(2007) 10 AHC CK 0062

In the Allahabad High Court

The Commissioner, Trade Tax — APPELLANT

Vs

Subhash Project and Marketing Ltd. — RESPONDENT

Date of Decision : 29-10-2007

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11(1)

Citation : (2007) 10 AHC CK 0062

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajes Kumar, J.—Present two revisions u/s 11(1) of the U.P. Trade Tax Act (hereinafter referred to as the ''Act'') are directed against the order of the Tribunal dated 24.5.2000 for the assessment years 1994-95 and 1995-96.

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

Learned Standing Counsel submitted that dealer opposite party (hereinafter referred to as the ''Dealer'') entered into the various contracts. Three contracts were relating to supply of P.S.P. Pipe, M.S. Pipe Fittings and two contracts were for erection, commissioning and civil works.

He submitted that during the assessment year 1994-95 the dealer had raised the bill for Rs. 34,56,412/- to Jal Nigam, Jhansi and Agra for the work of erection and commissioning and raised bill for Rs. 37,19,616/- for civil work. Against the aforesaid bills, the total receipt was - at Rs. 71,76,028/-. The assessing authority had deducted a sum of Rs. 21,76,028/- towards labour charges and has taken the value of the goods involved in the execution of such works contract at Rs. 40,00,000/-. The assessing authority allowed the deduction of the purchases of goods for Rs. 4,16,592/- made from the registered dealer and thereafter estimated the taxable turnover at Rs. 35,83,408/- towards value of the goods involved in the execution of work contract.

3. Likewise for the assessment year 1995-96, the applicant had show the receipt towards erection and commissioning at Rs. 1,00,92,052/- and towards civil work at Rs. 70,54,851/-. The Assessing authority stated that vide letter No. 562 dated 30.03.1998, Jal Nigam, Jhansi informed payment of Rs. 70,54,851/- towards civil work and erection, commissioning while earlier, the above payment was informed only for civil work. The assessing authority had taken the total receipts towards erection, commissioning and civil work at Rs. 2,39,40,663/-. From the aforesaid amount, a sum of Rs. 71,40,663/- was deducted towards labour charges and the value of the goods involved in the execution of the work contract has been worked out at Rs. 1,68,00,000/-. Out of the aforesaid amount, the purchases made from the registered dealer at Rs. 10,78,251/- was deducted and the taxable turnover towards the value of the goods involved in the execution of the works contract has been worked out at Rs. 1,57,21,750/-.

Learned Standing Counsel submitted that the Tribunal while deleting the tax on the aforesaid transactions, have not at all considered the finding recorded by the assessing officer and, therefore, the order of the Tribunal is vitiated.

Sri Bharat Ji Agrawal, learned Senior Advocate, appearing on behalf of the opposite party, submitted that the charges received towards erection, commissioning and civil work were in the nature of the labour charges in which there was no use of any material. He submitted that the materials which were supplied by the opposite party under the supply contracts were got erected, commissioned and used in the civil work and, therefore, assessing authority has erred in taking the erection, commissioning and civil work as a works contract and estimated the value of the material alleged to have been used in such works contract while they were purely labour works. He submitted that the Tribunal has considered this aspect of the matter in detail and the learned Standing Counsel is not right in saying that the findings of the assessing authority in respect of the erection, commissioning and civil work have not been considered.

4. Having heard the learned Counsel for the parties, I have perused the order of the Tribunal and the authorities below.

5. An my view, the Tribunal has not adverted to the findings and the reasonings given by the assessing authority and has not adjudicated the issue in accordance to law, Tribunal has not examined the nature of the contract; receipt against each contract; the value of the goods involved in the contract; the source of obtaining the goods used in the execution of the works contract. Tribunal has not adverted to the figures given by the assessing authority and its method in arriving to a taxable turnover. Tribunal has not given any basis for taking laying pipe line work at 8 percent. Tribunal has also not given any basis for estimating the material used in the civil nature of works. Tribunal has also not considered whether the dealer had maintained proper books of account relating to its business or not. In this view of the matter, I am of the view that the matter requires fresh consideration by the Tribunal.

6. Tribunal has not made reference of each individual contracts executed by the dealer and has not examined its nature individually as to whether the contracts were pure contract of supply of material of contracts were of purely labour contract or whether contracts were indivisible composite contract both for labours and materials. Each contract has to be dealt with separately with reference to receipt of payment. In case of supply contract, it is to be examined whether the materials have been supplied directly to the contractee from outside the State of U.P. or supplied after taking the delivery in U.P. or after making the purchases within the State of U.P. or after the manufacturing. After the consideration of this aspect of the matter, liability on the supplied contract may be ascertained. In case, if the contracts were purely of labour contracts in which there was no supply of material, said contract may be dealt with in accordance to the law. If the contracts were works contract, a composite contract for labour and material, it is to be examined that how much materials have been used in the execution of the works contract, whether the dealer maintained books of account in the regular course of business having details of the materials used in the execution of the works contract and the labour charges etc. In case, if the books of account are not properly maintained, the value of the material is to be determined by way of best judgment assessment having regard to the nature of the contracts.

After the determination of the value of the goods, involved in the execution of the works contract, its source is to be determined and thereafter a tax would be levied in accordance to the provisions of Section 3-F of the Act.

After doing the aforesaid exercise, Tribunal is directed to determine the turnover. The above exercise can be done by the Tribunal at its own stage after giving opportunity to the parties concerned or the Tribunal may send back the matter to the assessing officer for proper adjudication.

7. In the result, both the revisions are allowed. The order of the Tribunal is set aside and the matter is remanded back to the Tribunal to decide the appeals afresh in the light of the observations made above. Since the matter is quite old, Tribunal is directed to decide the appeals expeditiously.