District Electrical Engineer Vs. State of Rajasthan

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SooperKanoon Citation : sooperkanoon.com/756355

Court : Rajasthan

Decided On : Mar-15-1984

Reported in : [1987]65STC101(Raj)

Judge : S.C. Agarwal and; S.N. Bhargava, JJ.

Appeal No. : D.B. Sales Tax Reference Nos. 22, 31, 32 and 34 to 44 of 1972

Appellant : District Electrical Engineer

Respondent : State of Rajasthan

Advocate for Def. : K.K. Sharma, Adv.

Judgement :

S.C. Agarwal and S.N. Bhargava, JJ.

1. These references raise common questions for consideration and, therefore, they are being disposed of by a common order. In all these references the following questions have been referred to this Court by the Board of Revenue under Section 15 of the Rajasthan Sales Tax Act, 1954 (hereinafter referred to as 'the Act').

(i) Whether the disposal of coal-ash through auction or contract is incidental or ancillary to the trade of Railways ?

(ii) Whether penalty under Section 16(1)(b) and (c) can be imposed for the periods 1957-58 and onwards when the registration order was passed in the year 1966?

(iii) Whether the realisation of tax on coal-ash would be justified when tax was already realised when the coal was purchased ?

2. The facts lie within a very short compass. During the assessment years 1958-59 to 1964-65, Western Railway had a power house at Ajmer wherein coal-ash was produced as a waste product. The said coal-ash was sold by auction in lots by the District Electrical Engineer of the Western Railway at Ajmer. During the assessment years 1957-58 to 1963-64, coal-ash produced as a waste product was collected and the same was sold by auction in lots by the Divisional Engineer of the Western Railway. The Commercial Taxes Officer held that Western Railway was a dealer in coal-ash for the purpose of the Act and was liable to pay sales tax on the sale of coal-ash. The aforesaid order of the Commercial Taxes Officer was affirmed in appeal by the Deputy Commissioner, Commercial Taxes (Appeals) as well as by the Board of Revenue. Thereupon the aforesaid questions have been referred to this Court. Seven references have been made at the instance of the District Electrical Engineer, Western Railway, Ajmer and seven references have been made at the instance of the Divisional Engineer, Western Railway, Ajmer.

3. Nobody has appeared before us on behalf of the petitioners in these references.

4. We have heard Shri K.K. Sharma, the learned counsel for the Commercial Taxes Department.

5. At the outset it may be pointed out that in so far as questions Nos. (ii) and (iii) are concerned, the said questions cannot be said to arise out of the order of the Board of Revenue dated 2nd August, 1971 inasmuch as the said questions were neither raised before the Board of Revenue nor were they decided by the Board of Revenue. The reference in respect of questions Nos. (ii) and (iii), therefore; incompetent and the said questions cannot be answered.

6. As regards the first question, namely, whether the disposal of coal-ash through auction or contract is incidental or ancillary to the trade of railways, it may be

stated that the said question really involves determination of the question as to whether the Western Railway can be held to be a 'dealer' under Section 2(f) of the Act and whether the sale of coal-ash by the Western Railway can be regarded as 'business' as defined in Section 2(cc) of the Act. It may be mentioned that in Commercial Taxes Officer, Survey and Investigation, Jodhpur v. Divisional Superintendent, Northern Railway, Jodhpur [1980] 45 STC 18 this Court has dealt with the question as to whether the Divisional Superintendent, Northern Railway, Jodhpur, was a dealer within the meaning of Section 2(f) of the Act and was liable to pay sales tax on the sale of coal-ash made by the Northern Railway. This Court has held that the activity of the Railway in selling coal-ash must be held to be a business within the definition of the term 'business' as the said term has been defined in Section 2(cc) of the Act. This Court has further laid down that the Northern Railway fell within the definition of 'dealer' as defined in Section 2(f) of the Act in relation to the transaction of sale of coal-ash by it. In the said case this Court has placed reliance on the decision of the Supreme Court in District Controller of Stores, Northern Railway, Jodhpur v. Assistant Commercial Taxation Officer [1976] 37 STC 423 (SC) wherein it has been held that the activity of the Railway involved in selling unserviceable material and scrap-iron, etc., would be business as defined in the Act and that the Railway, since it is concerned in the activity of transportation, is engaged in commerce within the meaning of Clause (i) of the definition of 'business' and that the sale of unserviceable materials and scrap-iron, etc., by it is a transaction in connection with or ancillary to such commerce within Clause (ii) of the said definition and that the said activity was a part of the business as defined in Section 2(cc). In view of aforesaid decision of this Court in Commercial Taxes Officer, Survey and Investigation, Jodhpur v. Divisional Superintendent, Northern Railway, Jodhpur [1980] 45 STC 18 and the decision of the Supreme Court in District Controller of Stores, Northern Railway, Jodhpur v. Assistant Commercial Taxation Officer [1976] 37 STC 423 (SC), it must be held that the disposal of coal-ash by auction or contract is incidental or ancillary to the trade of Western Railway and the Western Railway has been rightly held liable to pay sales tax on the sales of coal-ash. Question No. (i) referred by the Board of Revenue must, therefore, be answered in favour of the department and against the petitioners.

7. In the result question No. (i) is answered in the affirmative and questions Nos. (ii) and (iii) are returned unanswered for the reason that the reference in relation to the aforesaid questions was incompetent. There will be no order as to costs.