No TDS on transportation charges reimbursed by buyer if seller is liable to pay such charges to GTA

Summary – The High Court of Calcutta in a recent case of Hightension Switchgears (P.) Ltd., (the Assessee) held that where seller sold goods to assessee (buyer) and under contract of sale it was bound to send goods to buyer and to pay transportation charges to goods transport agency and assessee reimbursed freight component to seller and claimed deduction of same, assessee was not liable to deduct tax at source under section 194C in respect of freight component

Facts

- During the year 2006-07, a seller had sold certain goods to the assessee (buyer). Under the contract of sale, the seller was bound to send the goods to the buyer and to pay the transportation charges to the goods transport agency. It was, however, entitled to recover the transportation charges from the buyer.
- The assessee reimbursed the freight component to the seller and claimed deduction of the same.
- The Tribunal held that the assessee was liable to deduct tax at source as per section 194C in respect of freight component. Since the assessee had failed to deduct tax at source in respect thereof, the lower authorities were justified in disallowing the freight component as per section 40(*a*)(*ia*).
- On appeal to High Court:

Held

- Under the contract of sale, the seller was bound to send the goods to the buyer. The price list goes to show that it was bound to pay the transportation charges to the goods transport agency. It was, however, entitled to recover the same from the buyer. Hence, the assessee has merely reimbursed the cost of transportation incurred by the seller. The question naturally in the facts of the case is as to who was liable to deduct the tax at source.
- From a combined reading of the provisions of section 194C, it would appear that any person responsible for paying any sum to any resident on account of carriage of goods shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to —

  (iii) one per cent in case of advertising,

  (iv) in any other case two per cent,

  of such sum as income-tax on income comprised therein.

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Therefore, the relevant question to be asked is, who was responsible for paying any sum to any resident for carriage of goods. The answer obviously is that it was the seller who was responsible for paying and the seller admits to have done that. Therefore, the liability to deduct tax was that of the seller. In case seller is unable to show that he had made the deduction, section 40(*a*)(*ia*) may be applied to his case but not to the case of the buyer/assessee.

- Even assuming that the supplier in transporting the goods to the assessee acted as an agent of the assessee and the assessee has reimbursed the freight charges to the supplier, who in turn has paid to the concerned transporter as held by the Tribunal is conceptually correct, no other conclusion is possible. The agent being the supplier in the instant case has admittedly paid to the transporter and has also deducted tax at source. When the agent has complied with the provision, the principal cannot be visited with penal consequences. For one payment there could not have been two deductions. Moreover when a person acts through another, in law, he acts himself.
- In view of the aforesaid, the assessee was not liable to deduct tax at source in respect of the freight component. When the assessee was not liable to make any deduction under section 194C, the rigours of section 40(*a*)(*ia*) could not have been applied to it.

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