(1990) 08 GAU CK 0021

In the Gauhati High Court

Case No : Civil Rule No. 119 of 1985

Sen Bricks APPELLANT

Vs

State of Tripura and Others RESPONDENT

Date of Decision : 29-08-1990

Acts Referred:

Constitution of India, 1950 — Article 226
Tripura Sales Tax Act, 1976 — Section 2

Citation : (1991) 81 STC 438

Hon'ble Judges : H.K. Sema, J;B.P. Saraf, J

Bench : Division Bench

Advocate : A.M. Lodh and A.K. Debnath, for the Appellant; K.N. Bhattacharjee, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Saraf, J.—The petitioner is a partnership firm carrying on the business of manufacture and supply of bricks under the name and style of "Sen Bricks" subsequently renamed as "Sen Brothers". It is a dealer under the Tripura Sales Tax Act, 1976 (hereinafter "the Act"). During the period April 1, 1980 to March 31, 1981, the petitioner supplied bricks to the Public Works Department in pursuance of contract agreement entered into between them. On consideration of the terms of the contract these supplies were held by the sales tax authorities to be sales exigible to tax under the Act on the ground that supply of bricks was a distinct item in the contract. The petitioner has challenged this finding in this writ petition.

2. Mr. A.M. Lodh, the learned counsel for the petitioner, submits that the following two common questions arise for consideration in this writ petition. First, that the supply of bricks did not amount to sale--it was works contract. Secondly, if it is held to be sale, the petitioner is entitled to get deduction on account of charges incurred by him for carriage to the place of delivery, handling, etc. It is submitted by the learned counsel that the facts of this case, including the

contracts with the Public Works Department--terms and conditions thereof and the questions of law referred to above are exactly similar to those in Civil Rule Nos. 104 to 107 of 1983 [Pioneer Enterprise v. State of Tripura [1991] 80 STC 125 [Gau] which have already been heard. The decision in those cases will govern the present case also.

3. In addition to the aforesaid two questions Mr. Lodh also argued that the estimation of turnover was arbitrary and excessive and the same should be set aside.

4. Mr. K.N. Bhattacharjee, the learned counsel agreed that the above two questions will be governed by the decision in Pioneer Enterprise [1991] 80 STC 125 (Gau). He, however, submitted that so far as determination of turnover is concerned, the petitioner cannot be allowed to challenge the same in the present writ petition. It was pointed out that against the estimation of turnover made by the Superintendent of Taxes, the petitioner went in revision before the Commissioner. The Commissioner set aside the assessment with a direction to the Superintendent of Taxes to consider the facts placed by the petitioner and to decide the turnover afresh. The Superintendent of Taxes thereafter on fresh consideration of the facts and circumstances of the case again finalised the assessment and determined the turnover. It was submitted that such a determination being a pure finding of fact, cannot be challenged in the present writ petition.

5. We have considered the rival submissions. So far as the objection to the estimation of turnover is concerned, we find that the same has been arrived at on proper consideration of all the facts and circumstances of the case. Therefore, we are not inclined to interfere with the same in exercise of our writ jurisdiction.

6. So far as the other two questions are concerned, we have perused the decision of this Court in Pioneer Enterprise [1991] 80 STC 125, which has since been delivered. It has been held in that decision that supplies of bricks made in pursuance of the contracts in question amounted to sale exigible to sales tax under the Act. It has also been held that the supplier was not entitled to claim any deduction on account of any expenditure incurred in carrying the goods to the place of delivery, loading, unloading, etc., and the total amount received on account of supply of bricks was the sale price for the purpose of taxation.

7. Following the aforesaid decision we decide both the points involved in this case also against the petitioner. The writ petition is accordingly dismissed. No order as to costs.