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(2017) 01 AHC CK 0231

In the Allahabad High Court

Case No : Trade Tax Revision Defective No. 434 of 2011

Commissioner, Commercial Tax APPELLANT

Vs

S/S Ashoka Mining Works, Billi Obra RESPONDENT

Date of Decision : 18-01-2017

Acts Referred:

Citation : (2017) 95 UPTC 318

Hon'ble Judges : Ashwani Kumar Mishra, J.

Bench : Single Bench

Advocate : S.C, for the Applicant

Final Decision : Disposed Off

Judgement

Ashwani Kumar Mishra, J.—This revision by the Revenue, questions the opinion expressed by the Trade Tax Tribunal, while allowing the assessee''s appeal, holding that there existed separate contracts for sale of ballast, its transportation and stacking, and therefore, the department was not justified in treating it to be a composite contract and assessing the turnover. The revisionist contends with reference to the contract awarded vide order dated 19.04.2001 that supply of ballast was made at Billi and the cost of transportation/freight was clearly included in the contract, and therefore, was rightly included in the turnover of the assessee. It is stated that the mere fact that stacking charges are separately given in the same order, would not be relevant as supply had to be made by the assessee of ballast at Billi Railway Station.

2. Learned counsel for the respondent assessee, on the other hand, has relied upon the decision of this Court M/s Arun Trading Company, Etawah v. Commissioner of Sales Tax, U.P. Lucknow, 1983 U.P.T.C.-80 in order to contend that the amount of freight charged separately in the invoice, could not be included in the turnover.

3. Shri Bipin Kumar Pandey, learned Standing Counsel for the State has placed reliance upon the decision of the Apex Court in M/s India Meters Limited v. State

of Tamil Nadu, reported in 2010 U.P.T.C.-1309, para Nos. 18 and 19 of the report are relied upon which reads as under:-

"18. It is no doubt true that Rule 6(c) of the Rules permits deduction of the cost on freight while determining the taxable turnover. However, that provision must be read in the context of definition of "turnover" as also the definition of "sale" in Sections 2(r) and 2(n) respectively of the Act. "Turnover" is defined in the Act, inter alia, to mean "the aggregate amount for which goods are bought or sold or delivered or supplied or otherwise disposed of in any of the ways referred to in clause (n)".

19. "Sale" is defined in Section 2(n), inter alia, as meaning "every transfer of the property in goods (other than by way of a mortgage, hypothecation, charge or pledge) by one person to another in the course of business for cash, deferred payment or other valuable consideration". The definition goes on to include a number of other transactions also within that definition of "sale". The turnover of an assessee/dealer would include the aggregate amount for which goods are bought or sold. It is, therefore, the amount for which the goods are bought or sold, which form part of the turnover, and a thing can be said to be sold only when the transaction falls within the scope of the definition of "sale"."

4. It is stated that the tribunal has misconstrued the terms of contract itself, and therefore, the view taken by the tribunal, cannot be sustained. Learned counsel has also placed reliance on a decision of this Court reported in Commissioner of Trade Tax v. S/S Pauhari Sharan Mishra, 2011 U.P.T.C.-181 which related to supply of ballast to the railway at the destination. Paragraph Nos. 3 and 7 of the judgment is reproduced:-

"3. The opposite party has been awarded a contract by the Railway to supply ballast at the destination. It appears that in the work order, the value of the gitti and its loading, unloading, freight charges, etc. have been separately shown. The assessee has admitted the liability of tax on the value of gitti but has not admitted the liability of tax on loading, unloading, freight charges, etc. on the ground that they have been separately stipulated in the work order. The claim of the applicant has not been accepted and the tax has been levied on the freight charges, etc. also.

7. In the case of M/s. India Meters Limited v. State of Tamil Nadu (Supra) it has been held by the Apex Court that where the supply is FOR destination under the contract the ownership of the goods remained with the supplier till they are delivered at the destination station, the amount of freight and insurance charges incurred by the dealer form part of the sale price."

5. I have heard learned counsel for the parties.

6. I am of the opinion that the contract awarded in favour of the assessee, since was for supply of ballast at railway site at Billi, as such the amount of freight incurred, was clearly included in the turnover of the assessee. This Court in

Commissioner of Trade Tax (supra) relying upon a similar transaction where goods were to be supplied at destination, has held that it was FOR transaction and that ownership of goods remained with the supplier till it got delivered at the destination station. The amount of freight, therefore, was to form part of the turnover.

7. In view of the aforesaid discussions, the order of the tribunal dated 13.01.2011, cannot be sustained, and is set aside. The tribunal shall decide the appeal, afresh, in the light of the observations made by this Court in Commissioner of Trade Tax (supra).

