(1987) 01 AHC CK 0022

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1047 of 1986

Bharat Heavy Electricals Limited — APPELLANT

Vs

Sales Tax Officer and Others — RESPONDENT

Date of Decision : 09-01-1987

Acts Referred:

COMPANIES ACT, 1956 — Section 617
Constitution of India, 1950 — Article 226

Citation : (1987) 66 STC 103

Hon'ble Judges : R.K. Gulati, J;K.C. Agarwal, J

Bench : Division Bench

Advocate : A.K. Ganguly, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

K.C. Agarwal and R.K. Gulati, JJ.—The petitioner; M/s Bharat Heavy Electricals Limited, Ranipur, Haridwar, U.P. is a "Government company" within the meaning of the said expression appearing in Section 617 of the Companies Act, 1966. It has different manufacturing units at different places in different States. The major manufacturing units are at :

1. Haridwar (U.P.)

2. Trichy (Tamil Nadu)

3. Hyderabad (Andhra Pradesh)

4. Bhopal (M.P.)

2. It is engaged, inter alia, in designing, manufacturing, supply, installation and commissioning of power plant equipments. In different years the petitioner''s Haridwar unit supplied component parts to Trichy unit and to Hyderabad unit. Trichy unit and Hyderabad unit were the executing units for the supply of the boiler packages and turbo generating package respectively. As is alleged in

paragraph 15 of the writ petition, the component parts were sent by the petitioner at the site outside the State of U.P. on the directions of the executing unit. It is alleged in paragraph 16 of the writ petition that Trichy unit and Hyderabad unit raised the invoices for the complete package inclusive of the component parts supplied by the petitioner and treated the transaction as, inter alia, sale and paid Central sales tax in their respective States.

3. It appears that in the assessment year 1974-75, the assessing authority, Haridwar, appointed under the U.P. Sales Tax Act, accepted the claim of inter-unit transfer in which the petitioner had supplied component parts to the executing units, namely, Trichy and Hyderabad units, on their directions. For the assessment year 1975-76 the Sales Tax Officer, Haridwar, accepted the claim of exemption on the supply of component parts as an inter-unit transfer. Subsequently, proceedings in respect of the assessment year 1975-76 were reopened by the Sales Tax Officer, Haridwar, u/s 21 of the U.P. Sales Tax Act for the assessment under the Central Sales Tax Act on the ground that the component parts which were supplied by the petitioner at the customers site should not be treated as an inter-unit transfer but should be treated as an inter-State sale from the State of U.P. Proceedings u/s 21 of the U.P. Sales Tax Act were challenged by the petitioner, but unsuccessfully. Consequently on 30th September, 1982, the Sales Tax Officer passed an assessment order and levied tax on the said inter-unit transfers treating the debit notes of Rs. 2,90,57,905.57 raised by the Haridwar Division on the concerned executing divisions as forming part of its turnover. The petitioner filed an appeal which was allowed on 10th July, 1984 and the case was remanded to the Sales Tax Officer for fresh assessment. The Sales Tax Officer, Haridwar, passed a fresh order dated 23rd July, 1985, which was subsequently rectified u/s 22, again treated the entire inter-unit transfers at Rs. 2,90,57,905.57 and levied total tax at Rs. 20,95,709.66 as inter-State sales. Against the said order an appeal was filed before the Assistant Commissioner (Judicial), Sales Tax, Saharanpur, which was dismissed on 31st December, 1985. The petitioner has filed a second appeal before the Sales Tax Tribunal, Saharanpur, which is pending. For the assessment years 1976-77, 1977-78, 1978-79, 1979-80, 1980-81 and 1981-82 the sales tax authorities of the State of U.P. did not accept the claim of exemption made by the petitioner and treated the transaction as inter-State sales from U.P. The correctness of the assessment orders have been challenged before the Deputy Commissioner (Appeals), Meerut and are pending before him.

4. Challenging the jurisdiction of the sales tax authorities in U.P. the petitioner has filed this writ petition. Sri A.K. Ganguly, learned counsel appearing for the petitioner, urged a number of grounds including that as Central sales tax is paid by the petitioner in Tamil Nadu and Andhra Pradesh, the petitioner was not liable to be taxed in the State of U.P. in respect of the component parts which were supplied by the manufacturing units of those places in compliance with the orders placed from time to time. His argument was that no sale, technically and really speaking, took place in the State of U.P. In support the learned counsel

urged that as invoices in respect of the supplies made by the petitioner were not raised by Haridwar unit but by Trichy and Hyderabad units, the sales tax authorities of U.P. had no jurisdiction to make an assessment order. In that connection learned counsel took us to the various provisions of the U.P. Sales Tax Act,

5. We have heard learned counsel for the petitioner as also the learned standing counsel. The learned standing counsel submitted that since various appeals have been filed against the assessment orders impugned by this writ petition and are pending, this Court should not interfere under Article 226 of the Constitution.

6. We are of the opinion that since practically in respect of various assessment years appeals are pending either before the Tribunal or before the Sales Tax Commissioner, it will not be appropriate for us to interfere under Article 226 of the Constitution on the grounds of law alleged in the writ petition. Moreover, the grounds taken cannot be decided divorced from the facts arising in each assessment year separately. The facts have to be considered and findings recorded thereon. The petitioner has already availed the remedy of appeals, which are pending and it would not be a proper exercise of jurisdiction to quash the orders aforesaid under Article 226 of the Constitution. The enormity of the amount involved would not, in the circumstances of the present case; be a ground by itself to invoke Article 226 of the Constitution. The petitioner can approach the Commissioner of Sales Tax, Lucknow and make a request to him for a direction of early disposal of all the appeals and also for such administrative orders as it may be advised to do with regard to recovery.

7. Subject to the above, this writ petition is dismissed summarily. A copy of this order shall be supplied to the petitioner within three days on payment of the requisite charges.

