(1985) 01 DEL CK 0044

In the Delhi High Court

Case No : Civil Writ No. 532 of 1974

Ghaziabad Engineering Company Private Limited APPELLANT

Vs

Union of India and another RESPONDENT

Date of Decision : 02-01-1985

Acts Referred:

Citation : (1987) 66 STC 384

Hon'ble Judges : Charanjit Talwar, J

Bench : Single Bench

Judgement

Charanjit Talwar, J.—The petitioner, Messrs. Ghaziabad Engineering Company Private Limited has raised two questions in this writ petition, namely, (1) whether a fuel injection pump is a component of a diesel engine and (2) the applicability of the second proviso to section 5(2)(a)(ii) of the Bengal Finance (Sales Tax) Act, 1941, as extended to the Union Territory of Delhi, to the value of the goods which were transferred by it to its factory at Ghaziabad.

2. Learned counsel for the parties agree that the first question does not survive in view of the Sales Tax References Nos. 16 to 21 of 1984 made by the Appellate Tribunal, Sales Tax, Delhi, by its judgment dated 28th June, 1983, which are pending in this Court.

3. As far as the second question is concerned, in the impugned order dated 28th March, 1974 (copy annexure H to the petition), the Sales Tax Officer while following the judgment of the Financial Commissioner in the case of Fitwell Engineers, held that "I accordingly add back the sum of Rs. 94,236.11 in the taxable quantum which will be taxed at the rate of 10 per cent because the dealer is dealing in items which are taxable at 10 per cent. Hence the dealer is required to pay additional tax of Rs. 9,423.61 on this account".

4. I may note here that it is the admitted case of the parties that the value of the goods transferred by the petitioner to its factory at Ghaziabad amounted to Rs. 94,236.11. I may further note that the view of the Financial Commissioner in

Fitwell Engineers was upheld by a Division Bench of this Court. Thereafter, in a batch of petitions decided by the Supreme Court in Polestar Electronics (Pvt.) Ltd. v. Additional Commissioner, Sales Tax [1978] 41 STC 409 the judgment of this Court was reversed. It was held : "It is also significant to note that though Parliament amended section 5(2)(a)(ii) for restricting manufacture as well as sale to the Territory of Delhi, it did not carry out any amendment in the section with a view to limited resale in the same manner by the addition of some such words as ''in the Union Territory of Delhi'' or ''inside Delhi''. This clearly evinces Parliamentary intent not to insist upon resale being restricted to the Territory of Delhi."

5. The reasoning of the Sales Tax Officer in the impugned order in view of the law laid down by the Supreme Court cannot be upheld. The petitioner thus succeeds on the second question which has been raised in this petition. The finding regarding the adding back of Rs. 94,236.11 in the taxable quantum is thus quashed. However, it is for the Revenue to find out whether the said goods manufactured at the petitioner''s factory at Ghaziabad were sold at all. For this purpose I remand the case to the Sales Tax Officer. The parties through their counsel are directed to appear before him on 1st February, 1985.

6. The petition is allowed to the extent indicated above. No order as to costs.

7. Petition partly allowed.

