(2008) 07 AHC CK 0054

In the Allahabad High Court

Mukhya Rail Path Nirikshak APPELLANT

Vs

Commissioner RESPONDENT

Date of Decision : 01-07-2008

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 2(h)

Citation : (2010) 28 VST 395

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prakash Krishna, J.—The counsel for the parties jointly agreed that in all the three revisions, the controversy involved is identical and may be disposed of by a common judgment.

2. The argument was advanced with the reference to the T. T. R. No. 354 of 2001. A number of points have been raised in the memo of revision but the counsel for the applicant has confined his submission to only one question as to whether the transaction in question amounts to "sale" within the meaning of Section 2(h) of the U. P. Trade Tax Act, 1948 relevant to the assessment year 1988-89 (Central).

3. The facts which are not in dispute may be noticed. The applicant, a unit of Northern Railway is engaged in the laying of railway tracks. For the said purpose it has entered into contract with various contractors for the manufacture and supply of sleepers. Under the said contract, the applicant agreed to supply cast iron scrap free of cost to the contractor. The said supply of cast iron scrap free of cost to the contractors to whom the contract for supply of sleepers was awarded, has been held by all the three authorities below including the Tribunal as "sale" within the meaning of Section 2(h) of the Act. The claim of the applicant that such supply of scrap to the contractors does not amount "sale" has been rejected by the Tribunal by the order under revision.

4. The question mooted in these revisions is whether the supply of cast iron scrap, free of cost, to such contractors from whom the sleepers were purchased ultimately amounted to "sale" or not.

5. The same controversy inter se parties came up for consideration before this Court in a bunch of revisions such as Revision No. 851 of 1999 and others. This Court by the judgment dated November 6, 2006 has held that the transaction in question does not amount to "sale" and therefore there is no liability on the applicant to pay any tax thereon.

6. The learned standing counsel could not dispute the above position and also agreed that the controversy involved in the present revision is squarely covered by the aforesaid decision of this Court. Respectfully following the above judgment of this Court, it is held that the applicant is not liable to pay any sales tax on the supply of cast iron scrap to such contractors.

7. The revision is allowed. The orders of the authorities below including the Tribunal are set aside and it is held that the transaction in question does not amount to "sale".

8. No order as to costs.

