(2008) 12 AHC CK 0067

Allahabad High Court

Case No: None

Commissioner, Trade Tax U.P.Lucknow.		APPELLANT
	Vs	
Dharmex Pvt.Ltd, D-13, Midix Industrial Area, Pune.		RESPONDENT

Date of Decision: Dec. 8, 2008

Hon'ble Judges: Bharati Sapru, J

Final Decision: Dismissed

Judgement

Bharati Sapru, J.

Heard learned Standing Counsel for the State and Sri Piyush Agrawal, learned Counsel for the assessee.

This revision has been filed by the State under Section 11(1) of the U.P.Trade Tax Act for the assessment year 198687. The question of law referred to is as hereunder:

"Whether Trade Tax Tribunal was legally justified in holding the transaction of supply of equipments, contriuances and machinery; made by the opposite party, as being done in the course of interstate sale, not liable to be taxed under the provisions of U.P. Trade Tax Act, contrary to the established fact found after scrutiny of the relevant documents that the transaction of supply made by the dealer to M/s. IFFCO was his provicial Sale?"

By its order dated 24.1.2000 the Trade Tax Tribunal has deleted the tax imposed on the assessee.

The facts of this case are that the assessee was a civil contractor having its business at Pune in Maharashtra. In the year 198687 the assessee entered into a transaction of a civil contract with M/s. IFFCO Ltd. for supplying equipment machinery and apparatus to its unit at Anwala in U.P. Proceedings were initiated against the assessee under Section 7(3) of the U.P. Trade Tax Act and the assessment order was

passed against the assessee on 27.9.1993 by which certain tax was imposed on the assessee in U.P. Being aggrieved by this order the assessee filed first appeal, which was also dismissed on 5.3.1994. The assessee thereafter went in second appeal and the Tribunal by its order dated 24.1.2000 has allowed the claim of the assessee and has declared the assessee dealer as nonassessable.

The Tribunal while considering the matter has taken into account the fact that the assessee while making the supply to the U.P. has already paid central sales tax at 4% on each transaction.

The Tribunal has recorded that the assessee was able to produce before it copy of Form31 against which it had made supplies to the party in U.P. and those forms clearly included within it on declaration that central sales tax had been paid at the rate of 4%.

Learned counsel for the State has vehemently argued that the regardless of these facts the most important fact was that the title in goods passed to the buyer at Anwala , which is established from Clause5 of the contract.

Learned counsel for the assessee has however argued that regardless of the fact that the goods were delivered at Anwala and the sale was finally completed there it would not convert the transaction of sale within U.P.

In view of the fact that it was actually a interstate sale between the parties situate at Pune and in U.P., learned counsel for the assessee has placed reliance on a decision of this Court in the case of M/s. S & Company New Delhi Vs. Commissioner of Trade Tax reported in 1999 U.P.T.C. page 823 in which there was a work contract concluded between a party at Delhi and Dehradun and this Court has came to the conclusion that because the tax was already paid at Delhi, it was no doubt a central Sales Tax matter and was covered under the provisions of the Central Sales Tax Act and, therefore, the sale value of such transaction, which would being brought to U.P. under the contract would not have been subjected to Trade Tax under the U.P. Sales Tax Act.

Learned counsel has also relied upon another decision of this Court in the case of CTT Vs. S.S. Indian Railway Construction Company, Agra wherein also this Court came to the conclusion that where the movement of goods was in pursuance of a contract, which was concluded outside the State for use in execution of work contract in the State. Such a transaction would be covered under Section 3 of the Central Sales Tax Act and would not be subject matter of tax within the state of U.P.

Having heard learned Counsel for the State and learned counsel for the assessee, I am of the opinion that in the present case the contract had already been concluded between the parties before the movement of the goods and it was clearly a case of interstate trade and, therefore, no tax was liable to be paid in U.P. on these transactions. I am in agreement with the decisions cited by learned counsel for the

assessee and, therefore, I see no reason to interfere with the order passed by the Tribunal, which has clearly recorded findings of fact that the contract was an interstate contract on which Central Sales Tax had already been paid.

This revision has no merit and is dismissed.