**(2007) 01 AHC CK 0059**

**In the Allahabad High Court**

The Commissioner, Trade Tax APPELLANT

Vs

S/s Modi Zerox Ltd. RESPONDENT

**Date of Decision :** 10-01-2007

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

**Citation :** (2007) 01 AHC CK 0059

**Hon'ble Judges :** Rajes Kumar, J

**Bench :** Single Bench

**Final Decision :** Allowed

## Judgement

Rajes Kumar, J.—Present revision u/s 11 of the U.P. Trade Tax Act (hereinafter referred to as the "Act") is directed against the order of the Tribunal dated 25th January, 1994 relating to the assessment year, 1991-92.

2. The revision has been admitted on the following two questions.

1. To over look that the Notification No. 2400 dated 27.4.1987 cannot over rule the main Section 3-F of the Act.

2. To hold that the cutter and stands are part of zerographic equipment and system, and hence exempt, while the cutter and stands are not manufactured by the assessee.

3. Heard Sri B.K. Pandey, learned Standing Counsel and Sri Bharat Ji Agrawal, learned Senior Advocate appearing on behalf of the opposite party.

4. Learned Counsel for both the parties agreed that the question No. 2 is covered by the decision of this Court in the case of dealer itself in Commissioner of Trade Tax v. Modi Zerox Limited reported in 2005 VLJ 45 wherein it has been held by this Court that cutter and stands are the separate independent items and are not the part of the system of the zerographic machines, their prices being charged separately are not entitled for exemption.

 

5. Respectfully, following the decision of this Court referred hereinabove, it is held that the turnover of cutter and stands are not entitled for exemption.

6. So far as question No. 1 is concerned, brief facts of the case are that the several machines have been given through lease agreement for use to the different parties, namely, Hindustan Aeronautics Ltd., Kanpur, Indian Telephone Industries Ltd., Rai Bareli, M/S Bharat Heavy Electricals Ltd., Hard war, Bharat Heavy Electricals Ltd., Ranipur, Hardwar, Oil and Natural Gas Commission, Tel Bhawan, Dehradun, M/S Hindustan Live Stock Company, Dehradun, M/S IRDE Raipur, Dehradun, M/S CQAI Raipur Dehradun and M/S Lal Bahadur Shastri Acadamy, Mussorie and a sum of Rs. 17,52,850/- have been received towards rent. Assessing authority levied the tax on the aforesaid amount received towards rent u/s 3-F of the Act. First appellate authority upheld the order of the assessing authority on this issue and remanded back the matter to the assessing authority on other issues. Being aggrieved by the order of the first appellate authority, dealer filed appeal before the Tribunal. Tribunal by the impugned order allowed the appeal and deleted the tax levied on the aforesaid amount. Tribunal held that all the departments to whom the machines have been given on lease are the Government Department- Semi Government Department or the Undertaking of the Government of India, thus, the use of the machines by these departments cannot be treated for commercial purposes.

7. Learned Standing Counsel submitted that the parties to whom the machines were given on lease are all involved in the commercial activities. He submitted that Hindustan Aeronautics Ltd., Kanpur is involved in the manufacturing of Aircraft and their parts, Indian Telephone Industries Ltd., Rai Bareli is involved in the manufacturing of telephone and their parts and other items, M/S Bharat Heavy Electricals Ltd., Ranipur. Hardwar is involved in the manufacturing and sale of motors, etc, Oil and Natural Gas Commission, Tel Bhawan, Dehradun is involved in selling of oil and natural gas. Likewise, other parties are also involved in the commercial activity of buying and selling and, therefore, Tribunal has erred in saying that the parties to whom the machines were given on lease were not of use for commercial purposes. He submitted that if the parties to whom the machines were given on lease are involved in commercial activities their uses by the lessee should be treated for commercial purposes and finding of the Tribunal in this regard is erroneous and liable to be set aside.

8. Learned Counsel for the opposite party submitted that the machines, which were given on lease, were not for use for commercial purposes and, therefore, the Tribunal rightly deleted the tax.

9. I have given my anxious consideration to the rival submissions of the parties.

10 Section 3-F of the Act and the notification dated 27th April, 1987 issued there under are reproduced below:

Section 3-F. Rate of tax on the right to use any goods or goods involved in the execution of a works contract.

Notwithstanding anything contained in Section 3-A, or Section 3-AAA or Section 3-D, the turnover relating to the business of transfer of the right to use any goods for any purpose or of transfer of the property in goods involved in the execution of a works contract shall be determined in the manner prescribed and shall be liable to tax at such rate not exceeding fifteen percent, as the State Government may, by notification, declare, and different rates may be declared for different goods or different classes of dealers.

Notification No. ST-II-2400/X-9 (195)/85-U.P. Act-XV/48-Order-87, dated 27.04.1987.

In exercise of the powers u/s 3-F of the Uttar Pradesh Sales Tax Act, 1948 (U.P. Act No. XV of 1948), the Governor is pleased to declare that, with effect from May 1,1987, every dealer to whom Sub-section (3) of Section 3 applies, and every other dealer the aggregate of whose turnover in a year relating to the business of transfer of the right to use the goods, specified in column 2 of the Schedule hereunder exceeds one lakh rupees, shall be determined in the manner specified in Rule 44-C of the Uttar Pradesh Sales Tax Rules, 1948, be liable to tax at the rate of 4 percent.

SCHEDULE

SI. No. Description of goods. 1. Air-conditioning plant. 2. Motor vehicles as defined in the Motor Vehicles Act, 1939, including chassis of motor vehicles. 3. Plant and machinery including cranes. 4. Electronic goods, electrical goods, including instruments, apparatus and appliances thereof, for commercial purposes.

11. Under the notification, transfer of right to use the goods specified in column No. 2 of Schedule are liable to tax. In column No. 2 at serial No. 4, electronic and electrical goods including instruments, apparatus and appliances thereof for commercial purposes are specified. Zerox machine is one of the instruments. However, only those instruments, which are used for commercial purposes, are to be considered as specified goods. If the party who has taken the instrument on lease is involved in commercial activity then it is deemed that the instrument is being used for commercial purposes, It is wholly irrelevant whether lessee is Government Department, Government Undertaking or Semi Government Undertaking etc. The relevant consideration is the activity of the lessee. If the activity of the lessee is of commercial nature, the use of machines by the lessee in such activity directly or indirectly amount to use of such machines for commercial purposes.

12. Learned Standing Counsel submitted that Hindustan Aeronautics Ltd., Kanpur, Indian Telephone Industries Ltd., Rai Bareli, M/S Bharat Heavy Electricals Ltd., Hardwar and Oil and Natural Gas Commission, Tel Bhawan, Dehradun are involved in commercial activities, but is not able to tell the activities of M/S Hindustan Live Stock Company, Dehradun, M/S 1ROE, Raipur, Dehradun, M/S CQA 1 Raipur Dehradun and M/S Lal Bahadur Shastri Acadamy, Mussorie. No

 

finding has been recorded by any of the authorities about the activities of the lessees. Thus, it is necessary that fact finding authority may find out about the activities of the lessees if any of the lessee is involved in the commercial activities, the instruments leased out to it would be considered for use for commercial purposes and in case if it is found that any of the lessee is not involved in the commercial activities lease rent received from them may not be subject to tax. In the circumstances, matter is remanded back to the Tribunal to either decide the issue itself on the basis of the evidences adduced by both the parties or may ask the assessing authority to adjudicate the issue.

13. In the result, revision is allowed in part. The order of the Tribunal is set aside and the matter is remanded back to the Tribunal to decide the issue afresh in the light of the observations made above.

 