(2010) 02 DEL CK 0104

In the Delhi High Court

Case No : Cont. Cas. (C) No. 70 of 2000 and C.M. Application No''s. 11259 of 2004 and 16398 of 2005

S.N. Enterprise APPELLANT

Vs

P.K. Tripathi and Another RESPONDENT

Date of Decision : 22-02-2010

Acts Referred:

Citation : (2010) 02 DEL CK 0104

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Rajesh Mahna Ramanand Roy Navneet Dhillon and Nasir Aziz, for the Appellant; Parag P. Tripathi, ASG, Arti Gupta, H.C. Bhatia and H.R. Taneja, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—The petitioner has filed this contempt petition alleging non compliance of an order of this Court passed on 19th January, 2000 in CW No. 3918/98. The order reads as under:

Counsel for respondents No. 1 to 3 submits that in view of the decision of this Court dated 30th November, 2008 in Civil Writ Petition No. 3304/97 Shri Krishna Engineering Co. v. CST Delhi, the said respondents will not withhold any forms on the basis of Rule 8(4)(c)(ii) of the Delhi Sales Tax Rules. The challenge in the present writ petition is mainly to the said Rule. Therefore, in view of the statement made by the learned Counsel for respondents No. 1 to 3, nothing survives in this petition. The petition stands disposed of.

2. The facts relevant for the purpose of deciding this petition are that the petitioner had filed aforesaid Writ Petition challenging the Rule 8(4)(c)(ii) of Delhi Sales Tax Rules which provided that ST-1 forms shall not be issued to a party who had defaulted in making the payment of amount of tax assessed or penalty imposed by an appropriate Assessing authority which the applicant admits due

from him and which is not in dispute. While the petition was pending, this High Court had delivered a judgment in case of Shri Krishna Engineering Co. v. Commissioner of Sales Tax and declared the aforesaid rule as ultra vires. After the judgment of Shri Krishna Engineering Company an amendment was made to proviso of Section 4(2)(a)(v) of Sales Tax Act and Sub-clause (ii) in Rule 8(4)(c) was re-inserted. This re-inserted rule was again challenged by a batch of petitions in the High Court and Delhi High Court in case of Prince Plastics and Chemical Industries and Others Vs. Commissioner of Sales Tax and Others, and in S.N.E (India) Private Limited v. Commissioner of Sales Tax (2003) 13 STC 417 (Delhi) upheld the validity of the Rule. The matter was carried up to Supreme Court and judgment of Delhi High Court in Prince Plastic was upheld and the judgment in Shri Krishna Engineering Company was overruled by Supreme Court vide its judgment in Commissioner of Sales Tax, Delhi and Others Vs. Shri Krishna Engg. Co. and Others,

3. In view of the fact that the petitioner herein had not cleared the huge sales tax demand and there were outstanding tax payments, ST-1 Forms were not issued to the petitioner. The petitioner has come up with the present contempt petition on the ground of statement made by the Counsel for Commissioner of Sales Tax in CW No. 3895/1998.

4. It is not disputed that the statement was made by Counsel for the Commissioner of Sales Tax because of the judgment of this Court in Krishna Engineering Co. v. C.S.T. Delhi. Thus, the statement was an effect of the relevant provision having been held ultra vires by this Court. This judgment of the High Court was set aside and the Rule was held not to be ultra vires by the Supreme Court. The effect would be that this Rule was in existence from the very beginning and the operation of the Rule did not come to an end even during the period when the judgment of High Court had not been set aside.

5. I consider that the denial of the form to the petitioner was in accordance with the law laid down by Supreme Court. Merely because a statement was made by the Counsel in view of decision of Shri Krishna Engineering Company?s case of this Court, which was later found to be a bad law, Contempt would not lie against the respondents. This petition has no force and is hereby dismissed.