(2008) 12 SHI CK 0008

In the High Court Of Himachal Pradesh

Divisional Forest Officer APPELLANT

Vs

Assessing Authority and Another RESPONDENT

Date of Decision : 23-12-2008

Acts Referred:

Himachal Pradesh General Sales Tax Act, 1968 — Section 33

Citation : (2009) 26 VST 579

Hon'ble Judges : Surjit Singh, J;R.B. Misra, J

Bench : Division Bench

Judgement

Surjit Singh, J.—The present reference, u/s 33 of the Himachal Pradesh General Sales Tax Act, 1968, has been made by the Himachal Pradesh Sales Tax, Tribunal, Dharamshala, for adjudication of the following questions:

(1) Whether the action of respondents charging the enhanced rate of tax of 25 per cent for the sales effected before February 1, 1979, is valid, since the enhancement in the rate of tax from 10 per cent to 25 per cent came into operation with effect from February 1, 1979 in view of the letter and instructions Memo. No. Ft. -37-4/73/iv dated May 21, 1980?

(2) Whether the sale of the forest by auction is complete at the fall of hammer or at the time of receiving royalty in instalments as part payment of consideration and the liability of sales tax accordingly?

(3) Whether interest is chargeable on the said payment if made in instalment and tax accordingly deposited?

2. Factual background in which the reference has been made may be stated. On October 6, 1978, Divisional Forest Officer, Nahan, put to auction 40 lots of standing timber trees, in accordance with the terms and conditions of auction, which had been published and notified, well in advance. One Amar Singh was the highest bidder at the auction. It was one of the conditions of the auction that the bids will remain open for thirty days to enable the competent authority to consider and examine the bids and to accord necessary sanction, and in the

meanwhile, bidder(s) could withdraw the bids. It appears that the highest bid was ultimately accepted. At the time when the auction took place and also up to the date of expiry of 30 days period, available for withdrawal of the bid by the bidder and sanction of the bid by the competent authority, rate of sales tax was 10 per cent of the sale consideration. This rate was revised to 25 per cent with effect from February 1, 1979. It appears, sanction to accept the bid was accorded in the month of March, 1979 and the lease deed, on behalf of the Forest Department, was also executed in the month of March, 1979, though on behalf of the highest bidder, the lease deed was signed in the month of October, 1978 itself, i.e. on the very date of auction.

3. Since sanction was accorded by the competent authority in March, 1979, the assessing authority (for the purpose of Himachal Pradesh General Sales Tax) sought to charge sales tax at 25 per cent, which became effective from February 1, 1979 and passed an assessment order accordingly. The Divisional Forest Officer filed appeal and then revision, review, etc., up to the level of Financial Commissioner (Appeals), Himachal Pradesh, contending that the sale was complete prior to February 1, 1979 and, therefore, tax was to be levied at the rate prevalent prior to that date, but his plea did not find favour with any of the authorities. His revision was dismissed by the Financial Commissioner, who at that time was the highest authority in taxation matters, vide order dated July 29, 1998. Divisional Forest Officer approached the Financial. Commissioner to make a reference to this court, u/s 33 of the Himachal Pradesh General Sales Tax Act, 1968, and submitted an application stating his case therein. In the meanwhile, the authority of Financial Commissioner (Appeals), in taxation matters, was substituted by Himachal Pradesh Sales Tax Tribunal, and it is the said Tribunal which has made the present reference on the aforesaid application of the Divisional Forest Officer.

4. We have heard the learned Counsel for the Divisional Forest Officer as also the learned Additional Advocate-General representing the sales tax authorities.

5. We would answer question No. 2 first, because answer to the other two questions, i.e., question Nos. 1 and 3, depends upon its answer. Admittedly, it was one of the conditions of the auction that the highest bid, which in technical terms means an offer, was to remain open for a period of 30 days from after the date of auction to enable the competent authority to consider and convey the sanction, and in the meanwhile, the highest bidder(s) could withdraw the bid (offer). That means, the sale was not complete at the fall of the hammer, but it was to get completed on expiry of the 30-day period for which the bid was to remain open with liberty to the highest bidder to withdraw it and to enable the competent authority of the seller to consider the bid and to convey the sanction.

6. Section 64(2) of the Sale of Goods Act no doubt says that in the case of sale by auction, the same is complete when the auctioneer announces its completion by the fall of hammer, but the provision of Section 64 is subject to the provision of Section 62 of the said Act, which says that where any right, duty or liability

would arise under a contract of sale by implication of law, it may be negatived or varied by express agreement or by the course of dealing between the parties, or by usage, if the usage is such as to bind both parties to the contract.

7. In the present case, as already noticed, there was a condition in the auction notice that the bid was to remain open for 30 days. That means this condition varied the provision of Section 64(2) of the Sale of Goods Act, inasmuch as it deferred the completion of sale by a period of 30 days from after the date of the auction (the fall of hammer). In this view of the matter, we find support from a judgment of the three-judge Bench of the honourable Supreme Court in Consolidated Coffee Ltd. and Another Vs. Coffee Board, Bangalore, and a Division Bench judgment of the Madhya Pradesh High Court in Jai Bhawani Timber Vs. State of Madhya Pradesh, .

8. Admittedly, the offer was neither withdrawn by the highest bidder nor was it rejected by the competent authority, within the period of 30 days, and, therefore, in accordance with the terms and conditions of auction and the provision of Section 64(2) read with Section 62 of the Sale of Goods Act, the sale stood completed on expiry of the 30-day period from the date of auction. The date of auction was October 6, 1978. So, the sale stood completed on November 6, 1978. Mere fact that the sanction was accorded by the competent authority in March, 1979, or the lease deed was executed on behalf of the State in the month of March, 1979, would not affect the date of completion of sale, in view of the aforesaid provisions of the Sale of Goods Act. So, we answer question No. 2 in the following terms:

Sale of forest, in question, completed not at the fall of the hammer, but on expiry of the 30-day period from the date of auction. This 30-day period from the date of sale of auction expired on November 5, 1978, and, therefore, the sale was complete on November 6, 1978.

9. Now, we come to question No. 1. When the sale was complete on November 6, 1978, the rate of tax prevailing on that date, i.e., 10 per cent of the sale proceeds was applicable and the liability of the dealer, i.e., Divisional Forest Officer, was to pay tax at the said rate.

10. Question No. 3 becomes immaterial and irrelevant in view of our answer to question No. 2.

11. Reference is answered in the aforesaid terms. Matter is disposed of.

