(2006) 10 AHC CK 0020

In the Allahabad High Court

The Commissioner, Trade Tax — APPELLANT

Vs

S/S Pratap Engineering Works — RESPONDENT

Date of Decision : 19-10-2006

Acts Referred:
Central Sales Tax Act, 1956 — Section 2

Citation : (2006) 10 AHC CK 0020

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—Present revision u/s 11 of U.P. Trade Tax Act (hereinafter referred to as "Act") is directed against the order of Tribunal dated 7th April, 1997 for the assessment year 1988-89.

2. Dealer/opposite party (hereinafter referred to as "Dealer") was carrying on the business of manufacture and supply of Railway signals and machinery parts. During the year under consideration, dealer had been awarded a contract No. N/ B.G./1/4/1, dated 01.06.1987 by Eastern Railway for the designing and supplying of system, equipment with erection, testing, commissioning at the Railway Stations, namely, Naugchchiya, Kharik, Thana Bihpur and Narayanpur, which were all part of Barauni-Katihar section of Eastern Railway. The value of the contract was Rs. 40.99 lacs. This is the contract in dispute. The dealer had also executed the other contracts, which are not in dispute. Tribunal found that the dealer had a workshop at Thana Bihpur, district Sainastipur (Bihar) and during the year under consideration transferred the goods for Rs. 10,62,700/- from Gorakhpur workshop to its workshop Thana Bihpur, district Samastipur. Tribunal found that the items, which were transferred, were in small pieces and in a semi-finished fabricated form, out of which signal equipment have been manufactured at the workshop at Thana Bihpur, district Samastipur and, thereafter, used in the contract namely, erection, supplying and commissioning of signal. Dealer treated the transfer of various items for Rs. 10,62,700/- from its

Gorakhpur unit to the Samastipur as a stock transfer. Goods were despatched through stock transfer memos and in the challans consignee and consignor both were the dealer. Goods have been received at the workshop situated at Samastipur. Goods included both imported goods as well as purchased within the State of U.P. Applicant claimed that the movements of such goods were by way of stock transfers. Assessing authority had rejected the plea of the dealer and treated the movements as inter-State sales. Though, assessing authority accepted that the contract was in nature of works contract but held that the goods had moved from Gorakhpur unit to Samastipur for the use in such works contract and, therefore, it was deemed sale u/s 2 (h) of the Act. Assessing authority accordingly, treated the movement of goods as inter-State sales and levied the tax under Central Sales Tax Act. The order of the assessing authority has been confirmed in appeal by the first appellate authority. Dealer filed second appeal before the Tribunal. Tribunal by the impugned order allowed the appeal and deleted the tax. Tribunal on the facts and circumstances of the case, held that the movements of goods were by way of stock transfers and not by way of inter-State sales.

3. Heard learned Counsel for the parties.

4. Learned Standing Counsel submitted that the Tribunal has erred in deleting the tax, treating the movements of goods as stock transfers. He submitted that the movements of goods were in pursuance of a prior contract and, therefore, they were inter-State sales. Learned Counsel for the dealer relied upon the order of the Tribunal.

5. Having heard learned Counsel for the parties, I do not find any error in the order of the Tribunal. At the outset it is stated that the assessing authority had erred in treating the use of goods in the execution of works contract as a deemed sale in view of Section 2 (h) of the Act. Section 2 (h) of the Act relates to the U.P. transactions and not to the inter-State transactions. For the purpose of inter-State transactions the definition of sale u/s 2(g) given under the Central Sales Tax Act as it existed prior to its amendment by Act No. 20 of 2002 w.e.f. 11.05.2002 is relevant. Section 2(g) of Central Sales Tax Act as it existed at the relevant time prior to the amendment by Act No. 20 of 2002 had not treated the goods used in execution of works contract as a sale. Thus, it is very doubtful that the movement of goods used in the execution of works contract from one State to another State can be treated as inter-State transactions. However, in the present case, it is not necessary to adjudicate this issue, in view of specific findings recorded by the Tribunal. Tribunal held that the dealer had a workshop at Samastipur and the goods which had been transferred were in pieces and in a semi finished stage, which were subsequently used in the manufacturing of the equipments etc. which had been used in the execution of the works contract. The goods which had moved from Gorakhpur to Samastipur were not directly used in the execution of works contract but have been used as raw material in the manufacturing of the equipments etc., which were used in the execution of the

works contract. Thus, in my view, the movements of the goods from Gorakhpur to Samastipur were only by way of stock transfers and not in the course of inter-State sales. The order to the Tribunal is accordingly, upheld.

6. In the result, revision fails and is accordingly, dismissed.