(2006) 08 AHC CK 0008

In the Allahabad High Court

Pentex Engineering Pvt. Ltd. APPELLANT

Vs

Commissioner, Trade Tax RESPONDENT

Date of Decision : 07-08-2006

Acts Referred:
Central Sales Tax Act, 1956 — Section 3, 4, 5
Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2009) 20 VST 873

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—The present revision u/s 11 of the U.P. Trade Tax Act, 1948 (hereinafter referred to as "the Act") is directed against the order of the Tribunal dated January 20, 2006 relating to assessment year 1999-2000.

2. The brief facts of the case are that the applicant is a private limited company incorporated under the Indian Companies Act, 1956 having its head office at Bharat Velvet Compound, Safed Pool, Vasanji Road, Mumbai. It is claimed that the applicant entered into a contract for design supply, installation, testing, commissioning and maintenance of L.P.G. monitoring system with the Bharat Petroleum Corporation Limited and Indian Oil Corporation Limited in U.P. for execution of works contract. The applicant has established an office at 113/20, Navyug Market, Ghaziabad. The applicant is a registered dealer under the U.P. Trade Tax Act, 1948 as well as under the Central Sales Tax Act, 1956. During the course of assessment proceedings u/s 7 of the Act, the applicant disclosed total payment at Rs. 53,82,309.25. Admittedly, the applicant has made purchases from outside the State of U.P. for Rs. 43,19,560. The assessing authority vide order dated February 28, 2002 passed the assessment order and levied tax on the amount of Rs. 48,44,078.35 which has been arrived after giving deduction of 10 per cent towards labour charges from gross receipt and tax was levied at 2.5 per cent for the period April 1, 1999 to January 16, 2000 and at the rate of four

per cent for the period January 17, 2000 to March 31, 2000. Subsequently, the assessing authority issued a notice u/s 22 of the Act and vide order dated February 28, 2004 passed an order u/s 22 of the Act. In the order u/s 22 of the Act on the total amount of Rs. 48,44,078.35 tax at the rate of 10 per cent was levied treating the goods imported and used in the execution of works contract as cable battery, electrical goods, etc. Being aggrieved by the order passed u/s 22 of the Act, the applicant filed appeal before the appellate authority. Before the appellate authority, the applicant contended that the ex parte order passed u/s 22 of the Act was not justified, inasmuch as, the applicant could not appear on the date fixed on account of his illness. It was further argued that the goods imported were the electrical goods and the transactions were covered by Sections 3, 4 and 5 of the Central Sales Tax Act, hence should be deducted. The Joint Commissioner (Appeals), Trade Tax, Ghaziabad vide order dated July 3, 2004 allowed the appeal and remanded the matter back to the assessing officer. Before the assessing officer, apart from raising dispute about the rate of tax, it was also contended that the goods which have been used in the execution of works contract, were the imported goods, therefore, the transactions being in the course of inter-State, covered under Sections 3, 4 and 5 of the Central Sales Tax Act, were liable to be excluded u/s 3F(2) of the Act. It was claimed that the goods imported were the electrical goods. The assessing authority held that the goods imported were the cables, terminal unit, explosion proof, heater, panels, transmitter, etc., and not the electrical goods and liable to tax at 10 per cent. In respect of the claim of deduction relating to the imported goods being covered under Sections 3, 4 and 5 of the Central Sales Tax Act, the assessing authority held that such issue has not been raised in the original assessment proceedings and in the order passed u/s 22 of the Act, only rate of tax was rectified and u/s 22 of the Act, mistake apparent on the face of record, can be rectified. Against the said order, the applicant filed appeal before the Joint Commissioner (Appeals), Trade Tax, Ghaziabad. The Joint Commissioner (Appeals), Trade Tax, Ghaziabad rejected the appeal. Being aggrieved by the said order, the applicant filed second appeal before the Tribunal. The Tribunal by the impugned order, rejected the appeal.

3. Heard learned Counsel for the parties.

4. The learned Counsel for the applicant submitted that the goods, which were used in the execution of works contract, were the electrical goods purchased from outside the State of U.P. in the course of inter-State sales and therefore, the transactions being covered under Sections 3, 4 and 5 of the Central Sales Tax Act, were not liable to tax u/s 3F(2)(b)(i) of the Act. He submitted that the Joint Commissioner (Appeals) in its order dated July 3, 2004 while allowing the appeal and remanding back the case to the assessing officer has also directed the assessing officer to consider the claim of deduction of transactions covered under Sections 3, 4 and 5 of the Central Sales Tax Act. No appeal against the said order was filed by the Commissioner of Trade Tax, therefore, the said order has become final and is binding upon the Revenue authority. In the circumstances, it

was not open to the assessing officer to refuse the adjudication of the claim of the applicant in this respect on the ground that such issue has not been raised earlier and u/s 22 of the Act, the said claim cannot be examined. He submitted that the order of the Tribunal confirming the view of the assessing officer, is wholly unjustified. The learned Standing Counsel submitted that in the appellate order dated July 3, 2004 only argument of the applicant has been referred and there was no specific direction to the assessing officer to examine the claim of deduction of transaction covered under Sections 3, 4 and 5 of the Central Sales Tax Act. He submitted that for the claim of deduction u/s 3F(2) of the Act, the nature of transactions are to be examined afresh as to whether they are covered under Sections 3, 4 and 5 of the Central Sales Tax Act and such fresh examination is outside the purview of Section 22 of the Act. He submitted that no claim has been made by the applicant in the original assessment proceedings and the claim was not adjudicated and in the order passed u/s 22 of the Act, only rate of tax was enhanced. Thus, it was not open to the applicant to raise issue relating to the claim of deduction of the turnover on the ground that it was covered under Sections 3, 4 and 5 of the Central Sales Tax Act.

5. Having heard learned Counsel for the parties and have perused the order of the Tribunal and the authorities below.

6. I do not find any merit in the submissions of learned Counsel for the applicant. In the original assessment proceedings, applicant had not raised any claim of deduction u/s 3F(2) on the ground that the transactions were covered under Sections 3, 4 and 5 of the Central Sales Tax Act. Vide ex parte order dated February 28, 2004 passed u/s 22 of the Act, only rate of tax was enhanced. Though, in appeal filed against the order u/s 22 of the Act, applicant had raised the claim of deduction u/s 3F(2) of the Act covered under Sections 3, 4 and 5 of the Central Sales Tax Act, but perusal of order dated July 3, 2004 shows that no specific direction was given by the Joint Commissioner (Appeals), Trade Tax, Ghaziabad to the assessing officer to adjudicate such claim. The matter appears to have been remanded back to the assessing officer on the ground that the order passed u/s 22 of the Act was ex parte and the claim of the applicant was that the goods imported, were the electrical goods and not the cables, etc. In any view of the matter, for adjudication of the claim of deduction u/s 3F(2), nature of transaction required examination which was not possible in the proceedings u/s 22 of the Act. In the proceedings u/s 22 of the Act, only mistake apparent on the face of record, can be rectified. The issue, which requires investigation and examination of the facts, argument and where two opinions are possible is outside the purview of Section 22 of the Act. Reliance is placed on the Division Bench decision of this Court in the case of Concrete Spun Pipe Works v. The Sales Tax Officer, Sector-V, Kanpur reported in [1969] 24 STC 48. In the circumstances, I do not find any error in the order of the Tribunal.

7. In the result, revision fails, and is, accordingly, dismissed.

