(2004) 10 AHC CK 0210

In the Allahabad High Court

Case No : Trade Tax Revision No''s. 722, 730, 733, 754 and 841 of 1995

The Commissioner, Trade Tax APPELLANT

Vs

S/S Modi Xerox Ltd. RESPONDENT

Date of Decision : 08-10-2004

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 11, 4A

Citation : (2004) 10 AHC CK 0210

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : S.C, for the Appellant; Bharat Ji Agrawal, for the Respondent

Final Decision : Allowed

Judgement

Rajes Kumar, J.—These six revisions u/s 11 of U.P Trade Tax Act (hereinafter referred to as "Act") are directed against the order of Tribunal dated 02.03.1995 relating to the assessment years 1989-90, 88-89 (Central), 88-89 (U.P.), 90-91, 89-90 respectively.

2. Dealer/opposite party (hereinafter referred to as "Dealer" was Public Limited Company incorporated under the Indian Companies Act, 1956, having its registered office at Rampur. Dealer had established a new unit for the manufacture of xerographic equipment and system. Dealer was granted eligibility certificate u/s 4-A of the Act being a new unit. The eligibility certificate ''was granted for xerographic equipment and system for the period of six years from 01.01.1985. Dealer was claiming the exemption from 26.05.1985 for the period of six years. Review application was also rejected. Dealer filed Writ Petition No. 1 1936 of 1990, which was allowed vide order dated 19.12.1990 and it was held that the dealer was entitled for exemption from 26.05.1985 for the period of six years. It is informed that against the order of writ petition, SLP has been dismissed. In pursuance of the order passed in the writ petition, eligibility certificate was modified and the exemption was granted from 26.05.1985 for the period of six years. Dealer further started manufacturing of loner and Developer

and for which the eligibility certificate was issued in respect of Toner w.e.f. 01.01.1986 and in respect of Developer from 19.03.1987. It appears that alongwith Xerographic machine, dealer had also provided one installation kit to its customers, which consisted of Photo-receptor, Toner, Developer and Fuser oil and also provided Cutter and Stand. Apart from the price of the Xerographic machine, dealer had separately charged for the installation kit and for Cutler and Stand. Assessing authority had not levied the tax on the turn over of Photo-receptor, Toner and Developer because they have been manufactured and dealer was holding eligibility certificate in respect thereof but so far as Fuser oil, Cutter and Stand are concerned, dealer was not the manufacturer and they were purchased from outside the State of U.P. and, therefore, on the turn over of Fuser oil, Cutter and Stand tax was levied by the assessing authority while passing the assessment order both under the U.P. Trade Tax Act and under the Central Sales Tax Act. Claim of the dealer was that Fuser oil. Cutler and Stand were part and parcel of the "Xerographic machine and system," therefore, they were also eligible for exemption. However, assessing authority had not accepted the plea of the dealer and levied the tax on the aforesaid three items. First appeals filed by the dealer were rejected. Second appeals, filed by the dealer were allowed by the Tribunal Tribunal accepted the plea of the dealer and deleted the tax assessed on the turn over of Fuser oil, Cutter and Stand. Tribunal held that Fuser oil, Cutter and Stand are part ami parcel of the Xerographic machine and system, therefore, not liable to tax.

3. Heard learned counsel for the parties.

4. Learned Standing Counsel contended that the dealer was not the manufacturer of Fuser oil, Cutter and Stand in the year under consideration. He further submitted that in invoices apart from the price of the Xerographic machine, price of Fuser oil. Cutter and Stand were charged. He submitted that Fuser oil was only consumables and the Cutter was required for cutting the paper after getting the Xerox copy from the Xerographic machine and Stand is an independent item on which Xerographic machine are put for the convenient purpose. He submitted that all the aforesaid three items were neither attached nor connected by any means with the Xerographic machine. Therefore, they could not be treated as part and parcel of the Xerographic machine and system.

5. Learned counsel for the dealer submitted that eligibility certificate was issued for Xerographic Equipment and System and the installation kit, which included Fuser oil was the part of the system. He further submitted that the Cutter and Stand being necessary devices, were part of the Xerographic machine and system and. therefore, eligible for exemption.

6. I have perused the order of Tribunal and the authorities below.

7. Admittedly, price of the Cutter and Stand were charged separately in the bill. Cost of the Fuser-oil had also been charged separately as a charge of the installation kit. Price of the Fuser oil. Cutter and Stand have been charged

separately apart from the price of the Xerographic machine in the bill. No reason has been given that if the installation kit or Stand and Cutter were part of the Xerographic machine, why the price of these items have been separately charged. It is clear that price for a complete machine was separately stipulated and charged and, thereafter, the price of installation kit, C''utter and Stand were separately charged apart from the price of the Xerographic machine. Installation kit, Cutter and Stand have not been treated as the part of the Xerographic machine. If it would have been a part of the Xerographic machine, separate price for the installation kit. Cutter and Stand would not have been charged. Further Fuser oil was only the consumables. It may be true that for the operation of the Xerographic machine, Fuser oil may be required but they can not be treated as part and parcel of the Xerographic machine and system. Cutter and Stand are the independent items and the prices of these items have been separately charged in the bill. Cutter is only required for the cutting the paper after getting the Xerox copy from the Xerographic machine and Stand is used for putting the Xerographic machine. Submission of learned counsel for the dealer that Fuser oil, Cutter and Stand being necessary for the operation of the Xerographic machine and are part of the system and since eligibility certificate was issued for Xerographic machine and system. these items are also covered under the eligibility certificate has no force. System has been defined by the various dictionaries as follows: System has been defined by the various dictionaries are as follows:

"Encyclopedia Dictionary defines system -"as a plan or scheme according to which things are connected or combined into a whole; an assemblcdge."

Black Dictionary defines system as ?"Orderly combination or arrangement as of particular parts or elements into a whole, any methodic arrangement of parts."

New International Webster''s Dictionary Comprehensive Dictionary defines ?"Orderly combination or arrangement as of parts or elements into a whole."

8. In my opinion, the aforesaid three items can not be said to be part of the system of the Xerographic machine. 1 have dealt similar question with regard to the Toner, Developer and Fuser oil in the Trade Tax Revision No. 483 of 1994 and held that they were not part of the system.

9. For the reasons stated above, 1 am of the view that the Tribunal has erred in treating the Fuser oil, Cutter and Stand as part of the Xerographic machine and system and has erred in allowing the exemption on the turn over of the said items.

10. In the result, all the revisions are allowed. Order of Tribunal is set aside and the turn over of Fuser oil, Cutter and Stand are held liable to tax.

