(2009) 10 AHC CK 0210

Allahabad High Court

Case No: None

Vysya Bank Ltd.		APPELLANT
	Vs	
Commissioner of Trade Tax		RESPONDENT

Date of Decision: Oct. 27, 2009

Acts Referred:

- Uttar Pradesh Trade Tax Act, 1948 - Section 11

Citation: (2010) 30 VST 487

Hon'ble Judges: Rajes Kumar, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Rajes Kumar, J.

The present revisions u/s 11 of the U.P. Trade Tax Act, 1948 (hereinafter referred to as, "the Act") are directed against the order of the Tribunal dated March 17, 2004 for the assessment year 2000-01. Revision No. 843 of 2006 relates to the assessment and Revision No. 842 of 2006 relates to the penalty u/s 15A(1)(a) of the Act.

2. The brief facts of the case are that the applicant had entered into a contract with M/s. Dhampur Sugar Mills, Dhampur for providing plant and machinery on rent and during the year under consideration received total rent of Rs. 1,16,77,320. The claim of the applicant was that stamp paper for the agreement was purchased from Delhi and on September 29, 1995 the agreement was executed at Delhi and, therefore, the right to use has been transferred at Delhi and the trade tax authorities of State had no jurisdiction to levy the tax on the rent received in pursuance of the aforesaid agreement u/s 3F of the Act. In support of his contention reliance has been placed on the Supreme Court decision in the case of 20th Century Finance Corporation Ltd. v. State of Maharashtra reported in [2000] 119 STC 182 : [2000] UPTC 593. The assessing authority had not accepted the plea of the applicant and has levied the tax on the entire amount of rent received during the year under consideration u/s 3F of

the Act. The order of the assessing authority has been upheld in first appeal and by the Tribunal.

3. The applicant had not disclosed the rent of Rs. 38,92,440 in the fourth quarter return on the ground that the rent was not received and the due tax had also not been paid. Therefore, the assessing authority has levied the penalty u/s 15A(1)(a) of the Act which has been confirmed in first appeal and by the Tribunal.

4. Heard Sri Ashok Kumar, learned Counsel appearing on behalf of applicant and learned standing counsel.

5. The learned Counsel for the applicant submitted that since stamp paper was purchased at Delhi and the agreement was executed at Delhi, therefore, the right to use had been transferred at Delhi and the Trade Tax Officer of U.P. had no jurisdiction to levy the tax. Reliance has been placed on the decision of the apex court in the case of 20th Century Finance Corporation Ltd. v. State of Maharashtra [2000] 119 STC 182 : [2000] UPTC 593. He further submitted that the plant and machinery were immovable, therefore, rent received cannot be taxed. Reliance has been placed on the decisions of this Court in the case of Swarup Vegetable Products Industries Ltd., Mansoorpur, District Muzaffar Nagar reported in [1998] UPTC 336 and in the case of Commissioner, Trade Tax Vs. Gulshan Sugars and Chemicals Ltd.,

6. The learned standing Counsel submitted that the Tribunal has recorded a categorical finding that lease rent did not indicate that lease deed was executed at Delhi and merely because stamp paper was purchased at Delhi, it cannot be presumed that the lease deed was executed at Delhi while admittedly the plant and machinery were given on lease in the State of U.P. He further submitted that Explanation I, Clause (ii) of Section 2(h) of the Act provides that if the goods are used by the lessee within the State during any period, notwithstanding that the agreement for the lease has been entered into outside the State or that the goods have been delivered to lessee outside the State the sale or purchase shall be deemed to have taken place in the State of U.P. He submitted that so far as the argument of learned Counsel for the applicant, that the plant and machinery were immovable cannot be entertained at this stage as this pleading was not taken before any of the authorities below and not arising from the order of the Tribunal. So far as the penalty is concerned, he submitted that merely because the amount has not been received, the applicant cannot be absolved from the responsibility to disclose such turnover in the return and to pay the tax. He submitted that the definition of "sale" in Section 2(h) includes the sale wherein there is deferred payment.

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

8. "Sale" is defined u/s 2(h) of the Act which reads as follows:

''sale'', with its grammatical variations and cognate expressions, means any transfer of property in goods (otherwise than by way of a mortgage, hypothecation, charge or pledge) for cash or deferred payment or other valuable consideration, and includes-

(i) a transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;

(ii) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(iii) the delivery of goods on hire purchase or any system of payment by instalments;

(iv) a transfer or the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(v) the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration; and

(vi) the supply by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating) where such supply or service is for cash, deferred payment or other valuable consideration.

Explanation I.- A sale of purchase shall be deemed to have taken place in the State,-

(i) in a case falling under Sub-clause (ii), if the goods are in the State at the time of transfer of property in such goods (whether as goods or in some other form) involved in for the execution of the works contract, notwithstanding that the agreement for the works contact has been wholly or in part entered into outside the State;

(ii) in a case falling under Sub-clause (iv), if the goods are used by the lessee within the State during any period, notwithstanding that the agreement for the lease has been entered into outside the State or that the goods have been delivered to lessee outside the State.

Explanation II.- Notwithstanding anything contained in this Act, two independent sales or purchases shall, for the purposes of this Act, be deemed to have taken place-

(a) when the goods are transferred from a principal to his selling agent and from the selling agent to his purchaser,

(b) when the goods are transferred from the seller to a buying agent and from the buying agent to his principal, if the agent is found, in either of the cases aforesaid,-

(i) to have sold the goods at one rate and passed on the sale proceeds to his principal at another rate; or

(ii) to have purchased the goods at one rate and passed them on to his principal at another rate; or

(iii) not to have accounted to his principal for the entire collection or deductions made by him, in the sales or purchases effected by him on behalf of his principal; or

(iv) to have acted for a fictitious or non-existent principal.

9. The Tribunal has recorded a categorical finding that, from the perusal of the lease deed it did not appear that the agreement has been executed at Delhi. The finding of the Tribunal is finding of fact. The copy of the lease deed has not been annexed along with the revision petitions and the learned Counsel for the applicant is not able to show that the lease deed has been executed at Delhi. Merely because the stamp paper was purchased at Delhi, it cannot be presumed that the lease deed was also executed at Delhi on September 29, 1995. Moreover, even assuming that the deed was executed at Delhi, it does not make any difference. Explanation I to Section 2(h) of the Act says that sale deemed to have taken place within the State of U.P. if the goods are used by the lessee within the State during any period, notwithstanding that the agreement for the lease has been entered into outside the State or that the goods have been delivered to lessee outside the State. Therefore, notwithstanding the agreement being executed at Delhi since the plant and machinery have been admittedly used within the State of U.P., sale is deemed to have taken place within the State of U.P. The apex court in the case of 20th Century Finance Corporation Ltd. v. State of Maharashtra reported in [2000] 119 STC 182 : [2000] UPTC 593 has held that unless there is any provision to the contrary the transfer of right to use the goods take place where the agreement is executed. Therefore, in case, if there is a provision to the contrary the principle laid down by the apex court that transfer takes place where the lease deed is executed, does not apply, as stated above. Explanation I, Clause (ii) says that sale is deemed to take place in the State of U.P. if the goods are used by the lessee within the State during any period, notwithstanding that the agreement for the lease has been entered into outside the State or that the goods have been delivered to lessee outside the State. Therefore, even if the agreement was executed at Delhi in view of the aforesaid provisions there was deemed sale in the State of U.P. and the trade tax authorities have a jurisdiction to levy the tax. So far as the submission of learned Counsel for the applicant that the plant and machinery were immovable cannot be accepted. Such pleading has not been taken before the authorities below at any stage. So far as the penalty u/s 15A(1)(a) is concerned, I do not find any error in the order of the Tribunal. Merely because the rent has not been received, the applicant cannot be absolved from the liability to disclose such sale in the return. Sales with deferred payment are, also included within the ambit of definition of "sale" u/s 2(h) of the Act and, therefore, such receipts were liable to be disclosed. The explanation of the applicant for not disclosing the turnover of rent receivable in the return has rightly not been accepted.

10. In view of the above discussions, both the revisions fail and are dismissed.