(2012) 06 UK CK 0068

In the Uttarakhand High Court

Case No : Commercial Tax Revision No''s. 22 and 23 of 2011

Vindhyavasini Stone Crusher Pvt. Ltd. APPELLANT

Vs

Commissioner, Commercial Tax RESPONDENT

Date of Decision : 15-06-2012

Acts Referred:
Central Sales Tax Act, 1956 — Section 8(3)(b)

Citation : (2012) 53 VST 533

Hon'ble Judges : Barin Ghosh, C.J;Umesh Chandra Dhyani, J

Bench : Division Bench

Advocate : S.K. Posti, for the Appellant; K.P. Upadhyaya, Chief Standing Counsel, for the Respondent

Judgement

Barin Ghosh, C.J.—Both these revision applications address same issues arising out of the same set of facts and law applicable and, accordingly, they are dealt with by this common judgment and order. There is no dispute that the revisionist applied for and obtained a registration under the Central Sales Tax Act, where, amongst others, it was indicated that the goods dealt with by the revisionist include plant and machinery of stone crusher. Having regard, to such registration, revisionist purchased loaders and dumpers at concessional rate of Central sales tax upon furnishing appropriate forms. Later on, it was held out that loaders and dumpers are no part of plant and machinery of stone crusher and, accordingly, revisionist was not entitled to concessional rate of tax thereon. The assessing authority proceeded on that basis. The appellate authority held that loaders are part of plant and machinery of stone crusher, but not dumpers. The matter, then, reached the Tribunal, who held that neither loaders nor dumpers can be said to be plant and machinery of the stone crusher.

2. According to the revisionist, to which there appears to be ho factual dispute, in order to crush stone/hopper is required to be loaded. That, according to the revisionist, is loaded by using dumpers and, in order to load the dumpers, loaders are used. It is their contention, therefore, that while loaders and

dumpers are machinery of stone crusher in terms of the meaning of "machinery" as pronounced by the Privy Council in the case of 26 CWN 761 (Privy Council) , they are also plant of stone crusher. It is the contention of the revisionist that, without loaders and dumpers, hoppers cannot be used and, as a result, no stone crushing activity can be undertaken. Principally on the ground that dumpers may be used for some other purposes also, the appellate authority, did not accept dumper as part of the plant and machinery of stone crusher. On the same analogy, the Tribunal also did not accept loaders as plant and machinery of stone crusher.

3. The subject dealt with, here has been dealt, by section 8(3)(b) of the Central Sales Tax Act, 1956 and rule 13 of the Central Sales Tax (Registration and Turnover) Rules, 1957. In terms of section 8(3)(b) of the Act, goods of the class specified in the certificate of registration for use in manufacture or processing of goods for sale, subject to any rules made by the Central Government in that behalf, are entitled to concessional rate of tax. In rule 13, the Central Government has included plant and machinery as goods for use in manufacture or processing of goods for sale.

4. In Indian Copper Corporation Ltd. Vs. Commissioner of Commercial Taxes and Others, , a Division Bench of the Patna High Court was concerned, whether the request made by Indian Copper Corporation Ltd. to include, amongst others, motor vehicles in its registration certificate under the Act is acceptable or not. Indian Copper Corporation Ltd. was engaged in mining as well as in manufacturing activities. The High Court held that motor vehicles used after mining activity is over and before manufacturing activity is undertaken, as well as vehicles used after manufacturing activity is over, cannot be treated as plant and machinery in connection with mining and manufacturing activities of Indian Copper Corporation Ltd.

5. The said decision was taken to the honourable Supreme Court by Indian Copper Corporation Ltd. The honourable Supreme Court decided its claim in the case of Indian Copper Corporation Limited Vs. Commissioner of Commercial Taxes, Bihar and Others, . The honourable Court held that vehicles used for mining purposes, for carrying mined products for manufacturing purposes, as also for carrying manufactured products for sale, encompass "in the manufacture or processing of goods for sale, or in mining" and, accordingly, declared that those vehicles should be treated as plant and machinery insofar as Indian Copper Corporation Ltd. is concerned, entitling it to have the same incorporated in its registration certificate.

6. That being the situation of the law pronounced by the honourable Supreme Court and having regard to the undisputed facts as narrated above, in so far as the revisionist is concerned, loaders and dumpers should be treated as plant and machinery of stone crusher, as registered in the registration certificate of the revisionist.

7. The conclusion, therefore, would be that the judgments and orders of the Tribunal, the appellate authority and the assessing authority to the effect that loaders and dumpers are no part of plant and machinery of stone crusher, are not sustainable and, accordingly, they are quashed. The revision applications, accordingly, stand disposed of.

