(2007) 09 AHC CK 0055

In the Allahabad High Court

Garrison Engineer APPELLANT

Vs

Commissioner of Trade Tax RESPONDENT

Date of Decision : 25-09-2007

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2008) 17 VST 279

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Judgement

Rajes Kumar, J.—Present three revisions u/s 11 of the U.P. Trade Tax Act, 1948 (hereinafter referred to as "the Act") are directed against the order of Tribunal dated May 10, 2007 relating to the assessment years 1993-94, 1995-96 and 1998-99.

2. The applicant is one of the departments of the Defence Ministry of the Central Government. During the years under consideration, the applicant had engaged contractors for the construction of building, etc., and supplied cement, steel, steel product, bitumen, etc., to the contractors and admittedly deducted the value of the materials while making the payment to the contractors. Admittedly, in all the three years the applicant had imported cement, steel, etc., from outside the State of U.P., which were supplied to the contractors. The claim of the applicant was that the supplies of the materials to the contractors were not sale inasmuch as such materials had been used in the construction of the own buildings of the applicant. The assessing authority had not accepted the plea of the applicant and had treated the supply of the materials, namely, cement, steel, steel product, bitumen, etc., as a sale. During the course of the assessment proceedings, the assessing authority required the applicant to furnish the details of the material supplied in each year and the payment deducted, but despite the time being allowed, such details have not been furnished. It appears that the copy of the contract and the payment schedule have also not been furnished. The assessing authority in the absence of necessary details, by way of best

judgment assessment, estimated the turnover and levied the tax. Being aggrieved by the order, the applicant filed appeals and the matter was remanded back to the assessing authority with the direction to consider the agreement and the payment schedule. It appears that the applicant could not furnish the copy of the agreement and the payment schedule and have also not furnished the details of the goods supplied to the contractors and the payments deducted. The matter was remanded thrice for this purpose, but no details were furnished. The assessing authority on the basis of the material available on record relating to the import of the goods from outside the State of U.P., opening and closing stock, estimated the turnover for the assessment year 1993-94, but could not levy the tax on the cement. The first appellate authority estimated the turnover of cement at Rs. 7 lakhs and levied the tax. The first appellate authority in the absence of any material affirmed the order of the assessing authority. Being aggrieved by the order, the applicant filed three appeals before the Tribunal. Before the Tribunal, the applicant contended that the supply of the materials was not sale inasmuch as the materials were used in the construction of own building of the applicant. It was further submitted that the estimate is arbitrary and without any basis. The Tribunal has not accepted the plea of the applicant that the supply of material was not sale in view of the decision of the apex court in the case of N.M. Goel & Co. v. Sales Tax Officer, Rajnandgaon reported in [1989] 72 STC 368 : [1990] UPTC 865, Rashtriya Ispat Nigam Ltd. v. State of Andhra Pradesh reported in [1998] 109 STC 425 : [1998] 13 NTN 472, Karya Palak Engineer, C.P.W.D., Bikaner v. Rajasthan Taxation Board, Ajmer reported in [2004] 136 STC 641 : [2004] 3 RC 254 : [2004] 25 NTN 1004.

3. Heard Sri Shambhu Chopra, learned Counsel for the applicant and Sri B.K. Pandey, learned Standing Counsel.

Learned Counsel for the applicant has very fairly submitted that in view of the decisions of the apex court and this Court, he may not be able to substantiate the claim that the supply of the materials to the contractors was not sale, but submitted that the estimate of turnover is not justified. He submitted that the Tribunal has not applied his mind on the material available on record, namely, opening stock, purchases made from outside the State of U.P. and the closing stock even in the absence of details of the materials actually supplied and the payment deducted.

4. Learned Standing Counsel submitted that the applicant was provided several opportunities to provide the details, but the details could not be provided. Therefore, assessing authority had no option except to estimate the turnover by way of best judgment assessment.

5. Having heard the learned Counsel for the parties. I have perused the order of the Tribunal and the authorities below.

6. As regards the question whether the supply of material to the contractor amounts to sale it is no more res integra. The apex court in the cases of N.M.

Goel & Co. v. Sales Tax Officer, Rajnandgaon reported in [1989] 72 STC 368 : [1990] UPTC 865, Rashtriya Ispat Nigam Ltd. v. State of Andhra Pradesh reported in [1998] 109 STC 425 : [1998] 13 NTN 472, Karya Palak Engineer, C.P.W.D., Bikaner v. Rajasthan Taxation Board, Ajmer reported in [2004] 136 STC 641 : [2004] 3 RC 254 : [2004] 25 NTN 1004 has held that the supply of the material to the contractor is a sale in a case where while making the payment to the contractor the value of the goods are deducted. Following the aforesaid decisions, this Court has also taken the same view in the case of Executive Engineer, Construction Division-Ill, U.P., Avas Evam Vikas Parishad, Agra v. Commissioner of Trade Tax reported in [2008] 17 VST 283 (All) [App] : [2006] UPTC 133. Therefore, the order of the Tribunal treating the supply of the materials to the contractors as a sale is upheld.

7. Now coming to the question of the estimate of the turnover, perusal of the order of the Tribunal reveals that the Tribunal has simply confirmed the estimate of the turnover without considering the necessary details, namely, opening stock, purchases made from outside the State of U.P. and the closing stock. Even though, the supply of the materials to the contractors could not be furnished, but in the absence of such details, for the purposes of estimate, the opening stock, purchases made outside the State of U.P. and the closing stock are the relevant materials to be considered for each year.

8. In view of the above, the Tribunal is directed to adjudicate the issue of determination of the turnover after taking into account the opening stock, purchases made outside the State of U.P. and the closing stock for each year.

9. In the result, all the three revisions are allowed in part. The order of the Tribunal is set aside and the matter is remanded back to the Tribunal to decide all the three appeals afresh in the light of the observations made above.