

UTTARAKHAND HIGH COURT

M/s. Iravanshi Builders and Developers Versus The Commissioner, Commercial Tax

No.- Commercial Tax Revision No. 7 of 2014

Dated.- April 23, 2014

Hon'ble Barin Ghosh, C.J. And Hon'ble V. K. Bist,JJ.

For the Petitioner : Mr. B. P. Nautiyal, Senior Advocate assisted by Mr. S. K. Posti

For the Respondent : Ms. Puja Banga, Brief Holder for the State of Uttarakhand

ORDER

Barin Ghosh, C.J. (Oral)

An Application under Section 57 of the Uttarakhand VAT Act, 2005 was filed before the Commissioner to seek an opinion, whether the activities, with which the revisionist is involved, would attract or not attract the provisions of the Uttarakhand VAT Act, 2005. In the Application, it was held out that the business carried on by the revisionist is development of residential complexes. It was held out that the land, upon which, such residential complexes would be constructed belongs to it; it has obtained necessary sanction to construct thereon and that it proposes to sell the constructed area. The Commissioner felt that the said activity is covered by Sub Section (55) of Section 2 of the Uttarakhand VAT Act, 2005 and, accordingly, opined that such activity would attract the provisions of the Uttarakhand VAT Act, 2005. The Appellate Authority has confirmed the said finding of the Commissioner. Hence, this revision.

2. Sub Section (1) of Section 3 of the Act provides as follows:

“Tax shall be levied and charged in accordance with the provisions of this Act on every sale made within the State by a dealer or a person.”

3. Therefore, no sooner a sale is effected, the provisions of the Act will become applicable and, accordingly, tax will be levied. Sale has been defined in Sub Section (40) of Section 2 of the Act, which clearly mentions that sale means any transfer of property in goods. Apropos that, one has to take into account the provisions contained in Sub Section (55) of Section 2 of the Act, which provides as follows:

““Work Contract” include any agreement for carrying out, for cash, deferred payment or other valuable consideration, building, constructing, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any movable or immovable property;”

4. Therefore, sale of goods being a sine qua non for application of the Act, as clarified in Sub Section (55) of Section 2 of the Act, such sale will include an agreement for carrying out construction of immovable property or commissioning of any immovable property. In other words, a person agreeing with another person to make a construction for a valuable consideration will be selling the construction made by him as goods covered by the

Act, but a person, if he sells an immovable property after the same has been constructed, he will not be selling goods attracting the provisions of the Uttarakhand VAT Act, 2005.

5. Therefore, with the clarification as above, we remit back the matter to the Commissioner, who shall find out, what is the object of the business of the revisionist, i.e. whether it is engaged in sale of immovable properties in the form of flats, apartments, etc. or it is undertaking construction of flats, apartments, etc. on behalf of others, and decide the issue on the basis of the law declared as above.

6. With the observation as above, the revision petition is disposed of.