(1986) 10 AHC CK 0045

In the Allahabad High Court

Case No : Sales Tax Revision No. 296 of 1986

Commissioner, Sales Tax APPELLANT

Vs

Pramod and Company RESPONDENT

Date of Decision : 21-10-1986

Acts Referred:

Central Sales Tax Act, 1956 — Section 3
Central Sales Tax Act, 1956 — Section 3
Central Sales Tax Act, 1956 — Section 3

Citation : (1987) 67 STC 247

Hon'ble Judges : R.R. Misra, J

Bench : Single Bench

Advocate : Bharatji Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

R.R. Misra, J.—This sales tax revision has been filed by the Commissioner of Sales Tax against the order dated 21st November, 1986 passed by the Sales Tax Tribunal, Aligarh Bench, Aligarh.

2. The admitted facts in the case are that Faridabad Manufacturing Company, Ghaziabad, has placed an order with M/s. Shankar Cement Private Ltd., Madras, for the supply of three wagons of cement. Accordingly builty was also prepared in the name of the aforesaid Ghaziabad party. Subsequently, however, this Ghaziabad party endorsed the builty in favour of the dealer-opposite party. It is also admitted by the counsel for the parties that cement is taxable at the point of sale either at the hands of manufacturer or importer.

3. In the present case the controversy is as to whether the dealer-opposite party is an importer or not. According to the contention raised by the learned Standing Counsel for the Commissioner of Sales Tax in view of Clause (b) of Section 3 of the Central Sales Tax Act since the sale has been effected by a transfer of documents of title to the goods, therefore it is a case of inter-State sale and the assessee is an "importer" within the meaning of Section 2(e) of the U. P. Sales

Tax Act. On the other hand, Sri Bharatji Agarwal, learned counsel appearing for the assessee-opposite party, states that the Tribunal has recorded a finding that there was no contract between the assessee-opposite party and the aforementioned Madras party in relation to the goods and that the said Ghaziabad party had also collected U. P. sales tax from the dealer. According to the aforesaid learned counsel the said Ghaziabad party was an "importer" under the U. P. Sales Tax Act.

4. The word "importer" has been defined u/s 2(e) of the U. P. Sales Tax Act as under :

Section 2. (e) ''importer'', in relation to any goods means the dealer who makes the first sale of such goods after their import into the State.

5. From the above facts, in my opinion, it is clear that so far as the Gaziabad party is concerned, it is this party which will be held to be "importer" under the U. P. Sales Tax Act and the contention raised by the learned Standing Counsel is not sound as has been categorically found by the Tribunal that the original contract which occasioned the movement of the goods was between the Madras party and the Ghaziabad party and even the builty was also prepared in the name of the Ghaziabad party. The Ghaziabad party did make the sale and also realised sales tax from the assessee-opposite party. Under the circumstances, the mere fact that the builty in the name of the Ghaziabad party was transferred to the assessee-opposite party will not make the assessee-opposite party "importer" as defined under the provision of the U. P. Sales Tax Act. In my opinion, the contention raised on behalf of the Commissioner of Sales Tax has no force. This view of mine also finds support from the decision of the Madhya Pradesh High Court in the case of Kaluram Ganesh Ram v. State of Madhya Pradesh, Miscellaneous Petition No. 232 of 1979 decided on 2nd July, 1982, wherein the facts were more or less similar to the facts of the present case.

6. In the result, this revision fails and is dismissed with costs.

