(1972) 10 AHC CK 0007

In the Allahabad High Court

Case No : Writ Petition No. 2865 of 1972

Mahesh Chandra Kapoor — APPELLANT

Vs

State of Uttar Pradesh and Another — RESPONDENT

Date of Decision : 09-10-1972

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1973) 31 STC 346

Hon'ble Judges : R.L. Gulati, J;C.S.P. Singh, J

Bench : Division Bench

Advocate : Chandra Kishore, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R.L. Gulati, J.—This is a petition under Article 226 of the Constitution. The petitioner is a contractor carrying on business at Bahraich. It appears that in the financial year 1967-68, the Lateral Road Project, Temporary Road Construction Division, P. W. D., Bahraich, had taken on lease the Katiara Cauri Stone Quarry from the forest department and it wanted the stone extracted from the quarry to be transported. It invited tenders for that work. The petitioner submitted a tender which was accepted by a letter dated 26th February, 1966, issued from the office of the Executive Engineer, P. W. D., Bahraich. The petitioner in pursuance of that contract carried out the work and received payment from the P. W. Department in accordance with the rate agreed upon. The Sales Tax Officer assessed the petitioner u/s 7(3) of the U. P. Sales Tax Act on the payment of Rs. 80,000 to a tax of Rs. 1,600. The petitioner did pay this tax. Subsequently, information was received by the Sales Tax Officer that the total payment received by the petitioner from the P. W. Department in connection with the contract was Rs. 6,23,687. He accordingly reopened the assessment u/s 21. The petitioner filed objection against the proceedings u/s 21 saying that he was engaged in a works contract involving no sale of any goods and, as such, was not liable to any tax. This objection was not accepted and the petitioner was assessed by an assessment order dated 29th March, 1972, at a further turnover of Rs. 6,20,000 to a tax of Rs. 12,400. By means of the present writ petition the petitioner has challenged this assessment order.

2. The contention is that the petitioner was engaged in a works contract, which did not involve any sale of goods and, as such, the provisions of the U. P. Sales Tax Act did not apply and the impugned assessment order is without jurisdiction. He has annexed to the writ petition certain documents, including the agreement executed between him and the P. W. Department, which show very clearly that the petitioner was given the contract to collect 11/2" gauge ballast stone from Katiara Cauri Quarry and to stack the same at Bichia Railway Station. He was to be paid at the rate of 70 per cent. cubic feet of the ballast stone. The Sales Tax Officer has treated this contract as a contract of supply and has levied sales tax. After going through the material on the record we are satisfied that the petitioner was engaged in a works contract and there was no sale of any material. As such, he was not liable to any tax on the payment received by him for the execution of the contract.

3. In his counter-affidavit Sri R. C. Srivastava, the Sales Tax Officer, Bahraich, has stated that all the documents now filed along with the writ petition were not produced before him nor were any books of accounts produced. Therefore, the assessment order was justified on the material placed before him. However, in paragraph 3 of the counter-affidavit he has admitted that the petitioner has filed a written objection (annexure VI) and annexures 1, 3 and 4 to the writ petition and annexure CAL to the counter-affidavit. Annexure VI, which is a copy of the written statement filed by the petitioner before the Sales Tax Officer, clearly sets out the following :

That the petitioner had taken the contract for the collection and loading of stone ballast and boulders to the L. R. P. and that the quarry belonged to the L. R. P. Department.

2. That the petitioner had to engage labourer to carry out the collection work and had to transport ballast so collected and load them into wagons.

3. That in consideration of the labour and work done by the petitioner, the department had to pay fixed rate for every cubic feet and that in the circumstances the contract was merely a works contract and not contract of sale and thus he was not a dealer.

4. Turning now to the annexures, admitted by the Sales Tax Officer to have been filed before him, annexure 1 is a letter of acceptance issued by the Executive Engineer, Lateral Road Project, Temporary Road Construction Division, Bahraich, dated 26th February, 1966. The subject of this letter is:

Tender for collection of 11/2" stone ballast at Bichia.

5. The rate for the payment for the work is mentioned at Rs. 70 per cent cubic

feet. Annexure III is an extract of bond. This also recites the name of the work as "Construction of Bareilly-Betiah Road, L. R. P. in Bahraich; Collection of 11/2" gauge Katiara Cauri Stone Ballast at Bichia Railway Station". The details of work mentioned in this bond described the work as :

-- sl. No. Work Situation Quantity Unit Rate in Rate in words Figures
-- 1. Collection of Bahraich. 10 lacs Per cent. Rs. 70. Rs.Seventy 11/2" gauge only. Katiara Cauri Stone Ballast at Bichia Rail. way Station.

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6. Annexure IV is a letter from the Executive Engineer dated 22nd July, 1966, addressed to the petitioner where the subject mentioned is "collection of stone ballast at Bichia Railway Station". There is nothing in these documents which suggests that the petitioner had undertaken any contract of supply of ballast. On the other hand, they very clearly show that the contract was merely for the transportation and stacking of ballast stone. The Sales Tax Officer has considered this contract to be a contract of supply. Now a contract of supply in order to be taxable under the U. P. Sales Tax Act must involve sale of goods. A supply of the nature undertaken by the petitioner did not involve any element of sale. It was a pure works contract. The impugned assessment order is palpably contrary to the material on record and is clearly without jurisdiction.

7. We, accordingly, allow this petition and quash the assessment order dated 29th March, 1972 (annexure VII to the writ petition) and the notice of demand of the same date (annexure VIII to the writ petition) issued in pursuance of the assessment order relating to the assessment year 1967-68. The recovery proceedings started against the petitioner for the recovery of the impugned tax are also quashed. The petitioner is entitled to the costs of this petition.

