(2004) 01 AHC CK 0013

In the Allahabad High Court

Commissioner of Sales Tax — APPELLANT

Vs

J.P. Cement — RESPONDENT

Date of Decision : 30-01-2004

Acts Referred:
Central Sales Tax Act, 1956 — Section 3(b)
Uttar Pradesh Trade Tax Act, 1948 — Section 11(1)

Citation : (2008) 11 VST 153

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—These are two revisions u/s 11(1) of the U.P. Sales Tax Act, 1948 (hereinafter referred as, "the Act") directed against the order of Tribunal dated June 4,1992 relating to the assessment years 1987-88 and 1988-89.

2. The dealer-opposite party was a registered dealer under the U.P. Sales Tax Act, 1948 and was carrying on business of cement. During the year under consideration, dealer had made the purchases of cement from M/s. Janki Prasad and Sons (Cement Division) Chowk, Lucknow, and M/s. Hindustan Automobiles, 97 Mall Road, Kanpur who were also registered firms and assessed to tax at Kanpur and Lucknow respectively. These above two firms stated to be consignment stockist of Maihar Cement, Satna, M.P. and Century Cement, Raipur, M.P. In the year 1987-88, dealer had made the purchases of cement to the tune of Rs. 3,94,47,938.74 and sold the same for Rs. 4,03,16,126. For the assessment year 1988-89 the total purchases from aforesaid two parties were for Rs. 3,25,18,467.70. Dealer claimed sales of cement in U.P. as non-taxable on the ground that the cement was purchased from the aforesaid two registered parties and as such was not the importer of such goods. The assessing authority had rejected the books of account and the claim of dealer that the purchases were U.P. purchase and estimated that taxable turnover of Rs. 4,35,00,000 for the assessment year 1987-88 and Rs. 3,51,00,000 for the assessment year

1988-89. Dealer filed appeal before the Deputy Commissioner (Appeals) Bareilly, who had allowed both the appeals and remanded back the appeal to the assessing authority. Being aggrieved by the order of first appellate authority dealer as well as the Commissioner of Sales Tax both filed appeals before Tribunal challenging the remand of the case to the assessing authority. Tribunal vide impugned order rejected both the appeals of Commissioner of Sales Tax and has allowed both the appeals for the assessment years 1986-87 and 1988-89 filed by dealer. Tribunal has set aside the order of assessing officer and declared the dealer non-taxable, treating the sales of cement in question purchased within U.P.

3. Heard learned Counsel for the parties.

It is not disputed that two selling parties M/s. Janki Prasad and Sons (Cement Division) Chowk, Lucknow and M/s. Hindustan Automobiles, Mall Road, Kanpur, sold cement to dealer-opposite party and raised their bills, charged sales tax and also deposited the sales tax on such sales with their respective assessing officer. It appears on enquiry it was found that the present dealer took the delivery of cement at the railway station and paid the necessary expenses and on the basis of the said material it has been inferred by the assessing officer that delivery of cement was taken from railway by the dealer within the State of U.P. and made the first sale of such cement inside the State of U.P. after import therefore, in respect of such cement dealer was held importer within the definition of Section 2(e) of the Act. Tribunal held that there was no transfer of document of title by the aforesaid two firms M/s. Janki Prasad and Sons (Cement Division) Chowk, Lucknow, and M/s. Hindustan Automobiles, Mall Road, Kanpur, in favour of the dealer during the movement from M.P. to the State of U.P. and therefore, the case is not covered u/s 3(b) of the Central Sales Tax Act, 1956. The Tribunal has referred one letter dated June 12, 1989 by the assessing authority to the Sales Tax Officer (S.I.B.), Bareilly, in which it was stated that the following R. Rs. have been endorsed by M/s. Maihar Cement, District Satna, Madhya Pradesh, in favour of M/s. Janki Prasad and Sons in which "please deliver to bearers" was mentioned. On these R. Rs. on the application of M/s. Janki Prasad and Sons one form XXXI-No. FT. 1988-925681 was endorsed on June 1, 1989. The assessing authority asked to inform after making enquiry from railway station Chanehti as to who have taken the delivery of the goods. On the basis of aforesaid letter Tribunal inferred that assessing authority never knew the person who retired their R. R. and the inference can easily be drawn in favour of dealer in the absence of positive evidence. Tribunal accordingly held that the railway receipts which have been endorsed in favour of the aforesaid two parties had never been endorsed in favour of dealer during the transit to attract the provisions of Section 3(b) of the Central Sales Tax Act, 1956. Tribunal further held that assessee cannot be asked by the department to produce negative evidence in support of its contention that the railway receipts in question were not endorsed in his name and they were not retired by the dealer. Tribunal also relied upon the various certificates issued by railway authorities filed by the dealer, in which it was contended that the cement in question brought from Satna and Raipur, M.P. to Bareilly at a Chinhati railway siding was delivered to firm. M/s. Janki Prasad and Sons, Lucknow. It has also been held that the unloading of the rakes in question have been done by M/s. Kanti Prasad Agarwal, Lucknow, the handling agent of the Firm Janki Prasad and Sons Cement, divisions Lucknow and not by the dealer. The payment has been made to the said handling agent by way of account payee cheques by Janki Prasad and Sons. With regard to the payment towards wharfage, etc. the Tribunal observed that as per railway Rule 1101 wharfage was required to be paid for not removal of the goods from railway premises within 40 days and for not taking of delivery from railways. With regard to the various papers seized at the time of survey in which number of cement bags are mentioned which were counted at the railway station and the payment and expenses, etc., and loading claim with the railway, the Tribunal held that these entries of the papers do not show the sale in transit during the movement of goods. Tribunal further observed that similar trade practice has been accepted by Revenue for the year 1985-86 and there is no occasion to divert in the years 1986-87 and 1987-88.

4. I do not find any infirmity in the order of the Tribunal. Learned Standing Counsel is not able to assail the findings recorded by Tribunal, which are findings of fact. The perusal of assessment order shows that no material has been placed on record to show that M/s. Janki Prasad and Sons, Lucknow, had ever endorsed the builties in favour of applicant in transit. There is also no material to disbelieve the case of the applicant that the aforesaid two parties M/s, Janki Prasad and Sons and M/s. Hindustan Automobile, Kanpur, having taken the delivery from the railways in the State of U.P. against their form XXXI. The delivery of the goods was taken by their authorised agent and thereafter at the railway siding the possession of the cement had been given to the dealer-opposite party. Therefore, the expenses incurred towards wharfage, etc., have been incurred by dealer. The fact that the aforesaid two parties have raised the bill in favour of the dealer and had charged the tax and deposited with their assessing officer is not in dispute. It is also not in dispute that the alleged cement have been imported by the aforesaid two parties, against their form XXXI and not by the dealer-opposite party against their form XXXI.

5. In view of the fact that the Revenue has failed to prove that the railway receipts were endorsed in favour of the party during the movement of goods and the provisions of Section 3(b) of the Central Sales Tax Act was applicable Tribunal has rightly treated the purchase by the dealer-opposite party from M/s. Janki Prasad and Sons, Lucknow and M/s. Hindustan Automobile, Kanpur, within the State of U.P. and has rightly declared the sales of such cement within the State of U.P. non-taxable.

In the result, both the revisions, fail and are dismissed.

