(2010) 01 RAJ CK 0061

In the Rajasthan High Court

Executive Engineer, BSNL APPELLANT

Vs

CTO RESPONDENT

Date of Decision : 19-01-2010

Acts Referred:
Constitution of India, 1950 — Article 285, 286

Citation : (2010) 01 RAJ CK 0061

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vineet Kothari, J.—This revision petition has been filed by the B.S.N.L. against the order of the Tax Board dated 4th October, 2002 dismissing its appeals against the imposition of sales tax on the sale in the form of supply of materials to the contractor for execution of work contract awarded by the B.S.N.L. to such contractors.

2. Challenging the said levy, various contentions were sought to be raised by the assessee in the present revision petition on the anvil of Section 2(38) defining sale under RST Act and also Article 285 and 286 of the Constitution of India.

3. However, this controversy has been put to rest by a recent decision of the Hon''ble Supreme Court in the case of Karya Palak Engineer, C.P. W.D., Bikaner v. Rajasthan Taxation Baord, Ajmer and Ors. AIR 2004 SC 4499 in which discussing the entire case laws on the point, the Apex Court held against the assessee that such supply of material to the contractor amounts to a taxable sale and even the Union of India or any of its department like B.S.N.L. in the present case is also liable to pay sales tax on such material supplied by it to the contractor for execution of its works contract. The relevant paras No. 19 and 21 of the aforesaid Supreme Court decision are quoted below for ready reference:

19. In the case of Rashtriya Ispat Nigam Ltd. Vs. State of A.P., this Court relying on the said judgment of M/s N.M. Goel & Co. (supra) held:

For the purpose of performance, the contractor was bound to procure materials. But in order to ensure that equality materials are procured, the PWD undertook to supply such materials and stores as from time to time required by the contractor to be used for the purpose of performing of contract only. The value of such quantity of materials and stores so supplied was specified at a rate and got set off or deducted from any sum due or to become due thereafter to the contractor

20. An attempt to distinguish the judgment in ''Goyal''s case on facts came to be rejected by this Court in the above case of Rashtriya Ispat Nigam Ltd.

21. In the instant case also by the use or consumption of material supplied in the work of construction, there was passing of property and by virtue of receipt of value of such transferred property by way of adjustment in bills the consideration has also passed which in our opinion satisfies the definition of ''sale'' in the local Sales Tax Act.

4. In view of the aforesaid binding legal precedent, the appeal of BSNL is liable to be dismissed against the B.S.N.L. and in favour of the respondent-Revenue holding that the sales tax is exigible on the value of material supplied by the assessee B.S.N.L. to the contractor for execution of its works contract.

5. The revision petition is accordingly dismissed. No order as to costs.

