

(2011) 01 PAT CK 0049

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 544 of 2008

Pandit Electrical Private Ltd.

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-01-2011

Acts Referred:

Bihar Value Added Tax Act, 2005 — Section 41, 6, 8
Constitution of India, 1950 — Article 226

Citation : (2011) 59 BLJR 205 : (2011) 184 ECR 169 : (2011) 2 PLJR 444 :
(2011) 46 VST 341

Hon'ble Judges : R.M. Doshit, C.J.; Jyoti Saran, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Jyoti Saran, J.—The Petitioner M/s Pandit Electrical Private Limited (hereinafter referred to as `the Company") is a supplier of goods to the Respondent East Central Railway (hereinafter referred to as `the Railway").

2. According to the Petitioner it is a Company incorporated under the provisions of the Companies Act, 1956 and has its Registered Office at Mugalsarai in the State of Uttar Pradesh. The Company supplies goods to the East Central Railway in the State of Bihar, for which it is liable to pay central sales tax at the rate of 4% per annum. It is the grievance of the Company that though it has paid central sales tax as required and is evidenced by the invoice produced on the record of the petition the Railway continued to deduct 4% of the contract amount as envisaged by Section 41 of the Bihar Value Added Tax Act, 2005 (hereinafter referred to as `the Act of 2005"). The Petitioner has, therefore, demanded refund of the sum of Rs. 4,62,528/- already deducted by the Railway and for a relief restraining the Railway from deducting any amount from the amounts payable for the goods supplied by the Company.

3. Learned Advocate Mr Nand Kishore Singh has appeared for the Petitioner. He has drawn our attention to the documents at Annexure `B" Series to buttress his

argument that the Company did pay central sales tax at the rate of 4%, as such no tax was payable to the State of Bihar under the Act of 2005. Nevertheless, the Railway has deducted 4% of the contract money as envisaged by Section 41 of the Act of 2005. He has further submitted that inspite of the interim protection granted to the Company the Railway continued to deduct such amount from the contract amount pending the writ petition.

4. Learned Advocate Mr Anil Kumar Sinha has appeared for the Railway. He has submitted that the documents produced with the writ petition were not produced before the Railway. The Railway had no reason not to deduct the amount of 4% of the contract amount as tax payable under the Act of 2005. He has submitted that at the time the petition was admitted for final hearing, the Railway had already deducted the sum of Rs. 4,62,528/- and had transferred it to the Government Treasury. The Railway should, therefore, not be directed to refund the said amount of tax. In support of his argument he has relied upon the judgment of the Division Bench of this Court in the matter of Abdul Majeed Khan v. The State of Bihar and Ors. 2010(3) PLJR 782, particularly paragraphs 37 & 38 of the judgment. He has also relied upon Section 8 of the Act of 2005 to emphasise that the burden of proof lies on the Assessee. The Railway was, therefore, justified in deducting the amount of tax under the Act of 2005 in consonance with the provisions contained in Section 41 of the Act of 2005. He has further submitted that in absence of the State Government before the Court, no order for refund of the amount should be made against the Railway.

5. Section 41 of the Act of 2005 provides for advance recovery of tax from works contractors. Clause (c) of Sub-section (2) thereof provides for production of a certificate issued by the Deputy Commissioner of Commercial Taxes, etc. to the effect that the demand or any part thereof relates to such transfer of property in goods on which the Assessee has no liability to pay tax in terms of the provisions of Section 6 of the Act of 2005. Section 6 of the Act of 2005 provides inter alia that no tax shall be payable under the Act on sales or purchases of goods which have taken place outside the State of Bihar.

6. In the matter of Abdul Majeed Khan (supra), this Court has considered the above referred provisions and has held that in the matter of inter-State sale no tax is payable under the Act of 2005.

7. As far as the legal position is concerned, there is no dispute. The only dispute raised before us is procedural. According to the Railway, the Company failed to inform the Railway in respect of the payment of central sales tax on the materials in question and that the Railway having deposited the amount deducted with the treasury of the State, it is the State Government which shall be directed to refund the amount.

8. Whether the Company produced the relevant materials before the Railway at the relevant time is a disputed question of fact which cannot be resolved in this petition under Article 226 of the Constitution. However, before us it is not

disputed that the Company did pay central sales tax and that it was not liable to pay the valued added tax to the State of Bihar.

9. In view of the above facts, we allow this petition. We direct the Respondent East Central Railway to refund the amount of tax recovered by it from the Company for the supply of goods on which the Company had paid central sales tax. Within two weeks from today, the Company will file a detailed statement before the Railway in respect of the goods supplied by it on which it has paid central sales tax and in respect of which the Railway has deducted 4% of the amount u/s 41 of the Act of 2005 with necessary documentary evidence. The Railway will consider the claim and will make the order of refund within eight weeks from the date of the receipt of the statement. The amount will be refunded within one week therefrom. In the event the Railway fails to refund the amount as specified, the Railway will, commencing from 1st April 2011, pay interest over such amount at the rate of 10% per annum till the date of payment.

10. The Respondent East Central Railway will be at liberty to approach the State authorities for refund of such amount deposited by it and refunded to the Company under this order or to adjust such amount against its existing or future liability for deposit or payment of tax under the Act of 2005. If the Railway makes such claim before the State authorities, the State authorities will consider and decide the same and refund the amount in question preferably within six weeks from the date of the claim.

11. The writ petition stands allowed in the above terms. The parties will bear their own cost.