
(2007) 8 VST 26

Allahabad High Court

Case No: None

Commissioner, Trade
Tax

APPELLANT

Vs

Samar Singh

RESPONDENT

Date of Decision: Jan. 19, 2006

Acts Referred:

Central Sales Tax Act, 1956 "Section 14, 15, 3, 4, 5

Citation: (2007) 8 VST 26

Hon'ble Judges: Rajes Kumar, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Rajes Kumar, J.

Present revision u/s 11 of the U.P. Trade Tax Act, 1948 (hereinafter referred to as "the Act") is directed against the

order of Tribunal dated April 26, 1999 for the assessment year 1994-95.

2. Dealer/opposite party (hereinafter referred to as "dealer") is a civil contractor and admittedly executed the civil nature of contract during the year

under consideration. The value of the goods involved in the execution of the works contract was liable to tax under section 3-F of the Act.

Dealer had not maintained any books of account. During the year under consideration, dealer had received total payment to the extent of Rs.

6,53,419 against the work executed. In the absence of any books of account, assessing authority after allowing the benefit of 30 per cent labour

charges, estimated the value of the goods used in the execution of works contract at Rs. 4,57,393.65. Dealer had furnished the details of the tax-

paid goods to the extent of Rs. 1,01,018. Benefit of such amount has been allowed and thereafter the balance amount of Rs. 3,56,375.65 had

been taxed in respect of which no evidence had been adduced that the goods had been subjected to tax. First appeal filed by the dealer was

allowed in part. First appellate authority upheld the levy of tax on the morang and sand but has deleted the tax on the cement and bricks being

purchased within the State of U.P. Commissioner of Trade Tax filed appeal before the Tribunal. Tribunal by the impugned order confirmed the

order of the first appellate authority and dismissed the appeal.

3. Heard learned Counsel for the parties.

4. Learned Standing Counsel submitted that the Tribunal has upheld the deletion of the tax on the turnover of cement and brick only on the ground

that in respect of such goods, dealer was not importer or manufacturer. He submitted that the contractor is entitled for the deduction from the gross

turnover u/s 3-F(2)(b)(iii) of the Act in respect of the amount representing the value of the goods, on the sale or purchase whereof the tax has been

levied or is liable under this Act at some earlier stage. He submitted that no evidence has been adduced by the dealer before the assessing authority

or before any authority that on the value of cement and brick, tax has been levied under this Act at some earlier stage. Thus, the exemption on such

turnover is illegal. Learned Counsel for the dealer relied upon the order of the Tribunal. I find substance in the argument of learned Standing

Counsel.

5. Section 3-F of the Act reads as follows:

3F. Tax on the right to use any goods or goods involved in the execution of works contract. 3F(1) Notwithstanding anything contained in Section

3-A or Section 3-AAA or Section 3-D but subject to the provisions of Sections 14 and 15 of the Central Sales Tax Act, 1956, every dealer shall,

for each assessment year, pay a tax on the net turnover of-

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

consideration ; or

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

at such rate not exceeding fifteen per cent as the State Government may, by notification, declare and different rates may be declared for different

goods or different classes of dealers.

(2) For the purposes of determining the net turnover referred to in Sub-section (1), the following amounts shall be deducted from the total amount

received or receivable by a dealer in respect of a-

(a) transfer referred to in Clause (a) of Sub-section (1) whether such transfer was agreed to during that assessment year or earlier,-

(i) the amount representing the value of the goods covered by Sections 3, 4 and 5 of the Central Sales Tax Act, 1956;

(ii) the amount representing the value of the goods exempted u/s 4;

(iii) the amount received as penalty for default in payment or as damages for any loss or damage caused to the goods by the person to whom such

transfer was made;

(b) transfer referred to in Clause (b) of Sub-section (1)-

(i) the amount representing the value of the goods covered by Sections 3, 4 and 5 of the Central Sales Tax Act, 1956;

(ii) the amount representing the value of the goods exempted u/s 4;

(iii) the amount representing the value of the goods on the sale or purchase whereof tax has been levied or is leviable under this Act at some earlier

stage;

(iv) the amount representing the value of the goods manufactured in a new unit exempted u/s 4-A or Section 4-AAA;

(v) the amount representing the value of the goods supplied to the contractor by the contractee:

Provided that the ownership of such goods remains with the contractee under the terms of the contract;

(vi) the amount representing the labour charges for the execution of the works contract;

(vii) all amounts paid to the sub-contractors as the consideration for execution of the works contract, whether wholly or in part:

Provided that no deduction under this sub-clause shall be allowed unless the dealer claiming deduction produces proof that the sub-contractor is a

registered dealer liable to tax under this Act and that such amount is included in the return of turnover filed by such sub-contractor under the

provisions of this Act;

(viii) the amount representing the charges for planning, designing and architect fees;

(ix) the amount representing the charges for obtaining on hire or otherwise machinery and tools used for execution of the works contract;

(x) the amount representing the cost of consumables used in the execution of the works contract, the property in which is not transferred in the

execution of the works contract;

(xi) the amount representing the cost of establishment and other similar expenses of the contractor to the extent it is relatable to supply of labour

and services;

(xii) the amount representing the profit earned by the contractor to the extent it is relatable to the supply of labour and services.

6. Section 3-F of the Act starts with the words ""notwithstanding anything contained in Section 3-A or Section 3-AAA or Section 3-D"" thus, it has

an overriding effect over Section 3-A, 3-AAA and Section 3-D. u/s 3-F(1) the value of the goods involved in the execution of works contract is

liable to tax. Section 3-F(2) provides deduction from the gross amount. Sub-clause (iii) of Clause (b) of Section 3-F(2) provides that the amount

representing the value of the goods on the sale or purchase whereof tax has been levied or is leviable under this Act at some earlier stage is only

liable to be deducted. Thus, dealer has to establish that on the value of the goods tax has been levied or is leviable under this Act. In the present

case, dealer failed to prove that the tax on the value of the cement, sariya and bricks have been levied. Thus, the deduction allowed by the first

appellate authority and Tribunal on the turnover of cement, sariya and bricks on the ground that in respect of these items dealer was not

manufacturer or importer, is erroneous.

7. In the result, revision is allowed. Order of the Tribunal is set aside and the appeal filed by the Commissioner of Trade Tax No. 101 of 1998 has

been allowed.