

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6680 OF 2009

THE UNION OF INDIA

Appellant(s)

VERSUS

GITA ENTERPRISES & ORS.

Respondent(s)

O R D E R

Heard learned counsel for the parties.

This appeal takes exception to the judgment and order dated 10.01.2008 passed by the High Court of Jharkhand, Ranchi in WP (T) No. 4527 of 2005, whereby the Writ Petition filed by the respondent No.1 for direction to the appellant-railways that it had no authority to deduct the sales tax at source from their bills came to be allowed.

The dispute essentially revolves around the tender conditions offered by Geeta Enterprises/Asansol- Respondent No.1, which is reproduced in paragraph 7 of the impugned judgment as under: -

"7. Both the parties would rely upon clause 16.1 of the terms of the agreement, which read as follows: -

"16. The Tender conditions offered by Gita Enterprises/Asansol are furnished, which read as follows:

S.No.	Tenderer's condition	Railways Remarks
1.	No sales Tax is to be deducted from our on account or final bills or from securities as we are paying the Sales Tax to the bona fide quarry owners at the time of purchasing the ballast.	Proof of payment of Sales Tax should be submitted otherwise Sales Tax will be deducted as per rule.""

The respondents on affidavit had asserted before the High Court in the stated writ petition that the blast stone supplied to the appellant-railways was procured from independent source on payment of sales tax. The vouchers of such procurement were submitted to the competent authority. The competent authority had not disputed the genuineness or the correctness of the said vouchers. Having failed to do so, it was not open to the competent authority to insist for the proof of payment of sales tax by the respondent No.1. This is precisely what the High Court has opined in paragraphs 14 to 16 of the impugned judgment, which read thus:

"14. As admitted by the learned counsel appearing for the respondents, already cash memo, invoice, bill and other things issued by the seller at the time of first sale have been produced and on the basis of the said documents, the clarification had also been sought by the Railways from the Commercial Taxes Officer. When these documents have been produced by the petitioner before the Railways that the transaction has suffered tax even at the first point of sale, the authorities concerned ought to have verified with the Commercial Taxes authorities concerned whether such amount has been deducted and deposited and then taken a decision regarding the deduction. Admittedly this was not done.

15. In our view, onus of the subsequent seller to produce proof of payment of tax at the first sale as contained in clause 16 (1) of the agreement has been discharged by the petitioner on production of the documents to show that already the tax has been collected and deposited. Unless, it is the case of the respondent authorities after thorough verification that there was no first sale and the amount of tax has not been deposited by the seller and the documents produced by the petitioner to establish that there was the first sale are not genuine documents, the Railways are not empowered to make deduction.

16. In view of the above discussion, we come to the following conclusion: -

"Stone Blast is taxable at the first point of sale as per the notification issued by the State Government under section 11(1) of the Act. No sales tax is payable under section 11(2) of the Act on subsequent sale where sales tax is levied at first point of sale.

In the present case, the petitioner produced the original bills and other documents issued by the selling dealer and officials before the Railways. Therefore, in terms of section 11(2) of the Act, no further tax is payable on stone blast. As per the agreement, the petitioner produced the original bill and other documents as proof of payment of sales tax in terms of clause 16(1) of the agreement. Therefore, the Railways had no authority to deduct the sales tax at source, especially when it never disputed the correct of the bills produced by the petitioner before it.""

The view taken by the High Court is just and proper. It needs no interference. The appellant could not have insisted for production of actual payment receipts of sales tax paid by third party - the seller of the goods, from where the same were procured by the respondent No.1 at first point of sale, after recovering the same from the respondent No.1. In that, the seller is responsible to pay the sales tax amount collected from the respondent No.1. The respondent No.1 had no responsibility in that regard.

As a result, we see no reason to interfere in this appeal and the same is dismissed. No order as to costs.

In view of dismissal of this appeal, the appellant shall

release the withheld deducted amount to the respondent No.1 within three months from today along with 6 per cent interest per annum thereon from the date of deduction till its payment.

Pending applications, if any, stand disposed of.

.....J
(A.M. KHANWILKAR)

.....J
(DINESH MAHESHWARI)

New Delhi
December 11, 2019.

ITEM NO.105

COURT NO.7

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 6680/2009

THE UNION OF INDIA THROUGH THE SENIOR

Appellant(s)

VERSUS

GITA ENTERPRISES . & ORS.

Respondent(s)

(CONDONATION OF DELAY IN FILING ON IA 1/2008 FOR ON IA 238/2009 FOR
ON IA 8926/2013 FOR ON IA 67772/2013)

Date : 11-12-2019 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE MR. JUSTICE DINESH MAHESHWARI

For Appellant(s)

Mr. Vikramjit Banerjee, ASG
Mr. Jaydip roy, Adv.
Mr. Nachiketa Joshi, Adv
Mr. P.V. Yogeshwaran, Adv.
Mr. Anshul Gupta, Adv.
Mr. Raj Bahadur, Adv.
Mrs. Anil Katiyar, AOR

For Respondent(s)

Mr. Jagjit Singh Chhabra, AOR
Mr. Saksham Maheshwari, Adv.

Mr. Anil K. Jha, AOR

UPON hearing the counsel the Court made the following
O R D E R

The Civil Appeal is dismissed in terms of the signed order.

Pending applications, if any, stand disposed of.

(DEEPAK SINGH)
COURT MASTER (SH)

(VIDYA NEGI)
COURT MASTER (NSH)

[Signed order is placed on the file]