(2008) 12 OHC CK 0050

In the Orissa High Court

State of Orissa APPELLANT

Vs

Sidhartha Engineering Pvt. Ltd., N.T.P.C. RESPONDENT

Date of Decision : 17-12-2008

Acts Referred:
Central Sales Tax Act, 1956 — Section 8

Citation : (2009) 107 CLT 182 : (2009) 1 OLR 394 : (2009) 23 VST 230

Hon'ble Judges : L. Mohapatra, J;Indrajit Mahanty, J

Bench : Division Bench

Judgement

Indrajit Mahanty, J.—This Sales Tax Revision arises out of a reference made by the Orissa Sales Tax Tribunal u/s 24(1) of the O.S.T. Act, 1947 referring to the following questions for the opinion of this Hon''ble Court:

1. Whether in the facts and in the circumstances of the case, the Sales Tax Tribunal is justified to hold that the Respondent is engaged in the distribution of electricity so as to be entitled to purchase goods at concessional rate of tax on the strength of ''C forms?

2. Whether on the facts and in the circumstances of the case, the Respondent in executing the works contract with NTPC is engaged in the distribution of electricity ?

3. Whether on the facts and in the circumstances of the case, the Sales Tax Tribunal is justified to hold that the Respondent in executing the works contract is entitled to the use of Form IV for concessional purchase of goods even when it does not concern?

(a) manufacture of goods for sale;

(b) packing, processing of goods for sale;

(c) mining;

(d) generation or distribution of electricity any other form of power.

4. Whether in the facts and in the circumstances of the case, a series of sale can be postulated to apply the provisions of Section 8 of the CST Act even if the tax is paid while purchasing the goods?

5. Whether on the facts and in the circumstances of the case the Sales Tax Tribunal is justified to allow deductions of Rs. 15,45,940.11 towards value of goods purchased on the strength of ''C forms although conditions u/s 8(3)(b) of the CST Act read with rules 12(1) and 13 of CST (Registration and Turnover) Rules are not satisfied?

2. Question Nos. 1, 2 and 5 are taken up together for consideration. The issue as to whether the Respondent M/s. Sidhartha Engineering (P) Ltd. (Works Contract) was entitled to purchase goods at concessional rate of tax on the strength of ''C forms, is no longer res intigra in view of the Judgment rendered by the Full Bench of this Court in the case of Kalinga Builders (P) Ltd. and Anr. v. Commissioner of Commercial Taxes, Orissa and Ors. 1999 STC 81. This very issue was considered by Their Lordships of the Full Bench and the same has been answered in favour of the dealer and against the State. Therefore, this issue having been answered by the Hon''ble Full Bench in the aforesaid Judgment in favour of the dealer needs no further answer.

3. In so far as Question No. 3 is concerned, as to whether the Respondent-dealer (works contract) was entitled to the use of Form IV for concessional purchase of goods also no longer subsists in view of the Judgment of this Court In the case of Kalinga Builders (supra). Apart from this, it is to be noted that the Respondent while using Form IV has deposited tax @ 4 % and at the relevant point of time, a works contract dealer was'' liable to pay works contract tax at the same rate i.e. 4%. Therefore, since the Respondent has admittedly deposited tax & 4 %, no difference in his tax liability would arise and, therefore, this question remains purely academic and, therefore, is also answered in favour of the dealer and against the revenue.

4. So far as Question No. 4 is concerned, as to whether a series of sales can be postulated to apply to the provisions u/s 8 of the O.S.T. Act, even after the tax is paid while purchasing the goods, is also no longer res intigra and has already been answered by this Court in the case of Bharat Heavy Electricals Ltd. and Ors. v. Union of India and Ors. 1988 STC 25, wherein it has been held that Section 5(2)(AA)(i) of the OST Act was also subject to Section 8 of the OST Act and if the good involved in a works contract, had already been subjected to tax in a series of sales, this would have to be excluded from the taxable turn over. This issue has also been set at rest by the Hon''ble Supreme Court in the case of Larsen & Toubro Ltd. v. Union of India and Ors. 1993 88 STC 204, whereby the Hon''ble Apex Court has laid down the dicta that the State Legislature while imposing a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract, is not competent to impose a tax on such a transfer (deemed sale) which constitutes a sale in course of inter-State trade or commerce or a sale outside the State or a sale in the course of

import or export.

5. In view of the aforesaid two authoritative pronouncements by both this Court as well as that of the Hon''ble Apex Court, this question also has already been answered in favour of the dealer and against the State and, therefore, it is no longer res intigra.

6. In view of the aforesaid conclusions arrived by us and the questions referred have been answered in favour of the dealer and against the revenue, this revision needs no further consideration and hence, it stands disposed of in terms as noted hereinabove.

L. Mohapatra, J.

I agree.

