(2014) 11 TP CK 0041

In the Tripura High Court

Case No : Writ Petition (Civil) 360 of 2009

Sugam Parivahan Ltd. VsThe State of Tripura

Date of Decision : 11-11-2014

Acts Referred:
Tripura Sales Tax Act, 1976 — Section 3A
Tripura Value Added Tax Act, 2004 — Section 2(25), 3

Citation : (2014) 11 TP CK 0041

Hon'ble Judges : Deepak Gupta, C.J;S. Talapatra, J

Bench : Division Bench

Advocate : R. Datta, Advocate for the Appellant; S. Chakraborty, Addl. G.A. and P. Datta, Advocate for the Respondent

Judgement

Deepak Gupta, C.J.—The petitioner by means of this petition has challenged the communication dated 29.10.2009 whereby 4% tax has been deducted from the bills payable to the petitioner.

2. The undisputed facts are that the petitioner is a Transporter dealing with the carriage of goods only. He was engaged by the Tripura Horticulture Corporation Ltd., which is a Government of Tripura undertaking to carry power tillers and other agricultural inputs purchased by the Tripura Horticulture Corporation from Kerala to Agartala in Tripura. The short question involved is whether this contract by which the petitioners had agreed to transport the goods amounts to sale within the meaning of the TVAT Act or not. Sale has been defined in Section 2(25) of the TVAT Act which reads as follows:

"(25) (i) "Sale" with all its grammatical variations and cognate expressions means every transfer of the property in goods (other than by way of a mortgage, hypothecation, charge or pledge) by one person to another in the course of trade or business for cash or for deferred payment or other valuable consideration, and includes -

a) transfer otherwise than in pursuance of a contract of property in any goods for cash, deferred payment or other valuable consideration;

b) transfer of property in goods (whether as goods or in some other form) involved in execution of a works contract;

c) delivery of any goods on hire purchase or any other system of payment by instalments;

d) transfer of the right to use any goods for any purpose(whether or not for a specified period) for cash, deferred payment or other valuable consideration; and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and purchase of those goods by the person to whom such transfer, delivery or supply is made, but does not include a mortgage, hypothecation, charge or pledge.

(ii) ''Purchase'' with all its grammatical variations and cognate expressions means any transaction of acquiring property in goods against valuable consideration or deferred payment by a dealer on purchase of taxable goods as mentioned in schedule VIII including any sum charged for,

(a) anything done by the seller with or in respect of the goods at the time of or before delivery thereof and

(b) containers or other materials for the packaging of such goods."

As far as Clause (b) is concerned that only relates to the execution of the works contract and is not applicable in the present case. Similarly, Clause (c) is also not applicable because there is no delivery of goods on hire purchase or other system of payment by installments. There is no transfer of the right to use any goods.

3. Transfer of goods is totally different from transportation of goods. It appears that the revenue in the State of Tripura is under the mistaken belief that the word ''transfer'' in the Act includes transportation of goods. There is no transfer in the property of goods when a person transports those goods on behalf of the consigner or the consignee.

Section of 3 of the TVAT Act is the charging Section and makes any dealer in taxable goods liable to pay tax in accordance with the terms mentioned in the schedule and rules.

Section 3A of the Tripura Sales Tax Act reads as follows:--

"3A. Tax on the transfer of property in goods involved in the execution of works contract -

Notwithstanding anything contained elsewhere in this Act, any transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract shall be deemed to be sale of those goods by the person making the transfer and shall liable to be taxed at the rate specified in column 3 of the Schedule;

Provided that in respect of any such transfer only so much value of the goods involved in the works-contract which has actually been paid to the dealer during the period, shall be taken into account for determining the turnover for that period."

This section is similar to Section 2(25) of the TVAT Act.

Section 3A has been interpreted by one of us (Deepak Gupta, C.J.) in the following terms:

"11. Section 3A basically relates to execution of works contract and by a deeming fiction the meaning to the phrase "transfer of property in goods" has been expanded so as to include those goods which are used in the execution of the works contract within the ambit of the definition of the word "Sale". The essential feature of section 3A is that if during the execution of the works contract any transfer of property of the goods takes place, the same is liable to be taxed in accordance with the column 3 of the Act. In the explanation, it has been stated that "property in goods" shall mean the aggregate of the goods for which amounts have been received or receivable by a dealer during such period as valuable consideration whether or not such amount has been separately shown in the works contract. The amount so received shall include the value of such goods purchased, manufactured, processed or procured by the dealer and the cost of freight or delivery as may be incurred by such dealer for carrying such goods to the place where these are used in execution of such works contract.

12. It is clear from the reading of the explanation that for section 3A to be attracted, first of all, there should be works contract which basically means a contract wherein construction or erection of some work is awarded by contract by one party to another. If during the execution of such works contract, some material is consumed or used for execution of the works, then not only the cost of this material but even the cost of the transportation of the material is to be added into the value of the goods for the purpose of taxation. However, by no stretch of imagination, it can be said that a contract, merely to transport goods from one station to other, is a works contract and that such transportation charges which may or may not have any connection with a works contract are liable to be taxed. The transporter is not a party to the works contract. The amount which the transporter receives, even if section 3A is given widest interpretation, may be included in the sale value for purpose of taxation in the hands of the person executing the works contract, but the transporter is not liable to pay tax. There is no transfer of property of the goods whatsoever and the transporter is only carrying goods from one station to the other on behalf of the Public Works Department. Therefore, the interpretation given by the learned lower appellate Court is totally perverse."

4. We are clearly of the view that the phrase "transfer of property in goods" has been expanded in the context of works contract to include those goods which are used in the execution of the works contract. This expansion of the definition can however not bring within its ambit the mere transportation of goods. When a

person transports goods on behalf of the consigner or the consignee there is no transfer in the property of goods either directly or by inference. A contract to transport goods from one place to another is not a works contract. The amount which a transporter receives may be included in the sale value for calculating the taxable turnover but by no stretch of imagination can the transporter be held liable to pay tax? We are, therefore, clearly of the view that the deduction of tax on the amount paid to the transporter/petitioner is illegal and is liable to be quashed and the same is accordingly quashed. The tax which has been deducted shall be refunded to the petitioner along with statutory interest within 3(three) months from today failing which the State shall be liable to pay interest @ 12% per annum. In case there are any taxes due from the petitioner the State shall be at liberty to adjust the refundable amount against the taxes due from the petitioner to the State.

5. The writ petition is accordingly, allowed. The Order dated 29.10.2009 is quashed and the State is directed to refund the tax.

6. With these observations the writ petitions stand disposed of.