IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Misc. Civil Application (Restoration) No.1284 of 2017
In
Sales Tax Application No.01 of 2006
[The Commissioner of Sales Tax, Maharashtra State, Mumbai v. M/s. Dana Minerals, Chandrapur]

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's order	Court's or Judge's orders

Smt. K.S. Joshi, Assistant Government Pleader for Applicants.

Coram : R.K. Deshpande & M.G. Giratkar, JJ.
Date : 6th February, 2018

Misc. Civil Application (Restoration) No.1284 of 2017 :

1. For the reasons stated in the application, we are satisfied that a sufficient cause is made out for restoration of Sales Tax Application No.01 of 2006.

2. Hence, the Misc. Civil Application is allowed, and Sales Tax Application No.01 of 2006 is restored to file.

3. The Misc. Civil Application stands disposed of.

Sales Tax Application No.01 of 2006 :

1. Heard Smt. Joshi, the learned Assistant Government Pleader appearing for the applicant.

2. This application seeks reference of the question for the decision of this Court.

3. On 23-3-2007, this Court passed an order, admitting the application and framing the questions of law as under :

> *"1. Whether on the fact and in the circumstances of the case, is the Tribunal justified in law in holding that the transportation charges for transporting minerals supplied by the respondent from the site of the respondent till the place of vendee do not form part of the sale price and therefore, not liable to law?*
>
> *2. Whether on the facts and in the circumstances of the case was the Tribunal justified in directing to delete the consequential interest u/s 36(3)(b) of the Bombay Sales Tax Act and whether the order to rework the liability is justified?"*

4. It is not in dispute that the respondent obtained the Government land on lease from the Revenue Department and extracted the mineral 'Laterite' from the mine and has supplied it to the manufacturers of cement, mainly to M/s. Associated

Cement Co. Ltd., District Chandrapur ["M/s. ACC Ltd."]. There were two separate contracts dated 7-4-1991 – one was for supply of 'Laterite' at the agreed price, and another was for making the arrangement of transportation of 'Laterite' on behalf of M/s. ACC Ltd. from the site of the respondent to the factory of M/s. ACC Ltd., which was also at the fixed rate. The question is whether the expenses incurred by the respondent and reimbursed by M/s. ACC Ltd. for transportation of minerals from the site of the respondent to the factory of M/s. ACC Ltd. can be a part of "sale price", as defined under Section 2(29) of the Bombay Sales Tax Act, 1959, which is reproduced below :

> *"2. **Definitions.***
>
> *In this Act, unless the context otherwise requires,--*
>
> *(29) "**sale price**" means the amount of valuable consideraiton paid or payable to a dealer for any sale made including any sum charged for anything done by the dealer in respect of goods at the time of or before delivery thereof, other than the cost of insurance for transit or of installation when such cost is separately charged;*

5. We have considered the provision of Section 19 of the Sale of Goods Act, 1930 in our decision delivered on 10-10-2017 in Sales Tax Reference No.02 of 2004 [*The Commissioner of Sales Tax, Maharashtra State, Bombay* v. *M/s. Ravi Trading Company, Akola*]. Para 18 of the said decision is reproduced below :

*"**18]** Section 19 of the Sale of Goods Act, 1930 dealing with the property passes when intended to pass, being relevant is reproduced below :*

> *"19. Property passes when intended to pass.--*
>
> *(1) Where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.*
>
> *(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.*
>
> *(3) Unless a different intention appears, the rules contained in sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer."*

The passing of the property in goods depends upon the intention of the parties, as is evident from the terms of the contract, the conduct of the parties, and the circumstances of the case. Under sub-section (3) of Section 19, unless a different intention appears, the rules contained in Sections 20 to 24 are the rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer. It is thus, the transfer of right to use the goods is deemed to be sale of goods, attracting the incidence of tax."

It is thus the transfer of right to use the goods is deemed to be sale of goods, attracting the incidence of tax.

6. In the present case, the transfer of mineral from the respondent to the purchaser was complete at the site of the respondent and separate contract commenced thereafter for transportation of material from the site of the respondent to the factory of M/s. ACC Ltd. The cost incurred for such transportation by the respondent is reimbursed by M/s. ACC Ltd. In our view, the cost of transportation reimbursed in the present case was not a sum charged for something done by the dealer in respect of goods at the time of or before delivery of goods transferring right to use. We, therefore, do not find any fault with the view taken by the Tribunal that the transportation charges, in the facts and circumstances of the present case, cannot constitute "sale price", as defined under Section 2(29) of the Bombay Sales Tax Act, 1959, referred to above.

7. The second question does not survive.

8. For the foregoing reasons, the sales tax application is dismissed.

(M.G. Giratkar, J.) **(R.K. Deshpande, J.)**

Lanjewar