(2004) 04 AHC CK 0191

In the Allahabad High Court

Case No : Sales Tax Revision No''s. 755 and 756 of 1992

The Commissioner, Sales Tax APPELLANT

Vs

S/s Doneria Pvt. Ltd. RESPONDENT

Date of Decision : 22-04-2004

Acts Referred:
Central Sales Tax Act, 1956 — Section 6A

Citation : (2005) 277 ITR 35

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Advocate : B.R. Tripathi and S.C, for the Appellant;

Final Decision : Allowed

Judgement

Prakash Krishna, J.—Both these revisions were heard together as common question of law and facts are involved and relates to the assessment year 1981-82 (Central) and 1982-83. The assessee is the same and issues are also the same, though the order of the Tribunal is different. Learned counsel for the parties have (sic) agreed that both the revisions may be disposed of by a common judgment.

2. The facts are given with reference to the assessment order 1981- 82 (Central) and it arises out of Second appeal No. 418 of 1987 decided by its order-dated 30-11-1991. Second appeal No. 314 of 1990 connected with 380 of 1990 and 381 of 1990 for the assessment year 1982- 83 (Central) decided on 30-11-1991.

3. The opposite party is a dealer and deals in the manufacture and sale of C.I. Casting pipes and pipefitting. It disclosed taxable turnover at Rs. 124,52,578.63 for the assessment year 1981-82 (Central). The disclosed turnover was not accepted by the assessing authority. It also partly rejected the case of stock transfer and the plea of job work. The Tribunal by order under revision has accepted both the pleas.

4. Aggrieved against the order of the Tribunal present revisions have been filed.

The following identical two questions of law have been framed in the Memo of revision.:

"Whether on the facts and in the circumstances of the case the Sales Tax Tribunal was legally justified to hold that:

(i) The impugned branch transfer amount is exempt despite the facts that goods (Initial) were found to be written on the transfer vouchers which relates to specific buyers of Delhi establishing the fact that inter state sales were made instead of stock transfer.

(ii) The impugned supply is a job work despite the facts terms of contract do not contain any provision of job work and Central sales Tax is to be charged on such supplies?"

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

6. First, I take up the case of stock transfer. The assessing authority has rejected the claim of stock transfer after scrutinizing the books of account minutely. It has discussed in detail the nature of transaction as recorded in the books of account. Striking feature of the case as noticed by the assessing authority is that the dealer has used code word in the bills alleged to be the stock transfer, while transferring the goods to the branch office at Delhi. It has claimed discount. A reply was called for to explain the code word and the reasons for claiming discount to the goods transferred to the branch office. On page 4 of the assessment order the assessing authority has given details i.e. bill number, date, code language used therein, the value of the goods, discount and price etc. in a tabuler form. Opportunity was given to the dealer to decode the code language used in the bills. Inspite of opportunity afforded to the dealer, the dealer choose not to explain the meaning of the code word. Learned counsel for the dealer before me submitted that the code word might have been used by the dealer for various reasons. It may be true, but it I for the dealer to maintain the books of account in such a fashion so that the department may be able to decipher the two nature of transactions. The Tribunal without adverting to this aspect of the matter which has been dealt with in great detail in the assessment order has accepted the claim of stock transfer in a mechanical manner. It proceeded that the case of dealer was that the goods were dispatched by the assessee for delivery to its branches and necessary expenses were borne by the branches and the goods are received by the branches. Thereafter the Tribunal observed " nothing contrary to it has been brought on record by the department. Thus, the goods worth to Rs. 453860.33 transferred to the branches can not be held as inter State sale." This conclusion of the Tribunal is not correct in view of Section 6A of the Central Sales Tax Act. Section 6A of the Central Sales Tax Act lays burden of proof in the case of transfer of goods claimed otherwise than by way of sale, on the dealer. The said burden of proof has been laid on the dealer statutorily. The dealer opposite party claimed that he is not liable to pay tax under Central Sales Tax Act in respect of goods moved from State of U.P. to

Delhi. The burden of proving that movement of goods was so occasioned is on the dealer. Learned counsel for the dealer could not show me any provision of law to justify the order of the Tribunal laying burden upon the department to disprove the claim of stock transfer. The order of the Tribunal has been passed by wrongly placing the burden of proof on the department and is contrary to Section 6A of the Central Sales Tax Act, therefore can not be sustained. The Tribunal shall re examine the matter in the light of Section 6A of the Central Sales Tax Act and the material available on record on this issue. Therefore the findings of the Tribunal on this issue for both the assessment years are set aside and the matter is remanded for fresh consideration.

7. The next issue is with regard to the claim of job work. This matter has been dealt with by the assessing authority on page 7 of the assessment order for the assessment year 1981-82. The assessing authority in order to verify the claim of job work of the dealer himself visited Delhi and inquired the matter from the Executive Engineer, Delhi Development Authority, Delhi. It then transpired that a contract for supply of items mentioned in the agreement No. 33/EE/HD/111/80/81 with respect to items enumerated in the contract at the agreed rate was entered into by the dealer opposite party. The contract money for supply is Rs. 16,14,000/-. The contract is dated 16-1-1981. There is another contract for supply of Cast iron dated 30-1-1982. The total contracted amount of the two contracts is about Rs. 1,02,40,000/-, as noticed in the assessment order. As against this the dealer has disclosed Central sales at a much lower figure. The assessing authority concluded that for the assessment year the dealer has concealed turn over of sale at Rs. 13,12,364. 68 to the Delhi Development Authority, Delhi. The assessing authority has also taken pain to find out real turn over of the dealer and for that purpose he visited Delhi Sales Tax Office and contracted the Sales Tax Officer Sri B.P. Singh. On the basis of inquiry conducted by the assessing authority he found huge suppression of sale and also recorded a finding that the claim of job work is bogus claim and, as a matter of fact, it is a case of supply of goods. That is the reason for using the Code language in the bills. The Tribunal has dealt with this matter in para 7 of its order. The order of the Tribunal being one of reversal it was expected from it to deal all aspect as were dealt with by the authorities below before recording a finding of reversal. The Tribunal has proceeded on the footing that certain quantity of Iron was purchased by the Delhi Development Authority, Delhi from the Steel authority of India, which was used by the assessee in production of Pipes and pipefitting for Delhi Development Authority. Therefore, the Tribunal concluded that since the goods were supplied as raw- material to the dealer and the dealer produced the goods out of the raw material supplied and charged only labour charges. Therefore it is a case of job work. This finding of the Tribunal is hardly satisfactory. The Tribunal being the last fact-finding court was expected to examine the facts of the case in great detail. In the order of the Tribunal there is no whisper about the terms and conditions of the two contracts entered into by the dealer opposite party. Without considering the terms and conditions of the

contract acceptance of claim of job work cannot be sustained. It was for the dealer to prove that he carried on the work on labour charges. The assessing authority has examined the matter in great detail. In case of disagreement with the finding of the assessing authority or of the first appellate authority, the Tribunal should have dealt with that aspect of the case on which the authorities below had placed reliance. It is open to the Tribunal to take a different view but not without taking into consideration those aspect of the case which were taken into consideration by the authorities below. Therefore the finding of the Tribunal on this issue for both the assessment years are liable to be set aside. ''The matter is remanded to the Tribunal for reconsideration in the light of observations made above as well as in the light of facts on the record of the case.

8. In the result both the revisions are allowed and the two orders of the Tribunal both dated 30-11-1991 with respect to assessment year 1981- 82 and 1982- 83 (Central) on the aforesaid two points are set aside. The Tribunal shall decide the issue afresh, as indicated above.

