(2008) 06 AHC CK 0019

In the Allahabad High Court

The Commissioner, Sales Tax APPELLANT

Vs

S/S. Optron Power Tonics Ltd. RESPONDENT

Date of Decision : 30-06-2008

Acts Referred:
Sales of Goods Act, 1930 — Section 21

Citation : (2010) 28 VST 465

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prakash Krishna, J.—The Commissioner of Sales Tax , U.P. Lucknow has challenged the legality and validity of the order dated 21.12.1992 passed by the Sales Tax Tribunal, Ghaziabad in second appeal No. 575 of 1990 relating to the Assessment Year 1982-83 (Central).In the memo of revision the following question of law has been raised:

Whether on the facts and in the circumstances of the case the Sales Tax Tribunal was legally justified to hold that transaction in question cannot be treated as sale and consequently is exempt from tax despite the fact that evidences on record reveal otherwise?

2. The facts are not much in dispute. Before the Assessing Officer in respect of the Assessment Year 1982-83 (Central), the dealer opposite party''s claim for exemption from Central Sales Tax on certain transactions mentioned in the Assessment Order on the ground that the goods were returned after sale, was rejected.

3. The Assessing Officer found that the claim for exemption cannot be entertained as the goods were not returned within six months from the date of sale as required under the Central Sales Tax Act. In absence of any material on record the case that these goods were sent for approval of the purchasers was disbelieved and was not accepted. The exemption on the ground of return of

goods/disapproval by the purchaser was claimed on the turnover of Rs. 17, 11, 164/-. The said order dated 15.3.1987 was confirmed by the First Appellate Authority in Appeal No. T-239 of 1989 by the order dated 12.4.1990. The Tribunal, however, in the second appeal filed at the instance of the dealer opposite party, has partly accepted the claim of the dealer opposite party with respect to the turnover of Rs. 9, 74, 000/-, the sales made to M/s. Physical Research Laboratory, Navrangpura Ahmadabad. It was very much influenced by the fact that in the income tax assessment, the Commissioner Income Tax (Appeal) has found in his order dated 15.4.1998 that there was no such sale to M/s. Physical Research Laboratory, Navrangpura Ahmadabad, without recording any finding on its own.

4. The contention of the learned standing counsel on behalf of the department in the present revision is that on the facts which are not in dispute, no exemption on the said turnover of Rs. 9, 74, 000/- from the Central Sales Tax Act, could be granted to the dealer opposite party. He submits that it was found even by the Tribunal that the dealer opposite party has received 95% of the sale price from its customer which was returned thereafter. The finding of the Tribunal that no sale or purchase took place as the goods was never in deliverable state, on the facts of the case is unsustainable. On the other hand, the learned Counsel for the dealer opposite party supports the impugned order.

5. Considered the respective submissions of the learned Counsel for the parties and perused the record. It was found by the Assessing Authority as well as by the First Appellate Authority that the dealer opposite party has not been able to substantiate his claim that the goods were sent to the purchasing dealer on approval basis. Whether the goods were sent on approval basis or not could be established from the account books and the other evidence on record. The dealer opposite party was claiming exemption on the plea that the goods were sent on approval basis and were ultimately disapproved by the purchasing dealer. However, there is no material on record to substantiate the said plea. Even the Tribunal has not referred any evidence in its order to show that the goods were sent on approval basis. As noted above, the order of the tribunal is based on some observations made by the Commissioner, Income Tax (Appeals) in connection with the income tax matters of the dealer opposite party. The stray observation even if made by the Commissioner, Income Tax (Appeals) is hardly relevant for sales tax purposes. Whether the sale has taken place or not has to be decided in the light of the "sale" as contained in Central Sales Tax Act read with Section 21 of the Sales of Goods Act. The very fact that 95% of the sale consideration was received by the dealer opposite party which according to it was returned subsequently and the fact that the goods were dispatched from the State of U.P. to the State of Gujrat is sufficient to show that the goods were sold by the dealer. In absence of any contrary material, it would show that the sale, as a matter of fact, had taken place. It may be noticed that a categorical finding was recorded by the First Appellate Authority which has not been met by the Tribunal that the dealer opposite party has not produced any evidence or the

account books to substantiate its plea of rejection of goods by the purchasing dealer. Correspondence, if any, taken place between the dealer opposite party and its purchasing dealer to show that the goods were not approved were not produced. The details of defects, if any, found by the purchasing dealer in the goods have not been furnished by the dealer opposite party to corroborate the plea of rejection of goods. The other particulars with regard to the movement of the returned goods such as truck number, G.R. number etc. have not been furnished. The Tribunal was duty bound before reversing the order of the First Appellate Authority to have met the reasonings given by the First Appellate Authority. Without adverting to the reasonings furnished by the First Appellate Authority, the Tribunal has erred in law in allowing the appeal by making observation in one sentence that the goods were not in deliverable state. The order of the Tribunal, therefore, cannot be sustained.

6. Viewed as above, it is held that the order of the Tribunal is indefensible as it has failed to consider the relevant material on record.

7. In the result, the revision succeeds and is allowed. The order passed by the Tribunal is hereby set aside, and the question of law raised in the memo of revision is decided by holding that there is no material on record to hold that the transaction in question cannot be treated as sale.

8. No order as to costs.