(1994) 02 P&H CK 0100

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 3541 of 1990

S.P. Narang APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 14-02-1994

Acts Referred:
Central Sales Tax Act, 1956 — Section 3, 4, 5
Haryana General Sales Tax Act, 1973 — Section 25B, 26

Citation : (1994) 95 STC 120

Hon'ble Judges : Ashok Bhan, J;Amarjeet Chaudhary, J

Bench : Division Bench

Advocate : M.L. Sarin, Alka Sarin and Vikas Puri, for the Appellant; H.N. Mehtani and S.S. Kheterpal, Distt. Attorney, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhan, J.—Petitioner in this writ petition has challenged the vires of Sections 25B and 26 of the Haryana General Sales Tax Act, 1973 (hereinafter referred to as "the Act") and two subsequent notifications dated March 24, 1989, annexures P-7 and P-8 issued by the State of Haryana, making it obligatory on the contractee responsible for making any payment or discharging any liability on account of valuable consideration payable for execution of a works contract involving transfer of property in goods at the rate of 2 per cent of the amount paid. The vires of Sections 25B and 26 of the Act and the notifications, annexures P-7 and P-8, have already been upheld by the Division Bench of this Court in Tirath Ram Ahuja Limited v. State of Haryana [1991] 83 STC 523. For the reasons recorded in that judgment, this writ petition has to be dismissed.

2. Counsel appearing for the petitioner raised another argument that Sections 25B and 26 of the Act are ultra vires the Constitution because a contractor is made liable to pay tax under this provision on the total turnover of the works contract and in the works contract certain goods on which the tax could not be imposed as this was deemed sale which constitutes a sale in the course of inter-

State trade or commerce u/s 3 of the Central Sales Tax Act or an outside sale u/s 4 of the Central Sales Tax Act or sale in the course of import or export u/s 5 of the Central Sales Tax Act and it was not permissible for the State Legislature to make law imposing tax on such deemed sales and, therefore, notifications issued by the State of Haryana, annexures P-7 and P-8, were beyond the legislative competence of the State. Strong reliance was placed upon a judgment of their Lordships of the Supreme Court in Gannon Dunkerley & Co. v. State of Rajasthan [1993] 88 STC 204. We do not find any merit in this submission of the counsel for the petitioner, This point was examined by this Court and repelled in National Heavy Engineering Co-operative Limited v. State of Haryana C.W.P. No. 9291 of 1992 decided on December 15, 1992 Reported in [1994] 93 STC 265 (P&H). In Gannon Dunkerley''s case [1993] 88 STC 204 the Supreme Court was considering certain provisions of the Rajasthan Sales Tax Act. It was held in National Heavy Engineering''s case [1994] 93 STC 265 (P&H) that provisions of Section 5(3) of the Rajasthan Sales Tax Act were totally different from the provisions of Section 26(2) of the Haryana Act.

3. Counsel for the petitioner contended that in the present case assessments have not been finalised by the Assessing Authority. Petitioner, if he has not already filed the returns for the relevant assessment years may do so within two months from today. If the returns have already been filed or the returns which might be filed within two months from this date should be finalised by the Assessing Authority within six months from today, if not already finalised. In case it is found that the assessee is entitled to any refund then the same be made to him without delay in accordance with law.

4. Subject to the observations made above, this writ petition is dismissed leaving the parties to bear their own costs.

