Knd Engineering Technologies Ltd. Vs. State of Assam and ors.

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SooperKanoon Citation : sooperkanoon.com/127985

Court : Guwahati

Decided On : Aug-08-2006

Judge : P.G. Agarwal, J.

Appellant : Knd Engineering Technologies Ltd.

Respondent : State of Assam and ors.

Advocate for Pet/Ap. : Dr. A. K. Saraf

Disposition : Petition allowed

Judgement :

P.G. Agarwal, J.

1. Heard Dr. A. K. Saraf, learned Counsel for the petitioner and Mr. Rakesh Dubey, learned Counsel appearing for respondent Nos. 1 and 2. None has appeared for respondents No. 3 and 4 although notices were duly served.

2. The respondent No. 4, Indian Oil Corporation Limited, awarded a contract to respondent No. 3 for piling and civil works at Gauhati Refinery. Thereafter the respondent No. 3 gave sub-contract to the petitioner-company for the above work and the work was executed by the petitioner-company. The respondent No. 3 thereafter wanted to deduct tax at source under Section 27 of the Assam General Sales Tax Act, 1993, from the petitioner-company and this has been challenged in

this writ petition. The interim direction was given on March 23, 2001 restraining the respondent No. 3 from deducting any tax at source and from withholding the payment.

3. The first submission of the learned Counsel for the petitioner is that respondent No. 3 is not a company under the control of the Government and as such in view of the provisions under Section 27(1) (a) of the Assam General Sales Tax Act, 1993, the respondent No. 3 is not entitled to make such deductions. The petitioner claims that respondent No. 3 is a public limited company under the Companies Act, 1956 and as such it is not a company under the control of the Government.

4. The above contention has not been controverted as affidavit-in-opposition has not been filed.

5. Secondly, the learned Counsel submitted that the contract was awarded by respondent No. 4, Indian Oil Corporation Ltd., to respondent No. 3 and respondent No. 4 had collected or deducted the tax at source from the bills of respondent No. 3 and as such so far the State is concerned, it has received its due. Moreover, there was no privity of contract in-between respondent No. 3 and the writ petitioner and there was no transfer of property involved in the sub-contract awarded to the writ petitioner by the respondent No. 3. As regards the transfer of property in goods in-between respondent No. 3 and respondent No. 4, the observations of this Court (D. B.) in the case of Allied Traders v. State of Assam [2002] 1 GLT 482 reported as Arunodoi Constructions Co. (P.) Ltd. v. State of Assam [2002] 127 STC 561 (Gauhati), are relevant.

6. In view of above, we find that respondent No. 3 is not entitled to deduct the tax at source from the petitioner.

7. Accordingly, the [writ petition stands allowed and the writ petition is closed in terms of the interim direction given in March 23, 2001.

8. It is submitted by Dr. Saraf that the amount which is kept by respondent No. 3 may be directed to be released. We ordered accordingly.