(2011) 12 DEL CK 0417

In the Delhi High Court

Case No : CS (OS) 564 of 2009 and I.A. No. 3680 of 2010

M/s Everest Kanto Cylinders Ltd. APPELLANT

Vs

M/s Agro Impex (I) Pvt. Ltd. RESPONDENT

Date of Decision : 07-12-2011

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6

Citation : (2012) 1 AD 449 : (2012) 188 DLT 323

Hon'ble Judges : A.K. Pathak, J

Bench : Single Bench

Advocate : S.S. Jauhar and Mr. Rajesh Narula, for the Appellant; Pramod Jalan, for the Respondent

Final Decision : Disposed Off

Judgement

A.K. Pathak, J.—By this application plaintiff has prayed that a decree in the sum of Rs. 34,00,747/-together with pendente lite and future interest @ 12% per annum be passed in favour of the plaintiff and against the defendant, in view of the admissions made by the defendant in his written statement.

2. Plaintiff has filed this suit for recovery of Rs. 34,00,474/-together with pendent lite and future interest @ 12 % per annum. It is alleged that the plaintiff had supplied CNG cylinders to the defendant on credit basis. Defendant represented that it was registered under the Delhi Sales Tax vide Sales Tax Registration no.LC/97/208279/0898, thus, ST-1 Forms will be issued against the purchase of CNG cylinders. Accordingly, plaintiff did not charge sales tax from the defendant. At the relevant time, sales tax @ 8% on the sale price was chargeable.

3. Plaintiff supplied CNG cylinders to the defendant vide following bills :-

Bill No.

Date

Amount (in Rs.)

1080

05.05.2002

20,17,008.00

1100

14.05.2002

11,20,560.00

1140

29.05.2002

11,20,560.00

1147

05.06.2002

16,80,840.00

1163

12.06.2002

22,41,120.00

1171

19.06.2002

16,80,840.00

1179

24.06.2002

11,20,560.00

1180

24.06.2002

21,01,050.00

1205

13.07.2002

22,41,120.00

1296

02.12.2002

28,01,400.00

1300

07.12.2002

22,13,106.00

1302

13.12.2002

22,13,106.00

1309

25.12.2002

19,23,744.00

1316

06.01.2003

19,48,800.00

1325

15.01.2003

19,48,800.00

1334

24.01.2003

9,74,400.00,

1335

24.01.2003

9,61,872.00

1356

20.02.2003

19,48,800.00

1373

17.03.2003

5,72,460.00

Grand Total

3,28,30,146.00

4. Defendant failed to supply the ST-1 Forms to the plaintiff despite repeated requests of the plaintiff. Sales tax @ 8% on the total bills amounting to Rs. 3,28,30,146/-comes to Rs. 26,26,411.68. On account of non-production of ST-1 Forms in respect of the aforesaid bills, the Sales Tax Department vide assessment order dated 25th May, 2006, directed the plaintiff to deposit Rs. 26,27,412/-along with penalty of Rs. 1,000/-. Accordingly, plaintiff had to deposit Rs. 26,27,412/-with the Sales Tax Department on 6th September, 2006. It is alleged that defendant is legally bound to pay this amount with interest @ 12% per annum. Interest on Rs. 26,27,412/-with effect from 6th September, 2006 till the filing of the suit comes to Rs. 7,73,335/-, thus, making a total amount of Rs. 34,00,747/- as due and payable by the defendant.

5. In the written statement, defendant has not disputed the fact that plaintiff had supplied CNG cylinders to it vide the bills mentioned in the plaint, details whereof have been given in para 3 hereinabove. It has also not been disputed that ST-1 Forms have not been given by the defendant to plaintiff. It is alleged that defendant was to supply ST-1 Forms to the plaintiff as and when the same are issued by the Sales Tax Department to the defendant. Sales Tax Department had not issued the ST-1 Forms to the defendant which fact was duly notified to the plaintiff vide letter dated 23rd February, 2006. The plea of the defendant is that ST-1 Forms could not be supplied to the plaintiff as the Sales Tax Department did not issue the same to the defendant.

6. From the above, it is clear that the defendant has admitted the supply of CNG cylinders worth Rs. 3,28,30,146/-by the plaintiff vide bills mentioned in the plaint. This admission is unambiguous and categorical. Similarly, defendant has also admitted non-issuance of ST-1 Forms by it to the plaintiff. Since the defendant was registered under the Delhi Sales Tax with registration no. LC/97/208279/0898, the amount of sales tax @ 8% was not added in the bills by the plaintiff. Thus, defendant was under legal obligation to supply ST-1 Forms to the plaintiff so as to enable it to submit before the Sales Tax authorities to claim exemptions. Since ST-1 Forms were not produced, Sales Tax Officer vide assessment order dated 25th May, 2006 has assessed Rs. 26,27,412/-towards the sales tax @ 8% on the bills amounting to Rs. 3,28,30,146/-. This amount has been deposited by the plaintiff with the Sales Tax Department and the original challan has been placed on record. Ex. P-28, is a letter written by the defendant to plaintiff whereby defendant has admitted that ST-1 Forms were not supplied by it to plaintiff. The plea taken by the defendant that ST-1 Forms were not supplied to the plaintiff as the same had not been issued to it by the Sales Tax Department is of no consequence. Had the defendant not promised the plaintiff for supplying ST-1 Forms, sales tax @ 8% would have been included in the bill. Plaintiff has statutory liability to pay the sales tax or to produce ST-1 Forms issued by the buyer. Since ST-1 Forms were not supplied by the defendant the same could not be produced by the plaintiff before the Sales Tax Department and as a result whereof, plaintiff had to pay sales tax amounting to Rs. 26,27,412/-from its own pocket, which otherwise is the liability of the defendant.

Buyer has to pay the sales tax and not the seller.

7. In Prince Plastics & Chemical Industries vs. Commissioner of Sales Tax 2002 (6) AD (Del) 341, a Division Bench of this Court has observed that "The embargo on charging tax under the Act is only in those instances where the Purchasing Dealer contemporaneously offers ST-1 Form to the Selling Dealer. The Sales Tax Department is neither privy to nor is it concerned with any assurances that might have been exchanged inter se these parties. Quite frequently ST-1 Forms are obtained from Sales Tax Department by the Purchasing Dealer, but for sundry reasons are not forwarded to the Selling Dealer. The only legal recourse is for the Selling Dealer to file a suit for the recovery of the Sales Tax from the Purchasing Dealer. There is no reason to deviate from this position merely because, by a mutual arrangement between the dealers, the supply of the ST-1 Forms is procrastinated to future dates. It should be recalled that, for the benefit of the assessed, the Rules permit the filing of exemption Forms till the time of assessment, this is probably the reason why dealers postpone their obtainment. There is no reason for the consequence of the dealer''s acts of omission or commission to visit the Department. The Act or the Rules do not prohibit the simultaneous furnishing of ST-1 Forms; they in fact envisage it. We are reproducing the Application Form for issue of declaration in Form ST-1 admittedly adopted by the Sales Tax Department for over thirty years. The Form specifically envisages the supply of such Forms to the dealer in advance of transactions." Thus, in my view, it is obligatory on the part of purchasing dealer to arrange for and supply ST-1 Forms to selling dealer and in case he fails to do so, selling dealer can recover the component of sales tax from the purchasing dealer by initiating recovery proceedings.

8. Order 12 Rule 6 of the CPC reads as under:

Judgment on admissions.-(1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the court may at any stage of the suit, either on the application of an party or of its own motion and without waiting for the determination of any other question between the parties, make such Order or give such judgment as It may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.

9. Plain reading of Order 12 Rule 6 CPC makes it abundantly clear that it is open to the court to pass a judgment on admissions in the pleadings or otherwise. The said provision clearly indicates that it is open to the court to pronounce judgment on statement made by the parties and documents on record can be taken note of dehors the pleadings. Admission may be made either specific or constructively. If the court is satisfied that the admission made by a party is unambiguous, a decree can straightaway be passed without taking recourse to trial.

10. In the instant case, admittedly sales tax @ 8% has not been included in the bills since the defendant represented that it was registered with the Sales Tax Department. It was the obligation of the defendant to issue ST-1 Forms which it has failed to do. It is also a fact that Sales Tax Officer had assessed Rs. 26,27,412/-towards the sales tax at the rate of 8% which has been duly deposited by the plaintiff way back on 6th September, 2006. This fact is borne out from the documents issued by a Government Department. In this suit plaintiff has only claimed the sales tax @ 8% on the bills in lieu of non supply of ST-1 Forms by the defendant. Accordingly, a decree can be passed straightway with regard to amount of sales tax paid by the plaintiff on account of non supply of ST-1 Forms by the defendant, on the admission of the defendant, regarding supply of CNG cylinders worth Rs. 3,28,30,146/-and non supply of ST-1 Forms.

11. As regards interest, plaintiff has claimed the same @ 12 % per annum. Plaintiff has paid Rs. 26,27,412/-on account of default of defendant for not furnishing ST-1 Forms. Since this amount has been illegally retained by the defendant, it is liable to pay the interest to the plaintiff, in view of present transaction being commercial in nature. However, in my view, interest @ 12% per annum is on a higher side. It would be appropriate to award interest @ 9% per annum.

12. For the foregoing discussions, a decree is passed in favour of the plaintiff and against the defendant for Rs. 26,27,412/-along with interest @ 9% per annum with effect from 6th September, 2006 till realization of the decretal amount. Plaintiff shall also be entitled to costs. Decree sheet be drawn accordingly.

13. Application as well as suit is disposed of.