

**Court No. - 10**

**Case :- SALES/TRADE TAX REVISION No. - 257 of 2010**

**Revisionist :- Buldelkhand Engineers**

**Opposite Party :- The Commissioner Commercial Taxes U.P.  
Lucknow**

**Counsel for Revisionist :- Krishna Agarawal**

**Counsel for Opposite Party :- C.S.C.**

**Hon'ble Rohit Ranjan Agarwal,J.**

Heard Shri Krishna Agarawal, learned counsel for the revisionist and Shri A.C. Tripathi, learned Standing Counsel for the State.

This revision has been filed under Section 58 of the U.P. Value Added Tax Act, 2008 (*hereinafter referred to as 'Act of 2008'*) assailing the order passed by the Tribunal dated 7.8.2009 in Second Appeal No.655 of 1994 (89-90). This revision was admitted on 29.10.2021 on the following questions of law :-

*"(1) Whether in view of the judgement of this Hon'ble Court in the case of Indian Sugar and General Engineering Corporation and Indian Railway Construction Co., where the value was bifurcated for supply and erection and the Hon'ble Court held that there is no liability of tax, still the impugned order passed by the Tribunal holding that the applicant is liable to tax is justified?"*

*"(2) Whether in view of the judgement of this Hon'ble Court in the case of Dharmex Pvt. Ltd., where it was held that the goods have been purchased from outside the State of U.P. to be used in execution of works contract, still the levy of tax under the U.P. Trade Tax Act is justified?"*

The short controversy in the present revision is that whether the works contract awarded to assessee for the year 1989-1990

could be divided into two parts i.e. supply of goods and works contract. The Assessing Authority had made an assessment on 31.3.1994 holding that the assessee was liable to pay tax on the works contract which was awarded to it by the Auraiya Gas Power Project, District - Etawah. The assessee challenged the assessment order before the first Appellate Authority, who allowed the appeal in terms of the notification dated 27.4.1987, issued under Section 3(f) of the U.P. Trade Tax Act, 1948 (hereinafter referred to as 'Act of 1948'). The order of the Appellate Authority was confirmed by the Tribunal on the second appeal preferred by the Revenue.

Against the order of Tribunal, Trade Tax Revision No.771 of 2000 was preferred by the revenue before this Court and *vide* order dated 5.8.2008, order of Tribunal was set aside and the matter was remanded to Tribunal to rehear and decide the appeal afresh in light of the observations made by the Court. Post remand, the Tribunal decided the second appeal and allowed the same, *vide* impugned judgment dated 7.8.2009. Hence, the present revision.

Learned counsel for the revisionist submitted that the assessee is not covered under the notification dated 27.4.1987 and he cannot be taxed for the works contract executed as the description of works contract mentioned in the schedule of the notification does not match with the work, which has been awarded to the assessee. He further submitted that the agreement, which was entered between the assessee and the Auraiya Gas Power Project, clearly establishes in Clause 2.4 that the consolidated payment was to be made to the contractor for supply of goods and the works contract, so executed. According to him, there was no division between the work executed by the contractor and the cost of the material supplied.

He then invited the attention of the Court to Annexure-1, which is the work specification/tender executed between the parties, wherein at serial no.2 in column no.3, description of items has been given which not only includes the cost of the material but also the cost of laying the pipes and execution of the work. Column 7 mentions the amount of Rs.9,96,300/- to be paid to the contractor. The total amount of the contractor is Rs. 10,67,517/-.

Shri A.C. Tripathi, learned Standing Counsel, submitted that Tribunal had rightly held that the contract was divisible and the Assessing Authority had rightly taxed on the work contract executed by the assessee. According to him, though the agreement provided for the payment of consolidated amount and there was no division, but the specification of work clearly mentioned and describes between the work to be executed by the contractor as well as the material supplied.

I have heard respective counsel for the parties and perused the material on record.

It is not in dispute that a written agreement was executed between the assessee - revisionist and Auraiya Gas Power Project. Clause 2.4 categorically provided that the cost included the material and the labour for laying pipeline, the work was to be executed by the assessee. Clause 3 read with Clause 3.1 of the Contract mentioned the total value of the contract as Rs.10,67,517/-. The Tribunal had noted the relevant clauses of the agreement in its judgment but relying upon specification of work/tender had segregated the contract awarded to the assessee between the work done by the assessee and the material supplied/purchased for the execution of work contract. Further, the notification dated 27.4.1987 has provided for levying of tax where the works contract has been executed over Rs.1 lakh and

the description has been mentioned in the schedule of the notification.

In the instant case, the agreement, which was arrived between the parties, did not segregate between works contract and the material to be supplied. The agreement specifically provided for the payment of lump-sum money to the contractor for the material as well as the works contract. The interpretation given by the Assessing Authority and Tribunal cannot be sustained in view of the agreement arrived between the parties. The notification dated 27.4.1987 is not applicable in the case of assessee - revisionist.

Considering the facts and circumstances of the case, I find that the finding recorded by the Tribunal as to the segregation of the work done by the assessee, pursuant to the agreement entered between the assessee and the Auraiya Gas Power Project, the order passed by the Tribunal is unsustainable in the eyes of law and the same is hereby set aside.

Revision stands allowed.

The question of law, as framed above, stands answered in favour of the assessee and against the revenue.

**Order Date :- 19.1.2023**  
Rishabh