(2014) 01 AHC CK 0280

In the Allahabad High Court

Case No : Sales/Trade Tax Revision Nos. 910, 911 and 912 of 2001

Commissioner APPELLANT

Vs

Triveni N.L. Ltd. RESPONDENT

Date of Decision : 13-01-2014

Acts Referred:

General Clauses Act, 1897 — Section 3(26)
Transfer of Property Act, 1882 — Section 3
Uttar Pradesh Trade Tax Act, 1948 — Section 2(d)

Citation : (2014) 72 VST 448

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : A.P. Mathur, Advocate for the Respondent

Judgement

Sudhir Agarwal, J.—Heard learned standing counsel for the revisionist and perused the record. In all these revisions, which have arisen from the orders of the Tribunal, though in respect to different assessment years, but following three common questions of law have been raised, pressed and argued and therefore, all these revisions are being decided by this common judgment.

"(A) Whether, on the facts and in the circumstances of the case, the Trade Tax Tribunal is legally justified to hold that the plant and machinery attached to earth is not movable property for taxing the transfer of right to use the goods under the provisions of section 3F of the U.P. Trade Tax Act?

(B) Whether, on the facts and in the circumstances of the case, the Trade Tax Tribunal is legally justified to allow dealer''s claim for exemptions on the amount received on account of rent for plant and machinery by ignoring the law laid down by the honourable Supreme Court in the matter of Sirpur Paper Mills Ltd. Vs. Collector of Central Excise, Hyderabad,

(C) Whether, on the facts and in the circumstances of the case, the Trade Tax Tribunal is legally correct to allow dealer''s claim of exemption on the ground that the machinery installed is immovable property being attached to earth even though the machinery was installed and attached to earth for better functioning and operational efficiency?

(D) Whether, on the facts and in the circumstances of the case, the Trade Tax Tribunal is legally justified to hold that the agreement was made outside the State despite there was no mention of place of agreement on the stamps?"

2. The brief facts relevant in this case are that the assessee and one M/s. Gangeshwar Ltd., executed a lease deed in respect of an industrial unit situated at Deoband (Uttar Pradesh). The entire industrial unit including land, plant and machinery was leased out to the assessee for the purpose of running the same. The assessing authority took a view that plants and machinery are such as can be removed from the earth by loosening nut and bolts, etc., and therefore, they constitute "goods", as defined u/s 2(d) of the U.P. Sales Tax Act, 1948 (hereinafter referred to as "Act, 1948") and transfer of goods with the right to use thereof is taxable under the Act, 1948. The first appellate authority dismissed the appeal confirming the view taken by the assessing authority but the Tribunal has reversed the above view taken by authorities below, hence this revision at the instance of the Revenue.

3. It is, however, admitted that the plants and machinery, in the case in hand, is such which is fixed or attached to earth or to the things embedded or attached to earth. Now the question which has to be considered, "whether these items can be held to be ''goods'' so as to attract tax liability under the Act, 1948".

4. This question has been considered time and again by various courts including apex court. The term "goods" is defined u/s 2(d) of the Act, 1948 and reads as under:

"''Goods'' means every kind or class of movable property and includes all materials, commodities and articles involved in the execution of a works contract, and growing crops, grass, trees and things attached to, or fastened to anything permanently attached to the earth which, under the contract of sale, are agreed to be severed, but does not include actionable claims, stocks, shares, securities or postal stationary sold by the Postal Department."

(emphasis Here Italicised added)

5. Anything, which is permanently attached to earth or fastened to anything permanently attached to the earth, would not be covered by definition of "goods" unless under the contract of sale, parties have agreed that those things or items are to be severed. This is in conformity with definition of "immovable property" as contained in section 3(26) of the General Clauses Act (Central) 1897, which reads as under:

"''immovable property'' shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth."

6. u/s 3 of the Transfer of Property Act, 1882 (hereinafter referred to as "the Act, 1882") the term "immovable property" has also been defined and it reads as under:

"''immovable property'' does not include standing timber, growing crops or grass".

7. Whether plants and machinery set up in a factory premises fastened to earth or things attached to earth can be held to be a movable or immovable property, came to be considered before this court in Official Liquidator Vs. Sri Krishna Deo and Others, The court appointed an Advocate Commissioner to inspect premises of the company to ascertain whether machinery and plants were fixed and attached to earth or not. The report submitted shows that plants and machinery of company were either embedded in the earth or permanently fastened to things attached to earth. On behalf of the State, argument was raised that most parts of machinery are fixed to their bases with bolts and nuts, and can be removed by removing the nuts. It thus cannot be said that such machineries are permanently fastened inasmuch as, the same can be moved away by removing the nuts and hence should be held "movable property". The argument was noticed and rejected, by following House of Lords decision in Reynolds v. Ashby & Son [1904] AC 466, wherein Lord Lindley has observed:

"The purpose for which the machines were obtained and fixed seems to me unmistakable; it was to complete and use the buildings as a factory. It is true that the machines could be removed if necessary, but the concrete beds and bolts prepared for them negative any idea of treating the machines when fixed as movable chattels."

8. This decision in Official Liquidator Vs. Sri Krishna Deo and Others, has been affirmed and approved in Duncans Industries Ltd. Vs. State of U.P. and Others, The court held:

"...We are inclined to agree with the above finding of the High Court that the plant and machinery in the instant case are immovable properties. The question whether a machinery which is embedded in the earth is movable property or an immovable property, depends upon the facts and circumstances of each case. Primarily, the court will have to take into consideration the intention of the parties when it decided to embed the machinery whether such embedment was intended to be temporary or permanent. A careful perusal of the agreement of sale and the conveyance deed along with the attendant circumstances and taking into consideration the nature of machineries involved clearly shows that the machineries which have been embedded in the earth to constitute a fertiliser plant in the instant case, are definitely embedded permanently with a view to utilise the same as a fertiliser plant. The description of the machines as seen in the Schedule attached to the deed of conveyance also shows without any doubt that they were set up permanently in the land in question with a view to operate a fertilizer plant and the same was not embedded to dismantle and remove the same for the purpose of sale as machinery at any point of time. The facts as could be found also show that the purpose for which these machines were embedded was to use the plant as a factory for the manufacture of fertiliser at various stages of its production. Hence, the contention that these machines should be treated as movables cannot be accepted. Nor can it be said that the plant and machinery could have been transferred by delivery of possession on any date prior the date of conveyance of the title to the land..."

9. The decision in Sirpur Paper Mills Ltd. Vs. Collector of Central Excise, Hyderabad, was distinguished observing that it was on account of particular facts in that case that plants and machinery, therein was found movable property. However, where there is no agreement to severe machines and plants and entire factory is leased out with plants and machinery, which are fastened to earth or attached or fixed to the things permanently attached to earth and such positions is necessary for the purpose of beneficiary enjoyment thereof, it would be an "immovable property" and no otherwise view can be taken. This is how the facts of this case also find distinction from what was involved in Sirpur Paper Mills Ltd. Vs. Collector of Central Excise, Hyderabad,

10. Whether chattel attached to the earth or building constitutes an immovable property, would depend upon degree, manner, extent and strength of attachment of chattel to earth or building. Broadly speaking, there are certain broad features, which are to be looked into in such cases. The attachment should be such as to partake the character of attachment of trees or shrubs, rooted to earth, or walls or buildings, embedded in that sense, and, further test is whether, such an attachment is for permanent beneficial enjoyment of immovable property to which it is attached. For a property and to be regarded as such property, it must become attached to immovable property as permanently as a building or a tree is attached to earth. If, in the nature of things, the property is a movable property and for its beneficial use or enjoyment, it is necessary to embed it or fix it on earth, though permanently, that is, when it is in use, it may not be regarded as immovable property, but not otherwise.

11. The term "permanently fastened or attached to earth" has to be read in the context for the reason that nothing can be fastened to earth permanently so that it can never be removed. When machines are attached to earth, not only they are attached for beneficial enjoyment of machines but also for beneficial enjoyment of land which is on lease. A similar question came up before the Rajasthan High Court also in C.T.O. Vs. Sadulshahar Krai Vikrai Sahakari Samiti, , and learned single judge, said in para. 31 of the judgment, as under (pages 101 and 102 in 135 STC):

"If a comprehensive reading is done of all the relevant provisions, then what goes to show that the whole factory premises including the plant machinery, land and building were given on lease. A lease of entire establishment was necessary for beneficial enjoyment of rights under the lease. If from the lease, plant and machinery is excluded, the land could not have been used for any purposes designed to be fulfilled by lease. The machinery and plant embedded to earth to give it a character of immovable property for beneficial use of land facilitated the lease otherwise, the lessee would not take the premises on lease and land could only be used if the plant and machinery was attached to earth. Thus, according to the definition of ''plant and machinery'' as contained in the General Clauses Act, makes it an immovable property."

12. In the present case it is not disputed that besides plants and machinery, entire land and building was leased out and, there was no provision/agreement that plants and machinery shall be severed or removed from earth. In fact, the industrial unit has been leased out for the purpose of running. Removal of plants and machinery would not have allowed the factory to run. There is no agreement between parties that plants and machinery shall be severed or removed from earth.

13. Even according to definition of "goods" u/s 2(d) of the Act, 1948, in my view it cannot be included therein. One has to understand the concept of fastening of plants and machinery to earth or its fixing or attached to earth in a reasonable and practicable manner.

14. Scientifically speaking, nothing can be treated immovable. In the context of plants and machinery, where it is permanently fastened or attached to earth, it has to be seen from the point of utility also. If it cannot be used without being attached to earth, it may be immovable property in the industries like one up for consideration in this matter. Unless, such fastening is there, the plant and machinery cannot be put to a rational use. They generally do not move or taken away unless a particular plant and machinery has become obsolete or when the factory is closed or otherwise circumstances so warrant and the owner decide to remove and sell it. Such contingency do not arise every day. They are very rare and occasional. Removal of plants and machinery from earth in a working unit is a decision which is not normally taken in ordinary circumstances, that too when entire land, building along with machinery is leased out for the purpose of running the same.

15. In the present case, this court rather has to concentrate on the definition of "goods" under the Act, 1948 since that is the things which are taxable. It cannot be doubted that in a fiscal statute, particularly taxing statute, meaning of a term shall first be examined in the light of definition clause if it is defined in the concerned taxing statute. The court should not search its meaning elsewhere since legislative intent in respect to meaning of that particular term, in the context of taxing statute, may be different. Here I find that items, which are fastened to or attached to earth or something attached to earth are not included in the definition of "goods" unless there is an agreement between the parties that those items, etc., would be severed pursuant to contract of sale between the parties, which is not the case here. In the present case, it is not the case of the Revenue that there was any intention of parties to sever plants and machinery attached to earth. In fact there was a lease to run entire factory and not to remove or sever plant and machinery attached or fastened to earth, which are

installed in the aforesaid factory to make it functional.

16. In view thereof and particularly considering well considered judgment of Tribunal, I do not find that plants and machinery in the case in hand can be treated to be "goods" within the meaning of section 2(d) of the Act, 1948 so as to attract tax taxability. Therefore, all the three questions are answered against the Revenue and in favour of the assessee. The revision is dismissed.

