(2006) 11 AHC CK 0106

In the Allahabad High Court

Mukhya Rail Path Nirikshak, Northern Railway APPELLANT

Vs

The Commissioner, Trade Tax RESPONDENT

Date of Decision : 06-11-2006

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2006) 11 AHC CK 0106

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajes Kumar, J.—These eight revisions u/s 11 of U.P. Trade Tax Act (hereinafter referred to as "Act") are directed against the order of Tribunal dated 6th March, 1999 for the assessment years 1989-90, 90-91, 91-92 and 92-93 both under the U.P. Trade Tax Act as well as Central Sales Tax Act.

2. Applicant is one of the unit of Northern Railway engaged in the manufacture of Railway tracks in its region. Applicant entered into the contract with various contractors for the manufacturing and supply of sleepers for the Railway tracks. As per the terms of the agreement cast iron scrap were supplied by the applicant to the contractor free of cost. Assessing authority levied the tax on the cost of pig iron supplied by the applicant to the contractor treating it as sale. This view has been affirmed by the Deputy Commissioner (Appeals), Trade Tax, Saharanur in first appeal and by the Tribunal in its impugned order.

3. Short question involved in the present revision is whether the pig iron supplied to the contractor free of cost under the terms of the agreement, for the manufacture and supply of the sleeper is a sale within the definition of Section 2 (h) of the Act and is liable to tax accordingly. Tribunal has upheld the levy of tax. Tribunal held that in case where 50% iron was supplied by the applicant to the contractor less rate has been settled keeping in view the valuation of the material and thus, supply of the pig iron has been held as sale. Tribunal has also

referred a letter No. 14.03.1989 issued by Northern Railway Headquarter, Baroda House, New Delhi.

4. Heard learned Counsel for the parties.

5. Learned Counsel for the applicant submitted that the rate of sleepers were settled separately in case where 100% material were used by the contractors and lower rate was fixed in case where 50% iron was supplied free of cost. He submitted that cost of iron was not charged by the Railway from the contractor and only stipulated price was paid by the Railway to the contractor for the supply of the sleeper. He submitted that it is not a case where from the stipulated price of sleeper, value of the iron was deducted while making the payment. He submitted that since no amount has been charged towards the value of the iron from the contractors, there was no question of treating it as sale. Learned Standing Counsel relied upon the order of the Tribunal.

6. Having Heard learned Counsel for the parties, I have perused the order of Tribunal and the authorities below.

7. It is useful to refer Section 2 (h) of the Act, which defines the sale and Section 2 (i) which defines the turn over as follows:

Section 2 (It) ''Sales'' with its grammatical variations and cognate expressions, means any transfer of property in goods (otherwise than by way of a mortgage, hypothecation, charge or pledge) for cash or deferred payment or other valuable consideration and includes -

(i) a transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;

(ii) a transfer of property in goods (whether as goods or in some other forms) involved in the execution of a works contract;

(iii) the delivery of goods on hire purchase or any system of payment by instalments;

(iv) a 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;

(v) the supply of goods by any incorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration; and

(vi) the supply, by way of or as part of any service or in any other manner whatsoever of goods, being food or any other article for human consumption or any drink (whether or not intoxicating) where such supply or service is for cash, deferred payment or other valuable consideration.

Section 2(i) ''Turnover'' means the aggregate amount for which goods are supplied or distributed by way of sale or are sold, by a dealer, either directly or through another, on his account or on account of others, whether for cash or deferred payment or other valuable consideration:

Explanation I: omitted.

Explanation II :-

Subject to such conditions and restrictions, if any, as may be prescribed in this behalf:-

(i) the amount for which goods are sold or purchased shall include the price of the packing material in which they are packed, and any sums charged for anything done by the dealer in respect of the goods sold, at the time of or before the delivery thereof, other than cost of freight or delivery or cost of installation or the amount realised as sales tax or purchase tax when such cost or amount is separately charged.

(ii) Any cash or other discount on the price allowed in respect of any sale and any amount refunded in respect of articles returned by customers shall not be included in the turnover; and

(iii) Where for accommodating a particular customer, a dealer obtains goods from another dealer and immediately disposes of the same without profit to the customer, the sale in respect of such goods shall be included in the turnover of the latter dealer alone:

8. It is also useful to refer one of the contract dated 05.02.1988 entered into between the applicant and M/s Calcutta Iron And Industries Company Limited, Calcutta, which has been referred by the Tribunal in its order:

1. Particulars of Order --- Description of Qt. In Rate in figure''s Amount RDSO Drawing & in words per No. tonne with contractor using 100% his own material viz pig iron. --- 1 2 3 4 1-BG CST-9 Type Sleepers --- RDSO Drg. No. T- 35001 Rs. 4,555/- Rs. 1,59,42,500-00 478(m)Ait.1 T-10221 Air.1 --- 2. MGST-909 15001 Rs. 4,669/- Rs. 70,03,500-00 Type --- Sleepers for BS No. 90R, B.S. No. 85N B.S. No. 6OR, reils to --- i) Drg No. RDSO/ T- 23266 ii) Drg, No RDSO/T- 2663 --- Description Qti. In Rate (in figures and in Amount and words per tonne with contractor using 50% pig iron obtained by him at his own cost & 50% CI Scrap supplied by Rly free of cost for Firm''s siding if on exists or the nearest Rly. Station open for booking. --- 1 2 3 4 --- 1. BGCST-11260 T Rs. 3030/- Rs. 3,41,29,060 Type sleepers RDSO Drawing No. T-

478(M)Ait 1. T-10221 Air 1 --- 2. MG CST-3170T Rs. 3145/- Rs. 99,69,650/- 9 Type Sleepters for BS No. 90R BS No. 75R and 85 No. 60R rails To i) Drg. No. RDSO/T- 2360 DRG No. RDS OT-2662 ii) Drg. No. T-9670 Rs. 3173/- Rs. 1,88,17,910/- RDSO/T- 499 My Ait.e 2 Drg. No. RDSO /T-439 My Ait.2 iii) Drg. No. RDSOA- 10258 Ait 1 Drg. 9 No. RDS O/T- 10232 Air-1 3. BGCSt-9 type Sleeper Plates (for 115 Ibs Section rails) To Rs. 60,62,000/- deg.2000 Rs. 3O31/- --- Total contract value Rs. 8,79,24,620/-

(Rupees eight crores seventy nine lakhs twenty four thousand six hundred and twenty only).

9. Perusal of the agreement shows that two separate price were stipulated for the sleepers; higher rate was stipulated in case where the contractors had to use 100% material and the lesser rate was fixed in a case where applicant had to supply 50% iron free of cost. It is not the case of the revenue that any amount towards cost of the iron supplied by the Railway was charged. It is not the case that the cost of the iron has been deducted from the stipulated value of sleeper. Thus, it is the admitted case that the iron was supplied free of cost without charging any amount. The question for consideration is whether on these facts supply of iron can be treated as sale within the definition of Section 2 (h) of the Act.

10. Section 2(h) of the Act defines the "sale" means any transfer of property in goods for cash or deferred payment or other valuable consideration. Admittedly it is not a case of transfer of goods for cash or deferred payment. The question is whether the transfer was for other valuable consideration. The "other valuable consideration" came up for consideration before the Apex Court and this Court.

11. In the case of Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others, , Apex Court held as follows:

The expression "valuable consideration'' has a wider connotation, but the said expression is also used in the same collocation in the definition of "sale" in Section 2 (h) of the Act The said expression must bear the same meaning in Clause (ff) and Clause (h) of Section 2 of the Act. It may also be noticed that in most of the Sales Tax Acts the same three expressions are used. It has never been argued or decided that the said expression means other than monetary consideration. This consistent legislative practice cannot be ignored. The expression "valuable consideration" takes colour from the preceding expression "cash or deferred payment". If so, it can only mean some other monetary payment in the nature of cash or deferred payment.

12. In the case of Sales Tax Commissioner Vs. Ram Kumar Agarwal, , Division Bench of this Court while interpreting Section 2 (h) of the Act held as follows:

In this view of the matter, the words "other valuable consideration which occur in Section 2(h), and which do not find a place in the definition of "sale" in the Sale of Goods Act, must be held to be ultra virus the scope of the Provincial or State Legislatures. Those words at best, can be interpreted, on the basis of the rule of ejusdem generis to mean payment, i.e., by cheque, bills of exchange or any such other negotiable instruments. But they cannot possible cover a case where no price is paid and the transaction is merely one of exchange or barter.

13. In the case of Dhampur Sugar Mills Ltd. v. CTT reported in STI 2006 SC 129. In terms of deed of licence and execution of performance guarantee, M/s Dhamur Sugar Mills had supplied sugar to M/s Swaroop Vegetables Products Industries Ltd. in lieu of rent. Apex Court held that it is not a case of barter or exchange but adjustment of price of molasses from the amount of licence fee, would amount to sale within the meaning of Section 2 (h) of the Act. This case is distinguishable on the fact. Present is the case of supply of iron free of cost and value of iron was not subject to deduction or adjustment.

14. The decisions of the Apex Court in the case of M/s. N.M. Goel and Co. Vs. Sales Tax Officer, Rajnandgaon and another, , Rashtriya Ispat Nigam Ltd. v. State of Andhra Pradesh reported in 1998 UPTC 727, Karya Palak Engineer, C.P.W.D., Bikaner v. Rajasthan Taxation Board, Ajmer and Ors. reported in 2004 UPTC 1178, Cooch Behar Contractors Association v. State of West Bengal reported in (1997) 26 STR 587 are also not applicable to the present case. In these cases, value of the material supplied were deducted while making the payment, while in the present case it is not so.

15. For the reasons stated above, orders of the Tribunal and the authorities below can not be sustained and are liable to be set aside and it is held that the iron supplied by the applicant to the contractors free of cost was not the "sale" within the definition of Section 2 (h) of the Act and, therefore, no tax is legally leviable.

16. In the result, all the revisions are allowed and the order of the Tribunal is set aside and it is held that the iron supplied by the applicant to the contractors free of cost was not the "sale" within the definition of Section 2 (h) of the Act and, therefore, no tax is leviable. Tribunal is created to poss appropriate order u/s 11(8) of the Act.

