
(2011) 03 GAU CK 0038
In the Gauhati High Court
Case No : Writ Petition (C) No. 75 of 2008

Sri Samir Ghosh	Vs	APPELLANT
The State of Tripura		RESPONDENT

Date of Decision : 30-03-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 03 GAU CK 0038

Hon'ble Judges : Iqbal Ahmed Ansari, J;C.R. Sharma, J

Bench : Division Bench

Advocate : A.K. Bhowmik, S. Dey and S. Ghosh, for the Appellant; N. Adhikari, General, NC. Pal, Sr. Govt. Advocate and S. Chakraborty, Addl. Sr. G.A., for the Respondent

Final Decision : Disposed Off

Judgement

I.A. Ansari, J.—The Petitioner has been awarded a contract by the Respondent No. 3, namely, Executive Engineer, PWD Stores Division, AD Nagar, Agartala, for clearing and unloading of Railway Wagons at Guwahati Railway Station and carriage of bitumen/tar by road from Guwahati Railway Station to PWD Store yard in and around Capital Complex area, Agartala, and Dharmanagar Store yard during the year 2007-2008. Pursuant to the contract work, so awarded, the Petitioner has executed a part of the contract and raised running bill for payment of his dues. Respondent No. 3 has, however, by letter, dated 01.02.2008, made a deduction, at source, of Rs. 87,527/- from the running bill of the Petitioner as Value Added Tax (in short, "the VAT") under the Tripura Value Added Tax Act, 2004, treating the said transaction as transfer of the right to use property. By the letter, dated 01.02.2008, aforementioned, the Petitioner has also been informed that further deduction of Rs. 21,882/- has been made as 1% cess under the Building and Construction Workers' Welfare Cess Act, 1996, (in short, "the Cess Act"). Aggrieved by the deductions so made, the Petitioner has impugned the same by filing this writ petition under Article 226 of the Constitution of India.

2. The Respondents have resisted the writ petition by contending to the effect, inter alia, that imposition of VAT is legal inasmuch as the contract, in question, amounts to transfer of the right to use property and that the Petitioner is also liable to pay cess under the Cess Act.

3. We have heard Mr. AK Bhowmik, learned Senior counsel, for the Petitioner, and Mr. N. Adhikari, learned Advocate General, Tripura.

4. As far as imposition of cess by taking recourse to the provisions of the VAT Act is concerned, suffice it to point out that the terms and conditions of the contract agreement show that the terms and conditions of the agreements, in question, which have formed the basis for raising the demands for payment of Value Added Tax are same as in Writ Appeal No. 67/2002 (Asit Barman Roy v. State of Tripura), which was decided by a Division Bench of this Court, on 25.07.2005, wherein the Division Bench held that the transactions were not eligible to tax on the ground that the contract was a pure and simple carriage contract involving carriage of goods from one place to another and that there was no transfer of the right to use the property in any goods, which was affected by the agreement, so as to attract imposition of tax. Based on the decision, in Asit Barman Roy (supra), Writ Appeal No. 120/2001 (Shri Sunil Chandra Dev v. Food Corporation of India and Ors.), and a large number of appeals were also decided by another Division Bench of this Court on 28.08.2007, wherein, having taken note of the decision, in Asit Barman Roy (supra), the Court held that the terms of the agreements, in question, did not amount to transfer of the right to use the property in any goods, the contract being a pure and simple carriage contract. It is not in dispute before us that the terms of the present agreement are substantially same as the case of Asit Barman Roy (supra).

5. Situated thus, it becomes abundantly clear that the contract, in the present case, is contract of carriage of bitumen/tar and such being the case, the contract does not amount to transfer of the right to use the property in any goods and the present contracts do not, therefore, become eligible to Value Added Tax under the Tripura Value Added Tax Act, 2004.

6. Coupled with the above, it may also be pointed out that in Samir Ghosh v. State of Tripura (WP(C) 235/2008), it has already been held that no cess can be levied and collected under the Cess Act from a contractor, who is merely carrying construction materials, as a carriage contractor, for the purpose of any construction work inasmuch as he is merely a carrier of such a construction materials and not an employer within the meaning of the Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, read with the Cess Act. It, therefore, logically follows that in the present case, the Petitioner is not liable to pay VAT as well as cess.

7. What crystallizes from the above discussion is that the Petitioner, in the present case, is neither liable to pay VAT nor he is liable to pay cess under the Cess Act and, hence, the deductions made, at source, from his bill of a sum of

Rs. 87,527/- as VAT and a sum of Rs. 21,882/- as cess are wholly without jurisdiction and cannot be allowed to stand good on record.

8. Because of what have been discussed and pointed out above, this writ petition succeeds and the impugned deductions are hereby set aside and quashed. The Respondents are hereby directed to refund to the Petitioner the sums of Rs. 87,527/- and Rs. 21,882/-, which have been deducted, at source, as VAT and cess respectively from the bill(s) of the Petitioner.

9. With the above observations and directions, this writ petition shall stand disposed of.

10. No costs.