(2007) 06 UK CK 0058

In the Uttarakhand High Court

Case No : Trade Tax Revision (TTR) 34 of 2006 and New No. of

Garrison Engineer (MES) APPELLANT

Vs

Commissioner Trade Tax RESPONDENT

Date of Decision : 18-06-2007

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 11(1), 2C, 7(3), 9

Citation : (2007) 06 UK CK 0058

Hon'ble Judges : Dharam Veer, J;B.C. Kandpal, J

Bench : Division Bench

Advocate : Suresh Mishra, for the Appellant; K.P. Upadhyaya, learned Addl. C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

1. This Trade Tax Revision, u/s 11(1) of the Trade tax Act, been preferred against the judgment and order dated 4-10-2005, passed by the Trade Tax Tribunal, Uttaranchal Dehradun in S.A. Nos. 84/1999 and other connected matters.

2. The revision has been admitted by this Court on the following substantial questions of law:

1. Whether the Military Engineering Service Department of the Government of India can be deemed to be 4dealer4 as defined in Section 2(C) of U.P. Trade Tax Act?.

2. Whether the issuance of material for example- cement and steel, to the contractor by the assessee (M.E.S.) for exclusive use of construction and repair of the building of the department of defence, docks and Air Fields in pursuance of the agreement executed by or on behalf of the President of India, can be deemed to be sale or a commercial activity and supply of material is liable to be trade tax or not?.

3. The facts of the case, giving rise to this revision, in short, are that the

revisionist is the Central Government Department under the Ministry of Defence at Dehradun. The Military Engineering Service (revisionist) headed by Engineer-in-Charge, works as a technical advisor to the Chief of Army Staff, Navy and Air Force and to their respective P.S.O4s. He advises the Ministry of Defence with regard to Engineering Services. In carrying on the above government activities, under the Constitution of India, the Government of India through its Military Department, constructs and maintain and takes care, when not in use, of building docks, Air fields etc. as an essential part to the activity of Indian Military, for own use and purpose. During the assessment year 1993-94 the revisionist department was assessed by the Assessment Officer for tax and passed order on 18-3-1997 u/s 7(3) and imposed Rs. 3,43,968-79 P. as tax. Being aggrieved, the revisionist filed an appeal before the Deputy Commissioner (Appeal) Trade Tax Dehradun u/s 9 of the Act. The Deputy Commissioner (Appeal) confirmed the order and dismissed the appeal vide his exparte order dated 24-12-99. Thereafter, the revisionist filed second appeal bearing No. 182/2000 u/s 10 of the Act before the Trade Tax Tribunal, Dehradun who vide impugned order dated 4-10-2005 confirmed the order of the Depty Commissioner (Appeal) and dismissed the appeal.

4. Being aggrieved, the assessee has preferred this revision.

5. We have heard the learned Counsel for the parties and perused the record.

6. The first question of law relates to the point as to whether the Military Engineering Service Department of the Government of India can be deemed to be dealer or not. The term 4dealer4 has been defined in Section 2(C) of the U.P. Trade Tax Act, 1948, which runs as below:

"Dealer" means any person who carries on in Uttar Pradesh (whether regularly or otherwise) the business of buying, selling, supplying or distributing goods directly or indirectly, for cash or deferred payment for commission, remuneration or other valuable consideration and includes-

(i) a local authority, body corporate, company, any cooperative society or other society, club, firm, Hindu undivided family or other association of persons which carries on such business;

(ii) a factor, broker, arhati, commission agent, delcredere agent, or any other mercantile agent, by whatever name called and whether of the same description as hereinbefore mentioned or not, who carries on the business or buying, selling, supplying or distributing goods belonging to any principal, whether disclosed or not;

(iii) an auctioneer who carries on the business of selling or auctioning goods belonging to any principal, whether disclosed or not and whether the offer of the intending purchaser is accepted by him or by the principal or nominee of the principal;

(iv) a Government which, whether in the course of business or otherwise buys, sells, supplies or distributes goods, directly or otherwise for cash or for deferred payment or for commission, remuneration or other valuable consideration;

(v) every person who acts within the State, as an agent of a dealer residing outside the State, and buys, sells, supplies or distributes goods in the State or acts on behalf of such dealer as-

(a) a mercantile agent as defined in the sale of Goods Act, 1930; or

(b) an agent for handling of goods or documents of title relating to goods; or

(c) an agent for the collection or the payment of the sale price of goods or as a guarantor for such collection or such payment;

(vi) a firm or a company or other body corporate, the principal office or headquarters whereof is outside the State having a branch or office in the State in respect of purchases or sales, supplies or distribution of goods through such branch or office;

(vii) every person who carries on the business of transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(viii) every person who carries on business of 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;

Provided that a person who sells agricultural or horticultural produce grown by himself or grown on any land in which he has an interest, whether as an owner, usufructuary mortgageee, tenant, or otherwise, or who sells poultry or dairy products from fowls or animals kept by him shall not, in respect of such goods be treated as a dealer.

7. The Garrison Engineer (MES) is a Department of Government of India and is constituent of the Government. The Department performs the acts on behalf of the Government and its performance will come in the category of the performance done by the Government. Clause (iv) of above quoted Section 2(C) of the U.P. Trade Tax Act, includes a Government, as a dealer, which in the course of business or otherwise buys, sells supplies or distributes goods, directly or otherwise for cash or for deferred payment or for commission, remuneration or other valuable consideration. The revisionist, in the present case, purchased the material and supplied it to the contractor, and received its cost from the contractors. The transaction will come under the head "or otherwise" mentioned in Clause (iv) of Section 2(C) of the Act. Therefore, the revisionist comes within the definition of 4dealer4 as defined in Section 2(C) of U.P. Trade Tax Act. The question No. 1 is decided accordingly.

8. Now the question remains to be decided, is whether the material supplied by the revisionist to the contractors can be deemed to be 4sale4 or not. Admittedly, the assessee Garrison Engineer (MES) supplied the material, cement, steel,

electrical goods, G.I. Pipe, C.I. Pipe, Bitumen and the cost of the material was received after deduction at source. It is also the claim of the Department that the supplied material was either purchased in Form No. 3-D at concessional rate or the same were purchased from out side the State. The Assessing Officer assessed the tax in view of the principle of law laid down by the Hon''ble Apex Court in the matter of M/s. N.M. Goel and Co. Vs. Sales Tax Officer, Rajnandgaon and another, .

9. The Hon4ble Judges of the Apex Court in the case of N.M. Goel and Company (supra) has held as under:

In order to be sale taxable to duty, there should be an independent contract- separate and distinct- apart from passing of the property, where a party purchases or procures goods from the Government. Mere passing of property would not suffice. There must be sale of goods. The primary object of the bargain judged in its entirety must be viewed. In the instant case, Clause 10 is significant. Though in a transaction of this type there is no inherent sale but a sale inheres from the transaction. Clause 10 read in the proper light indicates that position. By use or consumption of materials in the work of construction there was passing of the property in the goods to the assessee from the P.W.D. By appropriation and by the agreement, there was a sale as envisaged in terms of Clause 10 of the contract.

Further in the case of Karya Palak Engineer, C.P.W.D., Bikaner Vs. Rajasthan Taxation Board, Ajmer and Others, , the Hon''ble Apex Court has held as under:

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.

10. The facts of the above cited cases are entirely applicable to the facts of the case in hand. Perusal of Clause 10 of the contract agreement which relates to the "materials" clearly indicates that the materials mentioned in Schedule -B were to be supplied by the Government to the contractors and cost of the material so supplied should have been deducted from the bills of the contractors. Therefore, by supplying the material 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". The substantial question of law framed at serial No. 2 is decided against the assessee and in favour of the Department.

11. For the foregoing reasons the revision lacks merit and is dismissed. The judgment and order passed by the Trade Tax Tribunal is confirmed. No order as to costs.

