(1987) 02 AHC CK 0074

In the Allahabad High Court

Case No : Sales Tax Revision No. 633 of 1986

Commissioner, Sales Tax APPELLANT

Vs

Sai Electricals RESPONDENT

Date of Decision : 17-02-1987

Acts Referred:

Citation : (1988) 68 STC 342

Hon'ble Judges : Om Prakash, J

Bench : Single Bench

Advocate : A.B. Saran, for the Respondent

Final Decision : Dismissed

Judgement

Om Prakash, J.—This is a revision for the assessment year 1980-81 by the Revenue against the Tribunal''s order dated 28th November, 1985.

2. The assessee, a private limited company, is engaged in carrying out repairs of the transformers, belonging to the U.P. State Electricity Board under an agreement. For repairing the transformers the assessee used the spare parts, which are taken to have been sold to the Electricity Board. After repair of the transformers, the bills are submitted by the assessee to the Electricity Board. Thereafter, the Electricity Board makes a thorough inspection of the repaired transformers and only after having been satisfied, the bills, earlier submitted by the assessee, are approved. In the past, the assessment has been made on the assessee in respect of the sale of the spare parts in the year when the transformers are approved after inspection. The department has sought to make a departure from the past practice during this year, inasmuch as,, the tax is sought to be levied in the year when the bills were submitted by the assessee to the Board, on the ground that the sale of the spare parts had become complete in the year when the bills were submitted to the Board. I fail to understand as to why the departure has been made by the department from the past practice. So far as the interest of the Revenue is concerned, it is not jeopardised, as the only

question is as to in which year, whether in the year of submission of bills or in the year when the repaired transformers are approved after inspection and the bills are okayed, the tax is to be levied. The tax does not remain unrecovered either way. Therefore, it seems only an academic exercise as to in which year the sale of the spare parts is completed. When a method has been followed by the assessee year to year and that has been accepted in the past by the Revenue, then there does not appear a good reason to make a departure therefrom.

3. The matter can now be tested on the basis of the conditions, incorporated in the agreement. The Tribunal clearly observes in the order that:

From the terms of the contract, paper No. 04 of the paper book, it is clear that payments shall be made after final approval of the repaired transformers on the basis of different tests undertaken by the departmental officials. If any defect is detected, the responsibility of the assessee does not cease and he has to comply with the directions as per terms of the approved estimate prepared on the basis of joint inspection.

4. Looking to this condition, the Tribunal took the view that:

Even if it be held that the pro forma invoice sent according to the terms and conditions of the contract is a bill, the fact remains that unless the transformer is approved, there is no acceptance of the offer by the UPSEB. It is only after tests and checks that the department comes to the conclusion that the repairs carried out fulfils all the conditions and the repaired transformer is fit for acceptance. When they accept the transformer is complete and it is therefore the date on which, sale can legally be held.

5. I do not see any illegality in the view, taken by the Tribunal. So the matter viewed from either angle, it appears that the Tribunal reached the correct conclusion that the sale of spare parts will be taken to have been completed in the year, when the repaired transformers are approved after joint inspection and the payment is made to the assessee.

6. The next question is whether the Tribunal was right in accepting the book version regarding the turnover of scraps. Whereas, the assessee disclosed the turnover at Rs. 17,474.05, the assessing officer estimated the turnover at Rs. 70,000. The assessee gave a reason for steep fall in the turnover of scraps that the instant partnership came into existence with effect from 1st October, 1980 and no scrap was taken over from the old partnership firm and that the turnover of the scraps that become available during the period from 1st October, 1980 to 31st March, 1981 only was shown and that was much less. The Tribunal accepted this reason and in my opinion rightly. Otherwise also, no question of law arises from this decision of the Tribunal, as it is purely based on finding of fact.

7. In the result, the revision fails and is dismissed. No order as to costs.