



**IN THE HIGH COURT OF KARNATAKA AT  
BENGALURU**

DATED THIS THE 19<sup>th</sup> DAY OF MARCH 2015

PRESENT

**THE HON'BLE MR.JUSTICE VINEET SARAN**

**AND**

**THE HON'BLE MRS.JUSTICE S SUJATHA**

**STRP Nos.4 & 5-13/2015**

Between:

M/S SUZLON INFRASTRUCTURE LTD.  
(SUBSEQUENTLY KNOWN AS  
M/S SYNEFRA ENGINEERING &  
CONSTRUCTIONS LTD.)  
(PRESENTLY KNOWN AS  
M/S ASPEN INFRASTRUCTURE LTD.)  
NO.806A, 8<sup>TH</sup> FLOOR, 99 & 100  
PRESTIGE TOWER, RESIDENCY ROAD  
BANGALORE – 560025. .. PETITIONER

(BY SRI M N SHANKARE GOWDA, ADV.)

AND:

THE STATE OF KARNATAKA  
REPRESENTED BY ITS COMMISSIONER  
OF COMMERCIAL TAXES  
VTK-1, GANDHINAGAR  
BANGALORE. ..RESPONDENT

(BY SRI K M SHIVAYOGISWAMY, ADV.)

THESE PETITIONS ARE FILED UNDER SECTION  
65(1) OF KARNATAKA VALUE ADDED TAX ACT, 2003,  
AGAINST THE ORDER DATED 25.11.2014 PASSED IN  
STA NOS.48-57/2012 ON THE FILE OF KARNATAKA  
APPELLATE TRIBUNAL, BANGALORE, DISMISSING THE

APPEALS FILED UNDER SECTION 63 OF KARNATAKA VALUE ADDED TAX ACT, 2003.

THESE PETITIONS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 5<sup>TH</sup> MARCH 2015, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, **SUJATHA J.**, DELIVERED THE FOLLOWING

### JUDGMENT

These revision petitions are filed challenging the common judgment dated 25.11.2014 passed by the Karnataka Appellate Tribunal at Bangalore.

2. The brief facts of the case are:

- The petitioner which is a registered dealer under the provisions of the Karnataka Value Added Tax Act, 2003 (hereinafter referred to as 'the Act' for brevity), carried out the activity of laying down civil foundations, installation of electrical components for wind turbine generator (WTG), erection and commissioning of WTG. The petitioner has opted for composition under Section 15 of the Act for the assessment period September 2006 to March 2007, May 2007, June 2007 and August 2007. The WTGs which are undertaken for erection and

commissioning are manufactured by its group company viz., M/s Suzular Energy Limited. The WTGs so purchased by the customers are installed in a particular place earmarked by State Nodal Agency. Such customers in turn entered into agreements with the petitioner-company as per the offer letter of the petitioner and had placed orders for four varieties of activities to be undertaken for the installation, erection and commissioning of WTGs. These four activities are mentioned as:

- (a) laying down of civil foundation
- (b) supply and installation of electrical line
- (C) Supply of electrical items
- (d) erection and commissioning of WTGs supplied by customer

3. The Assessing Authority (AA) levied tax on these activities considering the agreement as an integrated single composite contract. On appeal this finding of the AA was upheld against which appeals were filed before the Tribunal. The Tribunal considering the terms of the agreement entered into

between the parties, dismissed the appeals filed by the assessee confirming the orders passed by the authorities.

4. Being aggrieved by the common judgment passed by the Tribunal, these appeals are filed by the assessee.

5. Heard the learned counsel appearing for the parties and perused the material on record.

6. Learned counsel appearing for the petitioner Sri M N Shankare Gowda vehemently argued that the assessee has entered into four different contracts viz.,

(a) laying down of civil foundation

(b) supply and installation of electrical line

(c) Supply of electrical items

(d) erection and commissioning of WTGs supplied by customer

and has paid the tax as per Section 15(1)(b) relating to the contracts (a) to (c) referred to above and only as regards contract relating to erection and

commissioning of WTG supplied by the customer, which is purely labour contract, the assessee having discharged the service tax liability is not liable to pay the composition tax under Section 15(1)(b) of the Act. The learned counsel placed reliance on the Judgment of this Court reported in ***H S Chandrashekar Hande vs State of Karnataka*** (2012(72) KLJ 116)

7. Per contra, the learned counsel Sri K M Shivayogiswamy appearing for the revenue supported the order passed by the Tribunal and sought for the dismissal of the revision petition placing reliance on the judgment of the Apex Court in the case of ***STATE OF KERALA vs BUILDERS ASSOCIATION OF INDIA*** (104 STC 134).

8. Section 15(1)(b) of the Act reads thus:

*15(1)(b): Composition of tax*

*(1) Subject to such conditions and in such circumstances as may be prescribed, any dealer other than a dealer who purchases or obtains goods from outside the State or from outside the territory of India, liable to pay tax as specified in Section 4 and.-*

*(b) who is a dealer executing works contract; or*

*may elect to pay in lieu of the net amount of tax payable by him under this Act by way of composition, an amount at such rate not exceeding five percent on his total turnover or on the total consideration for the works contract executed or not exceeding two lakh rupees for each crushing machine (per annum as may be notified by the Government)*

9. Thus, it is clear that any dealer executing works contract may elect to pay in lieu of the net amount of tax payable by him under the Act by way of composition on the total consideration for the works contract executed @ 4% during the relevant tax periods. The phrase "total consideration" includes both the amount received towards the execution of works contract involving transfer of property in goods and the amount received towards the labour work i.e., the total receipts received in a single composite contract. The perusal of the offer letter, a standard format consisting of offering the services with three annexures namely, Annexure.I- quotation, Annexure.II – terms and conditions, Annexure.III –

scope of work made by the assessee for services required for erection and installation of WTG in Karnataka reads thus:

“Please find enclosed our offer for the services required for the erection and installation of 1 WTG (S 66 – 1250 KW) at your proposed wind farm in Karnataka using your materials. Please note that this offer is the lowest possible proposal for your esteemed organization to have a long lasting and mutually beneficial relationship with your good self”.

Annexure I – Quotation;

Clause 6 of Annexure II – Terms and Conditions

which reads as under:

#### INSURANCE

We will take suitable insurance policy for storage & erection during the erection period of the WTGs. This insurance shall cease once the WTGs are commissioned. The Fire & Allied Perils, Earthquake & Third party risk policy will be taken by you as soon as the WTG is commissioned at your project site.

Scope of Work @ Annexure III reads as under:

“We will do the complete installation, erection and commissioning of the WTG and all electrical installation for WTG using material and also undertake to do the civil work with material as per your requirement and shall supply to do the civil work with

material as per your requirement and shall supply electrical terms required for D.P. Structure and 33 KV internal & external line”.

This offer letter demonstrates that the offer was for the services required for the erection and installation of WTG, which is a single integrated contract. For the sake of convenience, if the work orders, pursuant to the offer letter, is segregated to execute the unique wind farm project at specific location at site addresses given by the customer, it does not lose its composite, single, integrated nature

10. A contract has to be read as a whole and the purpose for which the contract was entered into by the parties has to be ascertained from the terms of the contract. The intention of the parties is to enter into an agreement for the installation, erection and commissioning of WTGs.

11. The perusal of the offer letter, with the terms and conditions of the work orders entered into by the assessee, proves that the assessee has



executed a single integrated contract which cannot be segregated. The scope of work and the insurance clause specifically establishes that the assessee has entered into an agreement for the installation, erection and commissioning of the WTGs, which includes labour work also.

12. The Tribunal has considered the work orders which are consequent to the offer for the services required for installation, erection and commissioning of WTG with invoice copy. It is also noticed that the WTGs do not come in the assembled manner but rather they are supplied by the customers as turbine, rotors and blades which are to be carried to the site where the assessee has to compulsorily make civil foundation followed by electrical work and then only has to erect and install WTG which is an integral activity.

13. This Court, while considering the issue of composition tax under Section 17(6) of the Karnataka Sales Tax Act which is in pari materia with Section

15(1)(b) of the Act in H S CHandrashekar Hande's case (supra) has held that

*“the tax payable under Section 17(6) is on the total consideration of the works contract which necessarily includes labour charges. The assessee would not be entitled to any exemption in respect of that labour charges which is included in the works contract when once he opts for composition of tax under section 17(6). However, 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. If the total turnover which has declared in the return has both these components i.e., consideration received in a pure labour contract and the consideration received in the works contract, is liable to pay tax under Section 17(6) only in respect of works contract. In respect of the consideration received in the labour contract, no tax need be paid. But this is a matter which has to be gone into by the Assessing Authority with reference to the contract to*

*be produced and the accounts maintained by the assessee to demonstrate that he is involved both in works contract as well as in labour contract. In other words, a works contract is a composite contract which includes payment of labour contract plus payment of material. In respect of that labour charges under section 17(6), tax is payable on the total consideration in the works contract. If the labour contract is an individual contract where the component is only labour, no tax is payable”.*

14. Thus it is clear that in a works contract involving transfer of goods and labour, tax is payable under Section 15(1)(b) on the total consideration of the works contract. If the labour contract is an individual contract involving only labour, no tax is payable. In the case on hand, the assessee has segregated the activities as per the work orders executed against the offer for erection and installation of WTGs. It is not the case of receiving labour related charges for executing pure labour work

without transferring any property in goods. The entire contract, if perused as a whole, is in the nature of composite single integrated contract, though designed as it is four separate work orders. All the segregated activities are related to the very same project with the very same customer involving transfer of goods and labour.

15. The Apex Court while considering an identical provision in the case of Builders Association of India (supra) under the provisions of Kerala General Sales Tax Act has categorically held that the alternate method of composition provided under composition tax is optional, there is no compulsion upon any contractor to opt for the alternate method of taxation and by opting to this alternate method, the contractor saves himself the botheration of book keeping, assessment, appeals and all that it means. The assessee having opted for the composition benefit voluntarily and with the full knowledge of the features of the alternate method of taxation, is liable

to make the payment of tax on the total consideration of the works contract involving both labour and transfer of goods. Segregation of composite contract is not permissible under Section 15(1)(b) of the Act. Even if any segregation is made for the purpose of billing and separate invoices are raised towards each portion, it does not alter the nature of composite contract.

16. The arguments advanced by the learned counsel for the assessee that service tax has been paid on the labour contract receipts and as such is not amenable to the provisions of Section 15(1)(b) of the Act, is not acceptable as the two different enactments are operating in different fields. If the works contract executed by the assessee falls under the definition of 'taxable services' amenable to levy of service tax, the assessee cannot be absolved from the liability of composition tax under Section 15(1)(b) of the Act.

17. The Tribunal on proper appreciation of the terms of the contract recorded a plausible finding that the contract executed by the assessee is a composite, single, integrated contract and all the four activities mentioned in the work orders as individual activities are intrinsically linked with each other and the main object is for the installation and commissioning of WTGs as per the offer letter. Thus, no interference is called for with the well reasoned order passed by the Tribunal.

18. Accordingly, the revision petitions filed by the assessee are dismissed answering the questions of law raised, in favour of the revenue and against the assessee.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

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