turnover in

such a manner as may be prescribed by the rules made under the Act. The definition of 'taxable turnover' is linked to the definition of total turnover because it is from the total turnover that the prescribed deductions are made. Section 2(35) defines 'total turnover':

> "(35) 'Total turnover' means the aggregate turnover in all goods of a dealer at all places of business in the State, whether or not the whole or any portion of such turnover is liable to tax, including the turnover of purchase or sale in the course of interstate trade or commerce or in the course of export of the goods out of the territory of India or in the course of import of the goods into the territory of India and the value of goods transferred or despatched outside the State otherwise than by way of sale."

The expression 'total turnover' in Section 2(35) is defined to mean the aggregate turnover of a dealer in all goods, at all places of business in the State. Hence, the definition of total turnover is linked to turnover. The latter expression is defined in Section 2(36) as follows:

> "(36) 'Turnover' means the aggregate amount for which goods are sold or distributed or delivered or otherwise disposed of in any of the ways referred to in clause (29) by a dealer, either directly or through another, on his own account or on account of others, whether for cash or for deferred payment or other valuable consideration, and includes the aggregate amount for which goods are purchased from a person not registered under the Act and the value of goods transferred or despatched outside the State otherwise than by way of sale, and subject to such conditions and restrictions as may be prescribed the amount for which goods are sold shall include any sums charged for anything done by the dealer in respect of the goods sold at the time of or before the delivery thereof.
>
> **Explanation.-** The value of the goods transferred or despatched outside the State otherwise than by way of sale, shall be the amount for which the goods are ordinarily sold by the dealer or the

prevailing market price of such goods where the dealer does not ordinarily sell the goods."

Section 7 provides when the sale of goods is deemed to take place:

"7. Time of sale of goods.- (1) Notwithstanding anything contained in the Sale of Goods Act, 1930 (Central Act 3 of 1930), for the purpose of this Act, and subject to subsection (2), the sale of goods shall be deemed to have taken place at the time of transfer of title or possession or incorporation of the goods in the course of execution of any works contract whether or not there is receipt of payment: Provided that where a dealer issues a tax invoice in respect of such sale within fourteen days from the date of the sale, the sale shall be deemed to have taken place at the time the invoice is issued."

Hence, in the case of a works contract, the sale of goods takes place at the time of the incorporation of the goods in the course of its execution.

11 The rules framed under the KVAT Act 2003 – the KVAT Rules 2005 – provide for the determination of total turnover. In the case of a normal sale, the total turnover is provided for in Rule 3(1)(b). The total turnover in the case of a works contact is defined in Rule 3(1)(c). Rule 3(1), insofar as is material, provided as follows:

"PART II
TURNOVER REGISTRATION AND PAYMENT OF SECURITY
Determination of total and taxable turnover

(1) The total turnover of a dealer, for the purposes of the Act, shall be the aggregate of-

(a) the total amount paid or payable by the dealer as the consideration for the purchase of any of the goods in respect of which tax is leviable under sub-section (2) of section 3;

(b) the total amount paid or payable to the dealer as the consideration for the sale, supply or distribution of any goods where such sale, supply or distribution has taken place inside the State, whether by the dealer himself or through his agent;

(c) the total amount paid or payable to the dealer as the consideration for transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract including any amount paid as advance to the dealer as a part of such consideration;

(d) the total amount paid or payable to the dealer as the consideration for transfer of the right to use any goods for any purpose (whether or not for specified period);

(e) the total amount paid or payable to the dealer as the consideration in respect of goods delivered on hire-purchase or any system of payment by instalments;

(f) the aggregate of the sale prices received and receivable by the dealer in respect of sale of any goods in the course of linter-State trade or commerce and export out of the territory of India and sale in the course of import into the territory of India; and

(g) the value of all goods transferred or despatched outside the State otherwise than by way of sale."

12 Under Rule 3(2), the taxable turnover is computed by allowing for certain deductions from the total turnover determined under Rule 3(1). Among the deductions to be made are those in respect of amounts expended towards labour

charges and other charges not involving the transfer of property in goods in connection with the execution of a works contract. Clauses (l) and (m) of Rule 3(2) are as follows:

> "The taxable turnover shall be determined by allowing the following deductions from the total turnover:-
> …
> (l) All amounts actually expended towards labour charges and other like charges not involving any transfer of property in goods in connection with the execution of works contract including charges incurred for erection, installation, fixing, fitting out or commissioning of the goods used in the execution of a works contract;
>
> (m) Such amounts calculated at the rate specified in column (3) of the Table below towards labour charges and other like charges as incurred in the execution of a works contract when such charges are not ascertainable from the books of accounts maintained by a dealer."

The table below clause (m) specifies types of contracts and alongside, labour and like charges as a percentage of the value of the contract. The principle is that expenditure on account of labour charges involved in the execution of works contracts is excluded from the total turnover in order to arrive at the taxable turnover. The liability to pay tax under Section 4 is on the taxable turnover.

13 The dispute in the present case relates to 2005-06. The case relates to the position of law in the State of Karnataka, as it stood until 31 March 2006. There can be no manner of doubt that even prior to 1 April 2006 works contracts were exigible to the levy of tax. The charging section, Section 3, mandates that "the tax shall be levied on every sale of goods". The expression 'sale' in Section 2(29) means 'every transfer of the property in goods' including 'a transfer of property in goods (whether

as goods or in some other form) involved in the execution of works contract'. Similarly, the definition of the expression 'goods' in Section 2(15) contains a clear reference to "all kinds of movable property" and all materials, commodities and articles (including goods, as goods or in some other form) involved in the execution of works contracts. The chargeability of goods involved in the execution of works contracts both before and after 01.04.2006 is a matter which lies beyond any element of doubt. Such provisions in the state laws – including the State of Karnataka – followed upon the 46th Amendment to the Constitution by which the expression 'tax on the sale or purchase of goods' was incorporated in Clause 29A of Article 366 to include taxes on the transfer of property in goods involved in the execution of works contracts.

14 Section 4 imposes a liability to pay taxes upon every dealer on his taxable turnover. Besides imposing a liability, Section 4 prescribes the rate of tax. The rate of tax on goods mentioned in the Second, Third and Fourth Schedules was specified in sub-clauses (i), (ii) and (iii) of Section 4(1)(a). The Second Schedule at the material time attracted a rate of 1%, the Third Schedule 4% and the Fourth Schedule, 20%. On 'other goods' the rate of tax was 12.5% under Section 4(1)(b). The expression 'other goods' in Section 4(1)(b) evidently means those goods which are not governed by Section 4(1)(a). Where goods are specifically covered by any of the entries of the Second, Third and Fourth Schedules, such goods would be covered by the specific entry relating to those goods. Recourse to the residual

provisions of Section 4(1)(b) would be available only in respect of 'other goods', that is, goods which did not fall within the purview of Section 4(1)(a). The law on the construction of a residual entry has been crystalized in several judgments of this Court and it would be appropriate to refer to one of them: **HPL Chemicals Ltd.** v **CCE**[4] . After adverting to the decisions in **Dunlop India Ltd.** (supra), and **Bharat Forge and Press Industries Pvt. Ltd.** (supra), this Court reiterated that "only such goods as cannot be brought under the various specific entries in the tariff should be attempted to be brought under the residuary entry". Applying this principle, where goods are specifically covered by clauses (i), (ii), or (iii) of Section 4(1)(a), recourse to the residual provisions of Section 4(1)(b) would not be available. To allow a residual provision to consume the specific would be to invert the intent of the legislature. The state wants us to do just that.

15 In **Gannon Dunkerly & Co** (supra), this Court held that it is permissible for the State legislatures to prescribe a uniform rate of tax for all goods involved in the execution of works contracts, even though different rates of tax are prescribed for the sale of such goods. This followed upon the insertion of Article 366(29A)(b). In the opinion of this Court:

> "… it would be permissible for the State Legislature to tax all the goods involved in the execution of a works contract at a uniform rate which may be different from the rates applicable to individual goods because the goods which are involved in the execution of a works contract when

[4] (2006)5 SCC 208

> incorporated in the works can be classified into a separate category for the purpose of imposing the tax and a uniform rate may be prescribed for sale of such goods".

The rationale underlying this principle is that goods involved in the execution of a works contract can be classified into a separate category, so as to provide for a uniform rate of tax. The real issue before this Court is as to whether prior to 1 April 2006, the State legislature of Karnataka had in fact done so. The answer to this is in the negative, on a plain and natural meaning of the words used.

16 The core of the submissions which have been ably projected before the Court by Mr Devadatt Kamat is that the State legislature had in fact prescribed a uniform rate for works contracts, prior to 1.4.2006 in Section 4(1)(b) under which a rate of 12.5% was provided. In his submission, declared goods would be assessed separately; while the balance of the goods in a works contract would be assessed on the total turnover, which is incorporated under Rule 3(1)(c). We find ourselves unable to accept the submission. In our view, it would be far-fetched to accept that in enacting Section 4(1)(b), the legislature intended to prescribe a uniform rate of tax, prior to 1.4.2006, for goods incorporated in a works contract. The scheme legislated upon in Section 4(1) envisaged specific rates of tax on goods falling within the Second, Third and Fourth Schedules. What Section 4(1)(b) provided was a residual entry under which a rate of 12.5% was provided 'in respect of other goods'. The expression 'in respect of other goods' meant goods other than those falling in the Second, Third and Fourth Schedules. Declared goods

specified in Section 14 of the Central Sales Tax Act, 1956 were comprehended in Serial No.20 of the Third Schedule to the KVAT Act 2003 and attracted a rate of 4%, which applied to goods in that Schedule. As a result of the deeming definition of the expression sale, a transfer of property in goods involved in the execution of a works contract become exigible to tax. Exigibiliy to tax, it is settled law, is distinct from the rate of tax and the measure of the tax. In **Gannon Dunkerly & Co,** this court expressed the view that it is open to the states to provide a uniform rate of tax on goods transferred in the course of the execution of a works contract. The exigibility to tax is not (as it cannot be) dependent on the state prescribing a uniform rate of tax for goods involved in works contracts. That the KVAT Act 2003 did not provide a uniform rate of tax prior to 01.04.2006 on goods involved in the execution of works contract also becomes apparent when we read the amendment which introduced Section 4(1)(c) by Act 4 of 2006. As a result of the amendment, the legislature provided that the rate of tax in respect of the transfer of property in goods involved in the execution of a works contract would be as provided in the Sixth Schedule. The Sixth Schedule elucidates works contracts of various descriptions and elucidates the associated rates of tax for each distinct category. For declared goods, Section 4(1)(c) is expressly subject to Sections 14 and 15 of the CST Act 1956. Hence declared goods involved in the execution of a works contract are taxable at the rates mentioned in Section 15 of the CST Act while all other goods involved in the execution of a works contract are taxable at the rate prescribed in the Sixth Schedule upon the amendment. The amendment

introducing Section 4(1)(c) took effect on 1 April 2006. The amendment is not clarificatory. It was with effect from 1 April 2006 that the State legislature mandated a uniform rate of tax on goods involved in the execution of works contracts as provided in the Sixth Schedule. The position as it existed upto 31 March 2006 was altered with effect from 1 April 2006. We are, therefore, unable to accept the submission of the State that upto 31 March 2006. Section 4(1)(b) envisaged a uniform rate for the transfer of goods involved in the execution of a works contract. Section 4 imposes the liability to pay tax on every dealer who is or is required to be registered, on his taxable turnover. The concept of taxable turnover in Section 2(34) is defined with reference to the turnover on which a dealer is liable to be taxed, determined after making deductions from the total turnover as prescribed. The concept of taxable turnover thus incorporates the expressions 'turnover' and 'total turnover', both of which are defined in Sections 2(36) and Section 2(35) respectively. The manner in which the total turnover of a dealer is computed is prescribed in Rule 3(1)(b), in the case of a normal sale, and in Rule 3(1)(c), for the purposes of a works contract. In the case of a works contract, deductions are envisaged under sub-rule (2) of Rule 3, which includes amounts such as labour and other charges. Section 7 provides that the sale of goods shall be deemed to have taken place at the time of the transfer of title or possession or incorporation of the goods in the course of the execution of a works contract. In our view, the interpretation which we have placed on the provisions of the Act as they existed prior to 1.4.2006 is consistent with the plain meaning of the words used by the

legislature. We are unable to subscribe to the submission which has been urged on behalf the appellant that Section 4(1)(b), as it existed prior to 1.4.2006 was a catch- all entry providing for a uniform rate of tax on goods involved in the execution of a works contract. Such a construction does not emerge from the plain meaning of the words used and is in fact belied by the need which was felt by the legislature to impose a uniform rate of tax only with effect from 1 April 2006. Before concluding, we need to clarify that the genesis of the present dispute arises out of the proceedings which were initiated before AAR by the respondent seeking guidance on the applicable rate of tax on the law as it existed until 31.03.2006. This proceeding concludes the issue of interpretation. We clarify, by way of abundant caution, that issues of a factual nature, will fall for adjudication in the course of assessment proceedings. It was open to state legislatures to provide uniform rates of tax on goods involved in the execution of works contracts. Many state legislatures did so. The Karnataka legislature did so with effect from 1.4.2006, not earlier.

17 For the above reasons, we find that there is no merit in the challenge preferred by the State of Karnataka to the impugned judgment and order of the High Court. The appeal shall, accordingly, stand dismissed. There shall be no order as to costs.

CIVIL APPEAL NOS 812-817 OF 2018:
(Arising out of SLP(C)Nos 10570-10575 of 2015)

18 The High Court, by its impugned judgment and order dated 25 September 2014 dismissed the Sales Tax Revision Petitions filed under Section 65(1) of the Karnataka Value Added Tax Act 2003 against the order dated 26 August 2013 of the Karnataka Appellate Tribunal, Bengaluru. While dismissing the revisions, the High Court relied upon its earlier decision dated 29 September 2012 in M/s Durga Projects Inc v State of Karnataka (STA 72 of 2010). The appeal filed by the State of Karnataka (Civil Appeal No.811 of 2018) in the matter of M/s Durga Projects Inc. has been dismissed by this Court. No separate submission has been raised in the present appeals. The appeals are, accordingly, dismissed. There shall be no order as to costs.

.....CJI
[DIPAK MISRA]

.....J
[A M KHANWILKAR]

.....J
[Dr D Y CHANDRACHUD]

New Delhi;
March 06, 2018