(2000) 03 GAU CK 0024

In the Gauhati High Court

Case No : Civil Rule No''s. 49, 50 and 51 of 1991

R.L. Roy and Others APPELLANT

Vs

State of Tripura and Others RESPONDENT

Date of Decision : 16-03-2000

Acts Referred:

Tripura Sales Tax (Amendment) Act, 1984 — Section 4
Tripura Sales Tax Act, 1976 — Section 3A(3)

Citation : (2000) 2 GLT 203 : (2000) 119 STC 457

Hon'ble Judges : D. Biswas, J

Bench : Single Bench

Advocate : B. Das and S. Saha, for the Appellant; P. Deb Roy, for the Respondent

Final Decision : Allowed

Judgement

D. BISWAS, J.—By this common judgment, Civil Rule Nos. 49 of 1991, 50 of 1991 and 51 of 1991 are proposed to be disposed of.

2. The common question involved in these writ petitions is whether levy of sales tax on the value of the bricks manufactured and utilized in execution of works contract would be permissible for the assessment years prior to the amendment of the Tripura Sales Tax Act, 1976 in the year 1984.

3. The petitioner-firm executed a number of consolidated contract works for improvement of roads by utilizing bricks manufactured by it. There was no agreement to supply materials necessary for the improvement of roads independent of the contract works. Although not liable to pay sales tax under the provisions of the Act, the petitioner-firm by mistake in some cases deposited taxes on the turnover involved in the consolidated contract works. But the assessing authority by the impugned assessment orders dated March 26, 1984 and April 24, 1987 on misinterpretation of law enhanced the turnover and raised demand accordingly. Being aggrieved thereby, the petitioner-firm approached the Assistant Commissioner of Taxes, Tripura, as well as the Tripura Sales Tax

Tribunal. Both the authorities confirmed the assessment made by the Superintendent of Taxes, Government of Tripura, Agartala. Hence, these writ petitions.

4. Before the question relating to interpretation of the provisions of the Tripura Sales Tax Act, 1976 is taken up for consideration, it would be of great convenience to have a look at some of the decisions of the Supreme Court as well as of this High Court.

5. In Hindustan Aeronautics Ltd. Vs. State of Karnataka, the Supreme Court held that where passing of property was merely ancillary to the contract for the purposes of the works such a contract does not thereby become a contract of sale. In Builders Association of India and Others Vs. Union of India (UOI) and Others, the Supreme Court dealt in details the exigibility of the materials used in works contract for taxation under the sales tax laws and upheld the validity of levy of sales tax on transfer of property in goods involved in the execution of works contract. The Gauhati High Court in Sailesh Chandra Nandi v. Superintendent of Taxes, Government of Tripura [1991] 82 STC 209(SC) dealing with a case of similar nature set aside the orders of assessment for the years ending March 31, 1978 and March 31, 1979 holding that no tax could be levied under the Tripura Sales Tax Act, 1976 in respect of the materials used by the petitioner of that case in the works contract undertaken by him as there was no sale of such materials in the State of Tripura within the meaning of Clause (g) of Section 2 of the Act. Of course, this decision was rendered after recording a finding to the effect that the contract in question was a contract for work and labour and not a contract for sale.

6. In the instant case, we are concerned with the question whether bricks supplied and utilized in the improvement of roads in execution of a works contract could be treated as sale for the purpose of levy of sales tax prior to the amendment of the Tripura Sales Tax Act, 1976. Applying the ratio available in Sailesh Chandra Nandi [1991] 82 STC 209 (Gau) and taking into consideration the nature of the contract, this Court is of the opinion that it was not a sale within the meaning of Section 2(g) of the Tripura Sales Tax Act, 1976 and that no tax could be levied on the value of bricks used in the improvement of roads prior to the amendment of the Tripura Sales Tax Act, 1976, w.e.f., July 12, 1984. Transfer of title of ancillary materials used in execution of a contract work became taxable w.e.f. July 12, 1984 as per the provisions of Sub-section (3) of Section 3A of the Act. Section 3A is a new section introduced by the Third Amendment Act of 1984 for levy of such tax at such rate as may be prescribed. Sub-section (3) reads as follows :

"3A(3) The tax under this section shall be levied at the rate of four per centum of such part of the contractual transfer price as specified in Sub-section (2).

Explanation.--In this section, the expression ''contractual transfer price'', used in relation to any period, shall mean the aggregate of the amounts received or receivable by a dealer during such period as valuable consideration for the transfer of property in goods used in execution of a works contract, whether or not the amount receivable as valuable consideration for such transfer is separately shown in the works contract and shall include the value of such goods purchased, manufactured, processed or procured otherwise by the dealer and the cost of freight or delivery as may be incurred by such dealer for carrying such goods to the place where these are used in execution of such works contract, but shall not include such portion of the aforesaid amounts as may be prescribed."

7. It would, therefore, appear from above that the materials used in the improvement of roads being indivisible part of a works contract for any assessment year prior to July 12, 1984, could not be taxed under the law as was then in force. In my opinion, the impugned assessment has been wrong and cannot be sustained. Consequently, the decision of the Assistant Commissioner of Taxes, Government of Tripura, Agartala, as first appellate authority and of the Tripura Sales Tax Tribunal impugned in these writ petitions cannot be sustained.

8. In the result, I allow the writ petitions and set aside the impugned assessment and orders passed by the above two authorities and remit the matter back to the Superintendent of Taxes (respondent No. 4) to reassess the turnover in the light of the decision as above.

9. No order as to costs.