(2011) 01 P&H CK 0194

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 15894 of 1994

Amrik Gas — APPELLANT

Vs

State of Haryana and Others — RESPONDENT

Date of Decision : 14-01-2011

Acts Referred:

Constitution of India, 1950 — Article 366(29)

Citation : (2011) 01 P&H CK 0194

Hon'ble Judges : Ajay Kumar Mittal, J;A.K. Goel, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Adarsh Kumar Goel, J.—This petition seeks quashing of order of assessment as upheld by the Tribunal under the Haryana General Sales Tax Act, 1973.

2. The Petitioner is a registered dealer engaged, inter alia, in transporting LPG Cylinders apart from being distributor of Bharat Petroleum Corporation for distributing the gas. It entered into a transport contract dated 6.9.1986 with the said Corporation. It transported the goods for Bharat Petroleum Corporation, Delhi and received the charges for the said service. The assessing authority treated the said charges as charges for right to use the trucks covered by the definition of ''sale'' under Article 366(29) of Constitution of India read with Section 2(l) of the Act. The said finding has been upheld by the appellate authority and the Tribunal. The Tribunal observed as under:

I have considered the submissions of the parties and have also seen the facts on record. I find that the Appellant has been carrying out this business of hiring out the machinery in terms of a contract entered with Bharat Petroleum Corporation, New Delhi. Since by virtue of Haryana Act No. 11 of 1984 the leasing out of machinery is also a sale in terms of the definition of ''sale'' as contained in Section 2(c) (iv), the rent received by the Appellant on account of hiring out the machinery is liable to be taxed under the Haryana General Sales Tax Act, 1973 with effect from 18.4.1984. This view further finds support from the judgment referred to by the departmental representative. In view of these clear judgments, the orders of the lower authorities are fully in accordance with the provisions of law and need no interference. Consequently the appeal has no force and the same is hereby dismissed.

3. We have heard learned Counsel for the parties.

4. Learned Counsel for the Petitioner submits that while recording the finding that the transaction in question was hiring out, the Tribunal has not discussed the agreement providing for transport service and treated the transport charges as charges for hiring of the vehicles.

5. Since the Tribunal has not gone into this aspect and has merely concluded that the transport charges received by the Petitioner were turnover of hiring out of the vehicles, the view taken by the Tribunal cannot be sustained.

6. Accordingly, we allow this writ petition and set aside the impugned order and remand the matter to the Tribunal for a fresh decision on merits in accordance with law. It is made clear that it will be open to the Petitioner to raise all such pleas as may be available to it in support of its case.

7. The Petitioner may appear before the Tribunal for further proceedings on 14.3.2011.