(2014) 10 MP CK 0041

In the Madhya Pradesh High Court

Case No : Writ Petition No. 161of 2006

Narmada Transmission Pvt. Ltd. APPELLANT

Vs

State of Madhya Pradesh RESPONDENT

Date of Decision : 29-10-2014

Acts Referred:
Finance Act, 1964 — Section 2

Citation : (2014) 10 MP CK 0041

Hon'ble Judges : Rajendra Menon, J;C.V. Sirpurkar, J

Bench : Division Bench

Advocate : Shekhar Sharma, Learned Counsel, Advocate for the Appellant; Rahul Jain, Learned Dy. Advocate General, Advocate for the Respondent

Judgement

Rajendra Menon, J.—Challenging the orders dated 1.2.2005 & 22.6.2005 so also the order dated 8.8.2005 passed by the respondents in the Commercial Tax Department, Government of Madhya Pradesh rejecting a claim made by the petitioner, challenging imposition of surcharge under Section 10A of the Madhya Pradesh Commercial Tax Act, 1994 (hereinafter referred to as the ?Act, 1994?), this writ petition has been filed.

2. Facts in brief go to show that the petitioner M/s Narmada Transmission Private Limited is a company registered under the provisions of the Companies Act and carries out work of erection and manufacturing of conductors and various other electrical items through it''s manufacturing unit situated in Govindpura, Bhopal.

3. A contract was awarded to the petitioner by the Madhya Pradesh State Electricity Board for the purpose of Design, Manufacture, Pre dispatch instruction, Testing & supply of materials and Commissioning of APDRP works at Shivpuri. Petitioner''s work was subjected to payment of Commercial Tax under the Act, 1994.

4. Under the provisions of the Act, 1994, levy of Commercial Tax is contemplated under Section 9. That apart, Section 10A contemplates a provision for levy of

surcharge on tax payable under various provisions of the Act. Further Section 19 of the Act, 1994 contemplates a provision for composition of tax by certain registered dealers.

5. Section 19(1)(a) of the Act, 1994 reads as under :-

?(1)(a) The Commissioner may, subject to such restrictions and conditions as may be prescribed, permit any registered dealer, who carries on wholly or partly the business of supplying goods in the course of execution of works contract entered into by him, to pay in lieu of tax payable by him under this Act a lump sum at such rate, not exceeding 15 per cent, as may be prescribed, determined in the prescribed manner, by way composition.?

(Emphasis Supplied)

6. For the year in question, petitioner moved an application before the Commercial Tax Officer Circle No.1-Bhopal and indicated their intention for seeking advantage composition of tax as provided under Section 19, reproduced herein above.

7. The petitioner was permitted composition by the Commercial Tax Officer and the composite tax or fee to be payable was determined as 4%. Petitioner accepted the same, paid the tax as ordered by the Assessing Officer by virtue of the powers vested upon him under Section 19 of the Act. Petitioner, after having paid the composition tax as determined under Section 19, received a notice for payment of surcharge under Section 10A. Petitioners challenged the imposition of surcharge and when the same was rejected, this writ petition has been filed.

8. Shri Shekhar Sharma, learned counsel submitted that the surcharge contemplated under Section 10A is nothing but a tax within the meaning of the Madhya Pradesh Commercial Tax Act, 1994 and once the payment of tax as contemplated under the Act is paid by composition, and when this is in lieu of all taxes payable under the Commercial Tax Act, all the taxes payable is deemed to have been paid and no further tax, even surcharge under Section 10A can be levied. He argues that the surcharge under Section 10A is nothing but a tax and in support of his contention, he places reliance on a judgment rendered by the Supreme Court in the case of Sarojini Tea Co. (P.) Ltd. Vs. Collector of Dibrugarh, Assam and another, to say that the surcharge in a taxing provision is nothing but a tax itself and once the provisions of Section 9 permits composition of tax and it''s payment in lump sum in lieu of all taxes payable under the Act, the petitioner cannot be further made liable to pay any surcharge under Section 10A. Accordingly, Shri Sharma, argues that the action of the respondents in claiming surcharge is unsustainable.

9. Shri Sharma, learned counsel invites our attention to the impugned order passed by the Revisional Authority as contained in Annexure-P5 dated 8.8.2005 and submits that the Revisional Authority is demanding the surcharge by construing surcharge to be not a tax as defined under Section 2(b). It is the case

of the petitioner represented by Shri Shekhar Sharma that once the Supreme Court in the case of Sarojini Tea Co. (P.) Ltd. (supra) has held that the surcharge is nothing but a tax, the observations made by the learned Revisional Authority that surcharge is not a tax, is contrary to the law laid down by the Supreme Court in the case of Sarojini Tea Co. (P.) Ltd. (supra).

10. Shri Rahul Jain, learned Dy. Advocate General refutes the aforesaid and argues that the surcharge payable under Section 10A is an amount payable over and above the tax, which is to be paid not only under Section 9A but also under Section 19 and, therefore, in demanding the surcharge, the authorities have not committed any error. It is argued that the definition of tax as appearing in the Act, 1994 and the definition of tax as appearing in the Income Tax Act are different and, therefore, the judgment rendered in the case of Sarojini Tea Co. (P.) Ltd. (supra) will not apply in the present case.

11. It is stated by Shri Rahul Jain that Section 10A is an independent charging clause, which permits the State Government to levy surcharge on the tax payable under any other provisions of the Act. Once the Government is empowered to levy surcharge on the tax payable, no error is committed by the authorities, warranting reconsideration.

12. We have heard learned counsel for the parties and perused the record. Before adverting to consider the rival contentions, we may take note of the judgment rendered by the Supreme court in the case of Sarojini Tea Co. (P.) Ltd. (supra). In the said case, the question before the Supreme Court was as to what is the meaning and import of the word ''surcharge'' as it appears in various taxing statutes. The Supreme Court has referred to various judgments including judgments pertaining to payment of electricity duty, income tax etc and from Paragraph-10 onwards, discusses the meaning of the word ''surcharge'' as it appears in various taxing provisions after referring to the definition of the word ''surcharge'', as defined in the Shorter Oxford English Dictionary. It is held by the Supreme Court in the aforesaid case after referring to the dictionary meaning of the word ''surcharge'' that the word stands for an addition and extra charge or payment, thereafter, the Supreme Court refers to the judgment in the case of Bisra Stone Lime Co. Ltd. and Another Vs. Orissa State Electricity Board and Another, and holds that surcharge is a super added charge, a charge over and above the usual and current dues.

13. In Paragraph-11, the Supreme Court found that when the surcharge is imposed upon a electric tariff, it is nothing but a process for enhancement of the rate of tariff by way of surcharge. The Supreme Court in the case of Orissa State Electricity Board (supra) dealt with the matter in the following manner :

"Although, therefore, in the present case it is in the form of a surcharge, it is in substance an addition to the stipulated rates of tariff. The nomenclature, therefore, does not alter the position. Enhancement of the rates by way of surcharge is well within the power of the Board to fix or revise the rates of tariff under the provisions of the Act (p.311 (of SCR) : (at p.130, Para 11 of AIR)?

(Emphasis Supplied)

14. Again with regard to levy of surcharge on income tax, the matter was considered in the case of Commissioner of Income Tax, Kerala Vs. K. Srinivasan, . In the said case, the question was as to whether the term income tax as provided under Section 2 of Finance Act, 1964 would include surcharge or additional surcharge wherever provided. The Supreme Court went into the question and if the judgment rendered is read in it''s totality, it would be seem that the Supreme Court has laid down the principle that surcharge on income tax is nothing but an addition and extra charge on the tax and is, therefore, nothing but a tax itself. Various judgments on the question are referred to in the case of Sarojini Tea Co. (P.) Ltd. (supra) and finally, the principle laid down is that the expression ''surcharge'' in the context of taxation means an additional imposition which results in enhancement of the tax and, therefore, an addition or imposition by way of surcharge is same as tax on which, it is imposed.

15. If that be so, we have no hesitation in accepting the contention of Shri Shekhar Sharma to the effect that surcharge is nothing but an addition on the tax already levied and, therefore, it is in the nature of a tax and infact is a tax levied on the consumer. Accordingly, if the principle as laid down by the Supreme Court is applied in the facts and circumstances of the present case, we find that while permitting the composition of tax to be paid by certain registered dealers, Section 19 (1)(a) of the Act, 1994 contemplates that the Commissioner may subject to such restrictions and conditions as may be prescribed, permit any registered dealer to pay in lieu of tax payable by him under the Commercial Tax Act, a lump sum at such rate, not exceeding 15%.

16. That being so, the provision of Section 19 is a provision for composition of tax and it''s payment in a lump sum manner in lieu of all taxes payable under the Act, 1994. Once a composition of tax under Section 19(1)(a) is permitted by the competent authority, it amounts to payment of all the taxes payable under the Act, 1994. In fact, composition of tax under Section 19(1)(a) is tax determined and paid in lieu of all other taxes as is required to be paid under the Act, 1994.

17. Accordingly, once the composition under the aforesaid provision is permitted then all taxes, which include surcharge under Section 10A is deemed to have been paid and no further surcharge is liable to be paid. Accordingly, we have no doubt that once the petitioner is permitted composition of tax under Section 19(1)(a), then no liability to pay any surcharge under Section 10A would arise, as surcharge payable under Section 10A is nothing but a tax payable under the Act, it is only one way of enhancement of the tax. That apart, if the return filed by the respondents and the averments made in Paragraph-6 are taken note of, we find that the respondents are demanding surcharge under Section 10A on the assumption that the surcharge is not a tax but a payment over and above the tax. This contention of the respondents is contrary to the meaning of ''surcharge''

as laid down by the Supreme Court in the case of Sarojini Tea Co. (P.) Ltd. (supra).

18. Accordingly, we allow this writ petition. The orders impugned are quashed.

19. No order as to costs.