

CASE NO.:
Appeal (civil) 31 of 1991

PETITIONER:
STATE OF ANDHRA PRADESH & ANR.

Vs.

RESPONDENT:
M/S. RASHTRIYA ISPAT NIGAM LTD.

DATE OF JUDGMENT: 06/03/2002

BENCH:
Shivaraj V. Patil & Bisheshwar Prasad Singh

JUDGMENT:

Shivaraj V. Patil, J.

The only point urged by the learned counsel for the appellants before us is that there was a transfer of right to use the machinery by the respondent in favour of the contractors by collecting hire charges looking to the clauses contained in the agreement. As such it was liable to pay sales tax under Section 5-E of The Andhra Pradesh General Sales Tax Act, 1957 (for short 'the Act'). On behalf of the respondent, the learned senior counsel made submissions supporting the impugned order pointing out to the various clauses contained in the agreement.

Section 5-E reads: -

"5-E. Tax on the amount realized in respect of any right to use goods

Every dealer who transfers the right to use any goods for any purpose whatsoever, whether or not for a specified period, to any lessee or licensee for cash, deferred payment or other valuable consideration, in the course of his business shall, on the total amount realized or realisable by him by way of payment in cash or otherwise on such transfer or transfers of the right to use such goods from the lessee or licensee, pay a tax at the rate of five paise in every rupee of the aggregate of such amount realized or realisable by him during the year;

Provided that no such tax shall be levied if the total turnover of the dealer including such aggregate is less than Rs.1,00,000/-."

(emphasis supplied)

The respondent is owning Visakhapatnam Steel project. For the purpose of steel project, it allotted different works to contractors. The respondent undertook to supply sophisticated machinery to the

contractors for the purpose of being used in execution of the contracted works and received charges for the same. The appellant made provisional assessment levying tax on hire charges under Section 5-E of the Act. The respondent filed writ petition seeking declaration that the tax levied, exercising power under Section 5-E of the Act on the hire charges collected during the period 1988-89, was illegal and unconstitutional. The appellant filed a counter affidavit in the writ petition contending that the respondent was lending highly sophisticated and valuable imported machinery to the contractors engaged in the execution of the project work on specified hire charges; the machinery was given in the possession of the contractor and he was responsible for any loss or damage to it and in view of the terms and conditions contained in the agreement, there was transfer of property in goods for use and on the amounts collected by the respondent as charges for lending machinery attracted tax liability under Section 5-E of the Act.

The High Court after scrutiny and close examination of the clauses contained in the agreement and looking to the agreement as a whole, in order to determine the nature of the transaction, concluded that the transactions between the respondent and contractors did not involve transfer of right to use the machinery in favour of the contractors and in the absence of satisfying the essential requirement of Section 5-E of the Act, i.e., transfer of right to use machinery, the hire charges collected by the respondent from the contractors were not exigible to sales tax. On a careful reading and analysis of the various clauses contained in the agreement and, in particular, looking to clauses 1, 5, 7, 13 and 14, it becomes clear that the transaction did not involve transfer of right to use the machinery in favour of contractors. The High Court was right in arriving at such a conclusion. In the impugned order, it is stated, and rightly so in our opinion, that the effective control of the machinery even while the machinery was in use of the contractor was that of the respondent company; the contractor was not free to make use of the machinery for the works other than the project work of the respondent or move it out during the period the machinery was in his use; the condition that the contractor would be responsible for the custody of the machinery while it was on the site did not militate against respondent's possession and control of the machinery. It may also be noticed that even the Appellate Deputy Commissioner, Kakinada in the order dated 15.11.1999 in regard to assessment years 1986-87 and 1987-88 held that under the terms and conditions of the agreement, there was no transfer of right to use the machinery in favour of the contractor. Although it cannot be said that the appellant was estopped from contending otherwise in regard to assessment year 1988-89, it is an additional factor and circumstance, which supports the stand of the respondent.

In our view, no fault can be found with the order under challenge. In the light of what is stated above this appeal has no merit. Consequently it is dismissed directing the parties to bear their respective costs.

.....J.
(Shivaraj V. Patil)

.....J.
(Bisheshwar Prasad Singh)

March 06, 2002.