(1993) 10 P&H CK 0131

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 10932 of 1992

Rama Construction Co. etc. APPELLANT

Vs

State of Haryana and Others RESPONDENT

Date of Decision : 11-10-1993

Acts Referred:
Haryana General Sales Tax Act, 1973 — Section 25B, 26(2)

Citation : (1993) 104 PLR 782

Hon'ble Judges : N.K. Kapoor, J;Amrit Lal Bahri, J

Bench : Division Bench

Advocate : Vanita Sapra, for the Appellant; Arun Mehra, Addl. A.G., for the Respondent

Final Decision : Dismissed

Judgement

N.K. Kapoor, J.—The petitioners? have filed this writ petition for issuance of a writ of probation restraining the respondents from acting on the provisions of Section 25B of the Haryana General Sales Tax Act, 1973, and further sought direction thereby restricting the respondents from deducting the amount payable to them and have further made prayer that Section 25-B of the Haryana General Sales Tax Act, 1973 (for short ''the Act'') be declared ultra vires, without jurisdiction and beyond competence of the State legislature under Entry No. 54, List it, Schedule VII of the Constitution.

2. The petitioners are engaged in the business of works contract and carry out the work contract entered into between them and the respondents from time to time. As per work contract, respondents supplied them different items required to execute the contract and the petitioners by their expertise, labour and supervision execute such a contract. It is sometimes in middle of 1991 that respondent Nos. 2 and 3 made payments to the petitioners after deducting 2% of the amount payable in terms of Section 25-B of the Act which is being assailed now. According to the petitioners, the respondents have no right to deduct 2% from the running payment due to them. In fact, no such tax is leviable as goods

are neither sold nor purchased. In any case, even the Haryana General Sales Tax Act gives two options to the petitioners i.e. one to pay sales tax on turn over and the other to pay lump sum in view of the sales tax payable by him u/s 25 of the Act.

3. Section 25-B of the Act provides for deduction of tax ait source by the contractee Notification u/s 26(2) of the Act provides that if a Building contractor, opts to pay lump sum tax, he is liable to pay tax at the rate of 2% on the value of the work contract. In case the persons do not opt to be governed by the provisions of Seetion 26(2) of the Act and the notification issued thereunder, it is the responsibility of the contractee of such building contract to deduct 2% 6f the amount out of the account of the contractor which is adjustable in the manner provided i. e. whatever is found due on the basis of assessment and if found in excess to be refunded to the person. identical pleas challenging the constitutional validity of Sections 25-B and 26(2) of the Act and the notification issued thereunder were raised in Tirath Ram Ahuja Ltd. v. State of Haryana 83 S. T. C. 523 the Court found no merit in any Of the contentions raised therein and consequently dismissed the writ petition. We also find no merit in any of the submissions made by the learned counsel for the petitioners and consequently dismiss the same. No order as td costs;

