(2003) 05 AHC CK 0244

In the Allahabad High Court

Case No : Sales Tax Revisions No''s. 1526 and 1527 of 1991

Baboo Lal Goyal APPELLANT

Vs

Commissioner, Sales Tax RESPONDENT

Date of Decision : 09-05-2003

Acts Referred:

Citation : (2006) 143 STC 358

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Advocate : Bharat Ji Agrawal, for the Appellant; The Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Prakash Krishna, J.—Raising a short controversy as to whether freight though charged separately, will form part of turnover or not, these two revisions have been filed for the assessment years 1984-85 and 1985-86.

2. The Trade Tax Tribunal, Agra, by a common order passed in Second Appeal No. 183 of 1991 (1984-85) and Second Appeal No. 81 of 1991 (1985-86) has held that the freight though charged separately, will form part of the turnover as the sale was for destination and as per conditions of the agreement.

3. The applicant, in response to a press note issued by Ramganga Command Area Development entered into an agreement for supply of stones at Aligharh, Hathras, Khair, Atrauli and Sikandrarao. The agreement was entered into between the assessee and Chairman of Ramganga Command Area Development Authority. In the tender notice under condition No. 11 it was mentioned that the cost of stones and transportation charges should be indicated separately.

4. The sales tax authorities accepted the account books of the dealer, but added the freight amount to the turnover of the dealer and consequently charged sales tax. It was held that as per conditions Nos. 8 and 9 of the agreement, the supply was agreed upon for destination and hence all the expenses, including freight,

shall form part of sale price.

5. Heard Sri Bharat Ji Agrawal, Senior Advocate, in support of the revision and the Standing Counsel.

6. Reliance was placed upon [1989] 73 STC 317 : 1988 UPTC 218 (Vinod Coal Syndicate v. Commissioner of Sales Tax). It was held therein that freight separately charged and paid by the principals and not by the dealer was not to be included in the taxable turnover of the dealer. Further reliance was placed upon Aruna Trading Co. Vs. Commissioner of Sales Tax, . Interpreting similar kind of agreement it was held that from the contract between the assessee and the railway it is clear that price of ballast and costs of other charges had been separately charged between the assessee and the railways. Counsel for the assessee brought to the notice of this Court that in the agreement filed as annexure 4 to the revision, the cost of stone and freight have been separately charged. The authorities below have also not disputed the factual position that the freight was separately charged in the bills by the dealer.

Attention was also invited towards M.P. Traders and Another Vs. Sales Tax Tribunal and Others, . It was held that the order of the Tribunal holding that the freight which was separately charged is liable to be included in the taxable turnover of the assessee is erroneous. Reliance was placed upon Vinod Coal Syndicate [1989] 73 STC 317 : 1988 UPTC 218.

7. Following the aforesaid decisions, both the revisions are allowed. It is held that the freight cannot form part of the net turnover of the assessee-applicant.

