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Neutral Citation No. - 2023:AHC:222824

Court No. - 2

Case :- SALES/TRADE TAX REVISION No. - 94 of 2023

Revisionist :- The Commissioner, Commercial Tax U.P.
Opposite Party :- S/S Sanya Construction And Developers Pvt. Ltd.
Counsel for Revisionist :- Bipin Kumar Pandey,S.C.
Counsel for Opposite Party :- Shubham Agrawal

Judgement Pronounced in Court

Hon'ble Shekhar B. Saraf,J.

1. Heard learned Standing Counsel for the revisionist and Sri Shubham Agrawal, learned counsel for the opposite party.

2. This is an application for revision under Section 58 of the U.P. Value Added Tax Act, 2008 in relation to Assessment Year 2012-13, wherein the following questions of law have been framed:

"1. Whether on the facts and circumstances of the case the Commercial Tax Tribunal was legally justified in holding that the cement imported from outside the State of U.P., the turnover is liable to be reduced as per Rule 9 of the Value Added Tax Rules?

2. Whether on the facts and circumstances of the case the 1st Appellate Authority was legally justified in reducing the expenses from 21% to 10% and Tribunal has committed illegality in confirming the same?"

3. Learned counsel for the revisionist has fairly submitted that he has no grounds to argue with regard to the second question of law and therefore, same is not being pressed by him.

4. With regard to the first question of law, learned counsel on behalf of revisionist submitted that factum of import of goods

and specific execution of work contract has not been established by the assessee and, therefore, the benefit under Rule 9 Sub Rule (1)(e) of the U.P. Value Added Tax Rules, 2008, (hereinafter referred as 'the Rules') would not be applicable to the assessee. It is further submitted that the judgment passed by the Coordinate Bench in ***M/s Comfort Systems Vs. Commissioner Commercial Tax, U.P.,*** reported in 2019 U.P.T.C. (Vol. 101) 242 is not applicable to the present case as in that case there was no dispute that the goods have been imported from outside the State of U.P. for utilization in the works contract.

5. Learned counsel on behalf of respondent assessee has relied upon paragraph nos. 11, 13, 14, 19, 20, 21 and 23 to buttress his argument that the ratio of the case is that when the goods are coming from outside the State and the Tribunal comes to a specific finding that the goods were brought in to the State for the purpose of carrying out pre-existing works contract, the benefit of deduction contemplated under Section 9(1)(e) of the Rules would be available to the assessee.

6. Upon perusal of the order of Tribunal it is patently clear that the goods were imported from outside the State of U.P. and were used in one project in the State of U.P. There does not appear to be any perversity in the finding of the Tribunal with regard to the above factum. In my view, such being the case, Rule 9 (1)(e) of the Rules would definitely apply and the petitioner would be entitled to the benefit thereunder. One may further look into the judgment of the Coordinate Bench for further clarification. Relevant paragraphs are delineated below:

"11.... Looking at the language of Rule 9(1)(e) of the Rules, the inter-state sale of the goods (giving rise to the claim of exemption) must precede their transfer under the works contract. Second, transfer of the property in

those goods must result or spring from the transaction of inter-state sale of those goods. The findings recorded by the Tribunal are to the effect, first a works contract was executed. Thereafter, the assessee caused the movement of goods from outside the state of U.P. for purpose of execution of the works contract. Third, as a fact, the assessee applied those goods to the works contract executed by it. Consequently, it has to be inferred that the property in those goods stood transferred to the contractee parties.

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13. Once the Tribunal had found that the movement of goods from outside the state had been caused by the pre-existing works contract and that the goods thus imported had been applied solely for execution of those works contracts and there was no allegation or finding that such goods had been imported by the assessee independent of the works contract, the enquiry necessary to decide the dispute should end there. According to the facts found by the Tribunal, the deemed sale was one performed in the course of inter-state sale as the movement of the goods had been occasioned from outside the state, only for the purpose of execution of the works contracts, by the assessee.

14. It would have been a completely different case if the assessee had been found to hold in stock any goods that may have been imported from before and may have been applied to the works contract subsequently. However, neither there is any room for presumption nor such speculation is permissible in the clear facts of the present case.

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19. That being the governing principle, the language of Rule 9(1)(e) of the Rules relied upon by the learned Standing Counsel has to be examined in that light. In absence of any legislative competence on part of the State legislature to impose tax on deemed sale in the course of inter-state trade, the phrase "as a result of sale in the course of inter-state trade or commerce" appearing in Rule 9(1)(e) of the Rules cannot be restricted or

confined to inter-state sale but as referring to transaction of "a sale or purchase of goods" falling under section 3 of the Central Sales Tax Act, 1956.

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23. The question of law framed above is answered thus:

Since in the present case, the Tribunal recorded a specific finding that there pre-existed works contracts between the assessee and the contractees and further the assessee had purchased the goods from outside the State of U.P., only to execute those pre-existing works contracts, in absence of any further finding that such goods had been sourced from before or that they were not applied to the works contract or that there arose two sales, the assessee was clearly entitled to the benefit of deduction contemplated under Rule 9(1)(e) of the Rules."

7. The general rule of law in taxing statutes is that in case of any doubt the benefit should be given to the assessee. However, in case of exemption and deduction to be given, a stricter approach may be followed, as per catena of judgments of the Supreme Court, to examine whether the assessee is eligible for such benefit. In the present case, there is no factual dispute of goods having been imported from outside the State of U.P. and, therefore, the assessee clearly qualifies for the said benefit. In light of the same, the question of law no. 1 is answered in favour of the assessee and against the Department.

8. In light of the observations made above, the revision application is dismissed.

Order Date :- 23.11.2023
Ashish