(2011) 02 AHC CK 0013

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No. 1483 of 2003

Commissioner of Trade Tax APPELLANT

Vs

Chakrawati Construction Co. RESPONDENT

Date of Decision : 24-02-2011

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2012) 47 VST 428

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : B.K. Pandey, for the Appellant; Kunwar Saksena, for the Respondent

Final Decision : Allowed

Judgement

Rajes Kumar, J.—This is a revision u/s 11 of the U.P. Trade Tax Act, 1948 (hereinafter referred to as, "the Act") against the order of the Tribunal dated July 19, 2003 for the assessment year 1996-97. The applicant is a civil contractor and has executed the contract awarded by the Irrigation Department, Bijnor and Eastern Ganga Nahar. The cement and sariya were provided by the contractee. The assessee has used the bricks and ret bajri in the execution of works contract. The assessing authority has levied the tax on the estimated turnover of ret bajri at Rs. 3,00,000 on the ground that no purchase voucher has been produced. The exemption on the purchases of bricks for Rs. 6,28,000 has been allowed on the ground that the same has been purchased from the brick-kiln owner, who was under the compounding scheme. A proceeding u/s 10B of the Act has been initiated. On a consideration of the reply filed by the assessee, the Deputy Commissioner (Executive), Trade Tax, Bijnor, passed an order dated December 21, 2001 wherein he has levied the tax on the turnover of bricks used in the execution of works contract. The tax has been levied on the ground that no purchase voucher has been filed and the assessee was not able to establish that the purchases were made from the brick-kiln owner, who was under the compounding scheme.

2. Aggrieved by the order of the Deputy Commissioner (Executive), Trade Tax, Bijnor, the assessee filed an appeal before the Tribunal. The Tribunal by the impugned order allowed the appeal, set aside the order passed u/s 10B of the Act and restored the assessment order. The Tribunal has deleted the tax on the purchases of bricks on the ground that the assessee was neither the manufacturer nor importer of the bricks. The argument of the State Representative that point of tax is not material for the purposes of determining the tax liability u/s 3F of the Act has been rejected.

3. Heard Sri B.K. Pandey, learned standing counsel and Sri Kunwar Saksena, learned counsel appearing on behalf of the assessee.

4. The learned standing counsel submitted that the applicant has executed works contract. The value of the goods involved in the execution of works contract is liable to tax u/s 3F of the Act. Section 3F of the Act also provides the determination of the net turnover. Clause (iii) of section 3F(2)(b) provides deduction on the amount representing the value of the goods on the sale or purchase whereof tax has been levied or is leviable under the Act at some earlier stage unless it is established that the tax on the goods have been levied or leviable under this Act at some earlier stage, the deduction cannot be allowed. In the present case, the assessee has not furnished the purchase voucher of bricks and, therefore, the assessee failed to prove that the tax has been levied or is leviable under this Act. Since the purchase voucher has not been produced, the claim of the assessee that the bricks were purchased from the brick-kiln owner, who was under the compounding scheme could not be accepted. The Deputy Commissioner (Executive), Trade Tax, Bijnor in the order has rightly levied the tax in the absence of purchase voucher being filed relating to the purchases of bricks and the Tribunal has illegally deleted the tax.

5. Sri Kunwar Saksena, learned counsel for the assessee, submitted that the bricks are liable to tax at the point of manufacturer or importer. The Tribunal has recorded a categorical finding that the assessee was neither manufacturer nor importer. He submitted that the photocopy of the purchase voucher has been filed before the Tribunal and, therefore, the order of the Tribunal is legally justified.

6. I have considered the rival submissions and perused the impugned orders.

7. Admittedly, the purchase voucher relating to the purchases of bricks has not been filed before the assessing authority. The Deputy Commissioner (Executive), Trade Tax, Bijnor, has recorded a categorical finding that the purchase voucher relating to the purchases of bricks has not been filed. This finding has not been disputed by the assessee and even by the Tribunal. In the case of works contract, the value of the goods involved in the execution of works contract is liable to tax u/s 3F of the Act. Section 3F of the Act also provides the determination of taxable turnover. Clause (b) of section 3F (2) of the Act provides certain deduction from the gross receipt. Clause (iii) of section 3F(2)(b)

of the Act provides deduction on the amount representing the value of the goods on the sale or purchase whereof tax has been levied or is leviable under the Act at some earlier stage. The burden lies upon the assessee to establish that the tax on the purchases has been levied or is leviable under the Act at some earlier stage. In the present case, the purchase voucher of the purchases of bricks could not be furnished therefore the assessee failed to establish that the tax on the bricks have been levied or is leviable under this Act. In the absence of purchase voucher it has not been established that the brick-kiln owner from whom the bricks have been purchased was under the compounding scheme u/s 7D of the Act and the tax has been paid under the compounding scheme. In the circumstances, the claim of exemption cannot be allowed. For the purposes of levy of tax u/s 3F of the Act and the determination of the net turnover the point of levy of tax under the notification is not relevant. Under the Notification No. 2-711 dated February 27, 1997 only the rate of tax mentioned in the notification is relevant and not the point on which the commodity is liable to tax. Therefore, the argument of learned counsel for the assessee cannot be accepted. In view of the above, the order of the Tribunal is illegal and liable to be set aside. In the result, the revision is allowed. The order of the Tribunal is set aside and the order of the Deputy Commissioner (Executive), Trade Tax, Bijnor is restored.