(2006) 09 P&H CK 0313

In the Punjab And Haryana At Chandigarh

Tilak Raj Madan Mohan APPELLANT

Vs

State of Punjab RESPONDENT

Date of Decision : 05-09-2006

Acts Referred:
Punjab General Sales Tax Act, 1948 — Section 2(i)

Citation : (2009) 20 VST 351

Hon'ble Judges : Rajesh Bindal, J;Adarsh Kumar Goel, J

Bench : Division Bench

Judgement

1. The Sales Tax Tribunal, Punjab has referred the following question of law for opinion of this Court, arising out of its order dated September 20, 1993 in respect of assessment year 1990-91:

Whether the levy under the Rural Development Fund shall form part of the turnover or not.

2. The assessee is a registered dealer under the provisions of the Punjab General Sales Tax Act, 1948 (for short, "the 1948 Act"). One of the questions for consideration was whether fee under the Rural Development Fund Act, 1987 was a part of "turnover". The term "turnover" has been defined u/s 2(i) of the 1948 Act as under:

?turnover'' includes the aggregate of the amounts of sales and purchases and parts of sales and purchases actually made by any dealer during the given period, less any sum allowed as cash discount and trade discount according to ordinary trade practice, but including any sum charged for anything done by the dealer in respect of the goods at the time of or before delivery thereof.

3. The learned Counsel for the assessee points out that issue is covered in favour of the assessee by judgment of the honourable Supreme Court in State of Punjab and Others Vs. Guranditta Mal Shanti Prakash etc., , wherein it was observed:

7. Under what circumstances the market fee is to be paid needs to be considered

and once it is held that the buyer has an obligation to pay the market fee and it is the duty of the seller to deposit the market fee on behalf of the buyer and, therefore, to realise it from the buyer, it is not the legal obligation of the seller to pay market fee on such a transaction and thus the amount of market fee cannot be treated as part of the sale consideration. It cannot be seriously disputed that this was the position in law in the State of Punjab.

8. If the law was not clear, it is open to the State to amend the law either with reference to the Agricultural Produce Market Committee Act or the Sales Tax Act because this Court in Anand Swarup Mahesh Kumar Vs. Commissioner of Sales Tax, , has explained under what circumstances the liability to pay market fee becomes part of the turnover. When the finding of the High Court is that on examining the enactment in question, there is no obligation on the part of the seller to pay the market fee since it is the duty of the buyer to pay the same and seller can realise it from the buyer the conclusion thereof that there was no liability to pay sales tax on the element of market fee is justified.

4. The learned Counsel for the Revenue is unable to distinguish the said judgment.

5. Accordingly, question is answered in favour of the assessee and against the Revenue.

