(2006) 11 AHC CK 0219

In the Allahabad High Court

Triveni Structurals Limited — APPELLANT

Vs

Commissioner, Trade Tax — RESPONDENT

Date of Decision : 23-11-2006

Acts Referred:
Constitution of India, 1950 — Article 366

Citation : (2007) 1 AWC 1015

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—Present two revisions u/s 11 of U.P. Trade Tax Act (hereinafter referred to as "Act") are directed against the order of Tribunal dated 3rd March, 2000 relating to the assessment years, 1988-89 and 1989-90.

2. Applicant is a Company incorporated under the Indian Companies Act, 1956 having its registered office at Naini, Allahabad. Applicant was engaged in the business of designing, fabricating, erecting and commissioning steel structural, including T.V. towers. In the years under consideration, applicant had executed various works contract in the State of U.P. various items in the form of iron and steel etc were purchased and the same were used in the manufacturing of structure, which were subsequently used in the execution of the works contract. Assessing authority levied the tax on the value of the steel structure used in the execution of the works at the rate of 8 percent. Levy of tax has been upheld in first appeals and by the Tribunal in second appeals.

3. Heard Sri Kunwar Saksena, learned Counsel for the applicant and Sri B.K. Pandey, learned Standing Counsel.

4. Learned Counsel for the applicant submitted that the goods have been transferred from the Naini factory to the site for use in the execution of the works contract. He submitted that the goods have been passed on to the customer only when the entire works have been completed and not at the stage

when the various items have been used in the execution of the works contract. He further submitted that the goods used were iron and steel, which were purchased within U.P. after payment of tax, therefore, they were not liable to tax.

5. Learned Standing Counsel submitted that since the goods have been used in the execution of the works contract in the years under consideration there was deemed sale u/s 2(h) of the Act. The goods namely iron and steel which are claimed to have been purchased within the State of U.P. have been used in the manufacturing of structure which were used in the execution of the works contract. He submitted that the Tribunal recorded a categorical finding of fact that the items which were purchased were not used as such in the execution of the works contract and therefore, no benefit can be given to the goods purchased within the State of U.P. after paying the tax.

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

7. By 46th Constitutional Amendment in Article 366, the definition of sale has been enlarged. "Value of the goods involved in the execution of the works contract" has been included within the ambit of sale. In view of the Constitutional amendment, the definition of Section 2(h) has also been amended under the U.P. Trade Tax Act. Section 2(h) of the Act, which defines sale, includes "value of the goods involved in the execution of the works contract". Therefore, by fiction, the value of the goods involved in the execution of the works contract has been treated as sale. Sales take place when the goods are incorporated in the execution of the works contract and not at the stage when entire work completes. The Constitution Bench of the Apex Court in the case of Builders Association of India and Ors. v. Union of India and Ors. reported in 1989 UPTC 645 held that "Ordinarily unless there is a contract to the contrary in the case of a works contract the property in the goods used in the construction of a building passes to the owner of the land on which the building is constructed, when the goods or materials used are incorporated, in the building. The contractor becomes liable to pay the sales tax ordinarily when the goods or materials are so used in the construction of the building and it is not necessary to wait till the final bill is prepared for the entire work".

8. The argument of the learned Counsel for the applicant that since iron and steel were purchased within the State of U.P. on payment of tax, therefore, the structure made out of said iron and steel cannot be subjected to tax, cannot be accepted. Tribunal has recorded a categorical finding of fact that the items, which were used in the execution of the works contract, were not the same, which have been purchased. Admittedly, no tax has been paid on the items, which have been used in the execution of the works contract. Therefore, the benefit of payment of tax on the raw material used in the manufacturing of structure cannot be allowed.

9. In the result, both the revisions fail and are, accordingly, dismissed.

