

(2010) 07 AHC CK 0488

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No's. 125 and 131 of 2003

Commissioner, Trade Tax, U.P., Lucknow

APPELLANT

Vs

Advance Spectra Tec (P) Ltd.

RESPONDENT

Date of Decision : 02-07-2010

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 15, 3, 4, 5
Uttar Pradesh Trade Tax Act, 1948 — Section 3F(2)

Citation : (2011) 38 VST 336

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Pankaj Mithal, J.—The assessee-dealer is a contractor registered in U. P. having one of its office outside the State of U. P. For the purposes of execution of works contracts it procures material both by purchase from within the State of U. P. and by purchasing and importing material from outside U. P. or by transferring material from its office situate outside U. P.

2. In the years in question, i.e., 1996-97 and 1997-98, the assessee transferred certain material from his office outside U. P. for the purposes of execution of works contracts in U. P., The assessing authority vide order dated September 30, 1999 imposed tax of Rs. 10,87,479 and Rs. 7,44,745, respectively by including the value of material so transferred from its office outside U. P. in the taxable turnover. On appeal before the Deputy Commissioner of Appeals, the matter was remanded to the assessing officer. The order of remand passed by the first appellate authority was challenged by the assessee as well as the Revenue before the Trade Tax Tribunal in second appeals. The Tribunal vide order dated September 6, 2002, considerably reduced the tax liability of the assessee holding that the value of goods used in the execution of works contract received from outside the State as stock transfer from outside U. P. office is exempt from tax u/s 3F(2)(b)(i) of the U. P. Trade Tax Act, 1948.

3. The above order of the Tribunal has been assailed by the Revenue by means of the present revision and the following question of law has been raised :

Whether, under the facts and circumstances of the case, the Trade Tax Tribunal was legally justified to hold that the goods received from outside the State as a result of stock transfer and used in execution of works contract are exempt from tax under the provisions of section 3F(2)(b) of the U. P. Trade Tax Act ?

4. I have heard Sri Bipin Pandey, learned standing counsel in support of the revision and Sri Yashwant Verrna for the assessee/opposite party.

5. The submission of learned standing counsel is that the goods received by the assessee as a result of stock transfer from his outside U. P. office and used in the works contract would not be covered by section 3 of the Central Sales Tax Act, 1956 and, as such, no deduction in this regard is permissible u/s 3F(2)(b)(i) of the U. P. Trade Tax Act. On the other hand, Sri Yashwant Verma has defended the order of the Tribunal on the ground that the amount of sale value of goods covered by section 3 of the Central Sales Tax Act is deductible in calculating the net turnover of transfer of property in goods involved in execution of works contract. The goods received by the assessee by stock transfer from his outside U. P. office amounts to movement of goods from one State to another and would be covered by section 3 of the Central Sales Tax Act.

6. U.P. Trade Tax Act, 1948 not only levies tax on sale and purchase of the goods in U. P. but also on transfer of rights to use any goods which has been covered by the definition of "sale" as contained in section 2(h)(iv) of the Act. The aforesaid provision is reproduced hereinbelow for the sake of convenience :

2. Definitions--....

(a)...

(h) "Sale", with its grammatical variations and cognate expressions, means any transfer of property in goods (otherwise than by way of a mortgage, hypothecation, charge or pledge) for cash or deferred payment or other valuable consideration, and includes--

(i)...

(iv) a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

7. Section 3F is the charging section and imposes liability upon every dealer to pay tax on the net turnover of transfer of property in goods involved in the execution of a works contract. However, sub-section (2) of section 3F of the Act permits certain deductions in calculating net turnover for the purposes of charging tax u/s 3F of the Act. The part of the above provision of section 3F of the Act, which is relevant for the purposes of this case, is reproduced here in below :

3F. Tax on the right to use any goods or goods involved in the execution of works contract.--(1) Notwithstanding anything contained in section 3A or section 3AAA or section 3D but subject to the provisions of section 14 and 15 of the Central Sales Tax Act, 1956, every dealer shall, for each assessment year, pay a tax on the net turnover of--

(a)...

(b) transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract,

at such rate not exceeding twenty per cent as the State Government may, by notification, declare and different rates may be declared for different goods or different classes of dealers.

(2) For the purposes of determining the net turnover referred to in sub-section (1), the following amounts shall be deducted from the total amount received or receivable by a dealer in respect of a--

(a)...

(b) transfer referred to in clause (b) of sub-section (1),--

(i) the amount representing the sales value of the goods covered by sections 3, 4 and 5 of the Central Sales Tax Act, 1956;

8. A plain and simple reading of the aforesaid provision reveals that every dealer is supposed to pay tax on the net turnover of the transfer of the goods involved in execution of the works contract but the amounts representing the sale value of the goods which are covered by sections 3, 4 and 5 of the Central Sales Tax Act, 1956 are deductible from the said turnover in determining the tax liability.

9. Now the short question which arises for determination is as to whether the value of the goods received by stock transfer by the assessee from its office outside U. P. and used in execution of the works contract is covered by section 3 of the Central Sales Tax Act and is deductible from the net taxable turnover.

10. Section 3 of the Central Sales Tax Act, 1956 reads as under :

3. When is a sale or purchase of goods said to take place in the course of inter-State trade or commerce.--A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase,--

(a) occasions the movement of goods from one State to another; or

(b) is effected by a transfer of documents of title to the goods during their movement from one State to another.

Explanation 1....

Explanation 2....

11. Section 3 of the Central Sales Tax Act is a deeming provision which provides that sale and purchase of goods shall be deemed to have taken place in the course of inter-State trade or commerce, if the sale or purchase occasions the movement of goods from one State to another, or is effected by a transfer of documents of title to the goods during their movement from one State to another. There are two Explanations to the above section. The first Explanation describes when the goods shall be deemed to be in movement from one State to another; whereas the second Explanation clarifies when the movement of goods commences and terminates in the same State.

12. In the instant case the assessee undisputedly has an office in U. P. as well as outside U. P. The works contract was in U. P. and there is also no dispute that the goods received by way of stock transfer in U. P. from the office of the assessee situate outside U. P. have been used in the execution of the works contract and that such transaction has resulted in the movement of goods from one State to another.

13. In *Santosh and Company v. Commissioner of Trade Tax* [1999] UPTC 823, his Lordship of this court held that the value of goods brought from outside U. P. and consumed in U. P. in works contract is deductible u/s 3F(2)(b)(i) of the Act. In the said case the assessee-dealer was having his office in New Delhi and he had brought goods from Delhi and consumed them in execution of works contract at Dehradun in U. P. The court held, "admittedly, goods were brought from Delhi to the State of U. P. in pursuance of and for the execution of the works contract and, therefore, they were covered by section 3 of the Central Sales Tax Act and the sale value thereof could not have been subjected to trade tax under the U. P. Sales Tax Act".

14. The aforesaid decision was followed by another Bench of this court in the case of *Commissioner, Trade Tax, U.P., Lucknow v. Dharmex Pvt. Ltd.*, Pune [2009] 23 VST 225; [2009] 39 NTN 68. In this case also the assessee-dealer was a contractor based at Pune in Maharashtra and had brought in and consumed goods in U. P. in execution of a works contract. The court held the above transaction to be a case of inter-State trade on which no tax was chargeable in U. P.

15. A slightly different view was taken in *Garg Photo Films, Agra v. Commissioner of Trade Tax* [2005] UPTC 230 but the facts of the said case were little different and therefore, the distinction made therein in not following the decision of *Santosh and Company* [1999] UPTC 823 would not be applicable in the present case. In the said case, there was no preexisting works contract. The material was imported in U. P. and kept as a stock. Later on when a works contract was entered into, the said material was utilised in its execution. In the said circumstances, His Lordship held that the value of the goods so utilised would not be covered by section 3 of the Central Sales Tax Act. The position in the present case is different. Here there existed a works contract and the goods were moved in U. P. from outside by way of stock transfer and were utilised in the works

contract.

16. In view of the above discussion, I am of the opinion that the goods received by the assessee in U. P. by way of stock transfer from its branch outside U. P. and consumed for execution of a pre-existing works contract amounts to sale or purchase of goods in the course of inter-State trade or commerce which is covered u/s 3 of the Central Sales Tax Act. The value of such goods is therefore liable to be deducted u/s 3F(2)(b)(i) of the Act from the net turnover of the assessee. Accordingly, there is no error of law in the impugned order of the Tribunal.

17. The question raised in these revisions is answered accordingly, in favour of the assessee and against the Revenue.

18. Revisions lack merit and are dismissed.