(2013) 10 GUJ CK 0008

In the Gujarat High Court

Case No : Tax Appeal No''s. 858, 859 of 2013 and Civil Application No''s. 593, 594 of 2013

State of Gujarat APPELLANT

Vs

Duncans Tea Ltd. RESPONDENT

Date of Decision : 04-10-2013

Acts Referred:

Citation : (2014) 43 GST 100

Hon'ble Judges : Sonia Gokani, J;M.R. Shah, J

Bench : Division Bench

Advocate : Maithili Mehta, for the Appellant;

Judgement

M.R. Shah, J.—As common question of law and facts arise in both the Tax Appeals and as they arise out of the impugned judgment and order passed by the Value Added Tax Tribunal (hereinafter referred to as ''the tribunal'') dated 31/08/2009 in Revision Application Nos. 52/2009 and 53/2009, both the Tax Appeals are decided and disposed of by this common order. Both these Tax Appeals have been preferred by the appellant-State of Gujarat through the Commissioner of Commercial Tax challenging the impugned common judgment and order passed by the tribunal in Revision Application Nos. 52/2009 and 53/2009 by which the tribunal has allowed both the applications and has quashed and set aside the orders dated 31/03/2009 passed by the Deputy Commissioner of Commercial Tax.

2. The opponent is a Limited Company doing the business of reselling of tea purchased from EITA Services Private Ltd., Vadodara. There was a spot visit on 30/06/2013 at Aslali and on 14/07/2013 at Ahmedabad by the Sales Tax Officer and thereafter show cause notice was given informing that the purchases from EITA Services Private Ltd. cannot be considered as purchases from a ''Registered Dealer'' and it has to be considered as inter-state trade and, therefore, such sales are liable to taxed accordingly. It appears that thereafter on 17/10/2005 as assessment order u/s 41(3) of the Gujarat Sales Tax Act came to be passed and

purchases from EITA Services Ltd. were considered as purchases from a ''Registered Dealer''. It appears that thereafter the aforesaid assessment order came to be taken in suo motu revision by the Deputy Commissioner of Commercial Tax, Circle VI, Ahmedabad and notice in Form Nos. 45 and 49 came to be issued for the Assessment Years 2001-02 and 2002-03. Thereafter, the Deputy Commissioner of Commercial Tax, Circle IV, Ahmedabad passed orders dated 31/03/2009 revising the assessment orders and held that the purchases from EITA Services Private Ltd. cannot be considered as purchases from a ''Registered Dealer'' and are required to be considered as inter-State trade and consequently directed to issue demand notice of Rs. 3,18,73,991/- with respect to the Assessment Year 2001-02 and of Rs. 2,48,40,578/- for the Assessment Year 2002-03.

3. Being aggrieved and dissatisfied with the orders passed by the Deputy Commissioner of Commercial Tax dated 31/03/2009 with respect to the Assessment Years 2001-02 and 2002-03, the opponent herein preferred Revision Application Nos. 52/2009 and 53/2009 before the tribunal and the tribunal by impugned common judgment and order has allowed the aforesaid two Revision Applications and has quashed and set aside the orders dated 31/03/2009 of the Deputy Commissioner of Commercial Tax treating the purchases from EITA Services Private Ltd. by the opponent as inter-State trade.

4. Being aggrieved and dissatisfied with the impugned common judgment and order passed by the tribunal in Revision Application Nos. 52/2009 and 53/2009, the appellant-State of Gujarat through the Commissioner of Commercial Tax has preferred the present Tax Appeals.

5. Ms. Maithili Mehta, learned AGP appearing on behalf of the appellant has vehemently submitted that the tribunal has materially erred in not holding the purchases from EITA Services Pvt. Ltd. by the opponent as inter-State trade. It is submitted that the tribunal has materially erred in quashing and setting aside the finding given by the Deputy Commissioner of Commercial Tax by which the tribunal has held that the purchases from EITA Services Private Ltd. cannot be considered as purchases from a ''Registered Dealer'' but are required to consider as inter-State trade.

5.1 It is further submitted that the tribunal has erred in not considering that the transactions done by the opponent are inter-State trade as EITA Services Private Ltd. had sold the entire goods brought on consignment basis from M/s. Duncan Tea Industries, Siligudi to M/s. Duncan Tea Ltd., Ahmedabad and the goods were transported on the same day in the same truck from Vadodara to Ahmedabad.

5.2 It is further submitted that the tribunal has erred in not considering that no evidence of loading and unloading of goods at Vadodara was produced and further transporter was also the same, who did not mention the truck number in the transport receipt of movement of goods from Vadodara to Ahmedabad. Making the above submissions, it is requested to admit the present Tax Appeals.

6. Heard Ms. Maithili Mehta, learned AGP appearing on behalf of the appellant and perused the orders passed by the Deputy Commissioner of Commercial Tax as well as the impugned judgment and order passed by the tribunal.

7. At the outset, it is required to be noted that in the present case form F issued by the Sales Tax Authority to EITA Services Private Ltd. were used by EITA for issue in favour of Duncan Tea Industries, Kolkata, which was not considered. As observed by the tribunal, no defect in the books of account have been noticed. The opponent herein purchased the goods from EITA Services Private Ltd., Vadodara and thereafter they were transported to Ahmedabad. It is also required to be noted that in the assessment order of EITA Services Private Ltd. for the corresponding period the sales in question was considered as local sales. The assessment order of EITA Services Private Ltd. for the corresponding period has not been reviewed. Once the sales by EITA Services Private Ltd. to the opponent herein M/s. Dunken Tea Ltd. came to be considered as local sales and on the basis of which tax is paid the purchases made by the opponent herein from EITA Services Private Ltd. are required to be treated as local sales and, therefore, it cannot be treated as inter-State trade between Duncan Tea Industries, Calcutta and the opponent herein, Duncan Tea Ltd., Ahmedabad. The tribunal has rightly observed that as such there is no evidence of any communication between the Ahmedabad party and Calcutta party. Considering the aforesaid facts and circumstances of the case, when the tribunal has held that it would not be proper to treat as inter-State transaction and consequently has set aside the order passed by the Deputy Commissioner of Commercial Tax dated 31/03/2009, no illegality has been committed by the tribunal, which calls for the interference of this Court in appellate jurisdiction. No question of law, much less substantial question of law, arises in the present Tax Appeals. Under the circumstances, both the Tax Appeals deserve to be dismissed and are accordingly dismissed.

Civil Application Nos. 593/2013 & 594/2013

In view of dismissal of the Tax Appeals, no order in the Civil Applications and they are disposed of accordingly.