

(2009) 12 AHC CK 0397

In the Allahabad High Court

Case No : Commercial Tax Revision No. 1182 of 2009

Deputy Project Manager, U.P., U.P. Rajya Setu Nigam Ltd.
Mauranipur, Jhansi

APPELLANT

Vs

Commissioner, Trade Tax, Lucknow and another

RESPONDENT

Date of Decision : 10-12-2009

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 3G

Citation : (2009) 12 AHC CK 0397

Hon'ble Judges : Abhinava Upadhyaya, J

Judgement

Abhinava Upadhyaya, J.—Heard Sri A.K. Srivastava, learned Counsel for the revisionist and Sri B.K. Pandey, learned Standing Counsel for the department.

2. The revisionist is a statutory corporation namely U.P. State Bridge Corporation Ltd. and is engaged in the business of construction. Certain goods were imported against Form3D for being used in the construction undertaken by the dealer itself. However, it was found that the said goods instead of being used in the contract undertaken by the corporation it was sold out. According to the department such a sale was in violation of section 3G of the U.P. Trade Tax Act and thereby imposed certain tax on such sale.

3. On the other hand learned Counsel appearing for the revisionist states that use of cement imported against Form3D has been used in the construction of Government Projects and as such there was no violation. The matter was carried upto the stage of Tribunal and the Tribunal disallowed the claim of the revisionist and has affirmed the order of assessment. Hence this revision.

4. Be that as it may, the U.P. State Bridge Corporation is a statutory corporation under the absolute control of the State Government and therefore, it is one of the limb of the Government. That being the case, in view of the decision of the Hon'ble Supreme Court in the case of Chief Conservator of Forests v. Collector, 2003 SCC 472 and in the case of Oil and Natural Gas Corporation Ltd. v. City Industrial Development Corporation, Maharashtra, 2007 (9) JT 382 wherein it has

been held that such dispute must not be carried to the Court of law and should be settled between the governmental authorities for which purpose the Hon''ble Supreme Court directed for constituting a Secretary Level, High Power Committee.

5. Similar view has been taken in other Division Bench decisions of this Court as in the case of Pradeshia Industrial and Investment Corporation v. Deputy Collector (Collection) Sales Tax and others, 1994 U.P.T.C. 833 and Etah Gramin Bank, Etah v. Commissioner of Income Tax, Aligarh and others, 2006 U.P.T.C. 333 The Supreme Court in the case of Mahanagar Telephone Nigam Ltd. v. Chairman, C.B.D.T., (2004) 267ITR 647 has observed as follows :

"Undoubtedly, the right to enforce a right in a Court of law cannot be effaced. However, it must be remembered that Courts are overburdened with a large number of cases. The majority of such cases pertain to Government Departments and/or public sector undertakings. As is stated in Chief Conservator of Forests" case, (2003) 3 SCC 472 it was not contemplated by the framers of the Constitution or the Civil Procedure Code that two departments of a State of Union of India and/or a department of the Government and a public sector undertakings fight a litigation in a Court of law. Such a course is detrimental to public interest as it entails avoidable wastage of public money and time. These are all limbs of the Government and must act in coordination and not confrontation. The mechanism set up by this Court is not, as suggested by Mr. Andhyarujina, only to conciliate between Government Departments. It is also set for purposes of ensuring that frivolous disputes do not come before Courts without clearance from the High Powered Committee. If it can, the High Powered Committee will resolve the dispute. If the dispute is not resolved the committee would undoubtedly give clearance. However, there could also be frivolous litigation proposed by a department of the Government or a public sector undertaking. This could be prevented by the High Powered Committee. In such cases there is no question of resolving the dispute. The Committee only has to refuse permission to litigate. No right of the Department/public sector undertaking is affected in such a case. The litigation being of a frivolous nature must not be brought to Court. To be remembered that in almost all cases one or the other party will not be happy with the decision of the High Powered Committee. The dissatisfied party will always claim that its rights are affected, when a fact, no right is affected. The Committee is constituted of highly placed officers of the Government, who do not have an interest in the dispute, it is thus expected that their decision will be fair and honest. Even if the Department/public sector undertaking finds the decision unpalatable, discipline requires that they abide by it. Otherwise the whole purpose of this exercise will be lost and every party against whom the decision is given will claim that they have been wronged and that their rights are affected. This should not be allowed to be done."

6. Therefore, under the circumstances, it would be appropriate that the matter

should be referred to the High Powered Committee as observed by the Apex Court which will resolve the issue at its level. It is further directed that until the decision by the High Powered Committee, the recovery proceeding pursuant to the order of the Tribunal dated 29.7.2009 shall be kept in abeyance and the same shall be subject to the orders that may be passed by the said Committee.

7. The applicants shall furnish copy of this order to the Chief Secretary, State of U.P. within a period of one month from today for necessary follow up action.

8. With the aforesaid observation, the present revision is disposed of finally.

9. It is further directed that revisionist will approach the Chief Secretary for the aforesaid purpose within a period of one month from today.

Revision Disposed Of.