
(2004) 05 AHC CK 0025
In the Allahabad High Court
Case No : Sales Tax Revision No. 1101 of 1991

The Commissioner, Sales Tax

APPELLANT

Vs

Bihar State Construction Corporation

RESPONDENT

Date of Decision : 11-05-2004

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 11, 2

Citation : (2004) 05 AHC CK 0025

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Advocate : S.C, for the Appellant;

Final Decision : Allowed

Judgement

Prakash Krishna, J.—This revision is at the instance of Commissioner of Sales Tax u/s 11 of U.P. Sales Tax Act and is directed against the order- dated 30-4-1991 passed in Second appeal No. 527 of 1986 for the assessment year 1979-80. In the memo of. revision only one question of law has been framed which reads as under:

"Whether the Tribunal was legally justified to hold interstate sale by a Government Corporation to a government department of the same State as branch transfer and consequently not liable for tax under Central Sales Tax Act.?"

2. Heard learned counsel for the parties and perused the record.

3. The opposite party dealer, deals in supply of boulders. In the relevant assessment year 1979- 80 (Central) no tax liability was admitted by it. The assessing authority on the basis of material in its possession determined the taxable turnover at Rs. 70 lacs. The assessment order was passed against the opposite party. This order has been set aside by the first appellate authority as well as by the Tribunal on the short question that on the facts of the present case there is no sale by the dealer opposite party within the meaning of "sale" as defined under Central Sales Tax Act. The case of the department is that the

dealer opposite party has supplied boulders to the irrigation department of the State of Bihar. The Tribunal has set aside the assessment order on the finding that the dealer and the irrigation department of the State of Bihar are the two units.

4. On 31.3.2003 three weeks time was granted to the learned counsel for opposite party to file constitution of Bihar State Construction department. In spite of it learned counsel for the dealer opposite party could not produce copy of the constitution of Bihar State Construction Corporation, as he did not receive it from the dealer in spite of registered letter. The case was taken up on 27-4-2004. On that date learned counsel for the dealer expressed his helplessness to produce the constitution of the dealer opposite party and submitted that the case may be heard and decided as it is. The hearing of the case was, concluded and judgment was reserved on 27-4-2004. Thereafter on 6-5-2004 after obtaining permission written argument have been filed by the counsel for the opposite party by way of affidavit. But even then it has not filed the constitution of Bihar State Construction Corporation.

5. The Tribunal proceeded to consider the definition of "sale" and has held that at least two persons are required to complete the transaction of sale namely "seller and the purchaser". A person cannot make sale to himself. It has placed reliance on a judgment of this Court given in the case of U.P. Cement Corporation v. Commissioner of Sales Tax 1978 UPTC 653. The Tribunal has distinguished the case of Supreme Court given in the case of Oil and Natural Gas Commission v. State of Bihar, 1978 UPTC 788.

6. In the case of U.P. Cement Corporation (supra) the facts are that U.P. Government owned a Cement factory known as "Churk Cement Factory". It decided to establish another factory at "Dalla". The cement was required for construction of Dalla Cement factory and the State Government decided that the cement be supplied from the Churk Cement; factory for the construction of Dalla Cement factory. The department treated the supply of Cement from Churk Cement factory to Dalla Cement factory as sale as the bills were prepared by Churk Cement factory. Both factories were owned by the State Government. In this factual scenario this Court interpreted the word "sale" as defined u/s 2(h) of the Act and came to the conclusion that as both the Cement factories namely "Churk and Dalla" owned by the State Government there was no sale. It was held that although section 2(h) of the Act does not specifically refer to two persons being involved in the transaction, the necessity of two persons being involved in the transaction, arises out of the fact that before the transaction can be a sale within meaning of section 2 (h) of the Act, there must: be transfer of property. The transfer of property, unless particular statute expressly provides otherwise, contemplates passing of title from one person to another.

7. The case in hand is distinguishable on facts. In Para 10 of the affidavit filed after the close of hearing of revision by the opposite party], it Has been admitted that the opposite party even though incorporated under the Indian Companies

Act where its share capital was subscribed by the Irrigation department of Government of Bihar. Paragraphs 9 and 10 of the affidavit, which are material, are quoted below:

"9-That Bihar State Construction Corporation is owned and controlled by the irrigation department of Bihar Government. The irrigation department of Government of Bihar by its Government order no AD-4-207/73/ 1661 dated 2-2-1974 has specifically ordered that irrigation department and the electricity department of Government of Bihar for enforcing and implementing the project of irrigation department has established Bihar State Construction Corporation whose share capital of Rs. 5 crore and its initial subscribed capital of Rs. 20 lacs shall be paid by the irrigation department of Bihar Government itself whose head office shall be at Patna. A Photostat copy of the said Government order dated 2-2-1974 Ms. being filed herewith and marked as Annexure-1 to this affidavit The said Government order was also sent for publication in the gazette to the Government Press, Patna, vide No. 1661 dated 2-2-1974 that was accordingly published in the gazette.

10. That Bihar State Construction Corporation even though incorporated under the Indian Companies Act but its share capital was subscribed by the irrigation department of the Government of Bihar. Rule- 43 of the Memorandum of Association prescribes that the Directors shall be appointed by the Governor and such Directors are not required to hold any qualification shares. Relevant rules 45 and 46 are also reproduced below:

Number of Directors:

45- The Governor shall from time to time determine in writing the number of Directors of the Company, which shall not be less than two and not more than eleven. The Directors shall not be required to hold any qualification shares.

Appointment of Directors:

46 (1) (a) The Directors shall be appointed by the Governor and shall be paid such remuneration, if any as the Governor may from time to time determine."

Supreme Court in the case of Steel Authority of India v. Ambica Mills Limited) AIR 1998 SC 418 has held that High Court was wrong in holding that Steel Authority of India was the department of Union of India. It has taken into consideration its two earlier judgments Dr. S.L. Agarwal Vs. The General Manager, Hindustan Steel Ltd., and Western Coalfields Limited Vs. Special Area Development Authority, Korba and Another, . In Para 17 of the aforesaid report it has quoted portion from the Western Coal Field's case, which is also relevant for our purpose. It reads as under:

"17- In Western Coalfields Limited Vs. Special Area Development Authority, Korba and Another, this Court held as follows (at pp 704-705 of AIR):

"It is contended by the Attorney General that since the appellant- companies are

wholly owned by the Government of India, the lands and buildings owned by the companies cannot be subjected to property tax. The short answer to this contention is that even though the entire share capital of the appellant-companies has been subscribed by the Government of India, it cannot be predicted that the companies themselves are owned by the Government of India. The companies which are incorporated under the Companies Act have a corporate personality of their own, distinct from that of Government of India. The lands and buildings are vested in and owned by the companies, the Government of India only owns share capital."

8. Even the Tribunal has made observation that there is no dispute that the dealer and the "Irrigation department of Bihar" are two units of the State of Bihar. The Tribunal has not made reference of the constitution or any other document to show that the dealer opposite party is part of the State of Bihar. I am of the view that the controversy involved in the present case is wholly covered by judgment of Supreme Court given in the case of Steel Authority of India Limited. There being two juristic persons one State of Bihar Irrigation department and the another dealer opposite party the transaction of boulders by the dealer opposite party to the irrigation department of the State of Bihar from U.P. State Bihar is clearly Central sale. The ratio given in the case of U.P. State Cement Corporation is not attracted. Learned counsel for the dealer opposite party could not point out any material on record to show that the dealer is part of the State of Bihar. In the case of Steel Authority of India, the argument of counsel for the Steel Authority of India that the appellant was a company incorporated under Indian Companies Act and not-with standing the fact that the company was entirely owned by the Government of India, is a separate entity, was accepted by the Supreme Court. It was not treaded as a wing/ department of the Government. Independent existence and byelaw relating to the Corporation it is distinct even from its members. Following the reasoning of the Supreme Court the dealer in the case in hand is distinct from State of Bihar. In the affidavit the dealer opposite party has not given any reason for non-filing of its constitution in spite of specific order passed by the Court. Therefore it is reasonable to draw an adverse inference against it for withholding the relevant documents from the Court.

9. A technical objection though not raised during the course of hearing of the revision but has been raised in the affidavit for the first time that revision is not maintainable for non filing of copies of the assessment order and the order of first appellate authority. This objection should have been raised at the earliest opportunity at the time of hearing of the revision itself.! The practice of raising such an objection after conclusion of hearing of the revision cannot be approved- No difficulty was felt by the learned counsel in advancing the argument at the time of final heating of the revision on merits. Therefore the said objection is liable to be rejected-

10. In the result the revision is allowed. The order of the first appellate authority

as well as of the Trade Tax Tribunal, are set aside and the case is remanded to the first appellate authority to hear and decide the appeal on other points, if any, in accordance with law.