



UNREPORTED

I-1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **ITA 651/2006**

THE COMMISSIONER OF INCOME TAX, DELHI-II Appellant
 Through: Mr. Sanjeev Sabharwal, Advocate

versus

M/S. M.M.T.C. LTD. Respondent
 Through: Mr. Ajay Vohra, Ms. Kavita Jha,
 Ms. Akansha Aggarwal and
 Mr. Somnath Shukla, Advocates

% DATE OF DECISION: September 20, 2010

CORAM:**HON'BLE MR. JUSTICE A.K. SIKRI****HON'BLE MS. JUSTICE REVA KHETRAPAL**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

A.K. SIKRI, J. (ORAL)

1. Notice in this appeal was issued limited to question No.(c) which pertains to allowing loss of ₹ 5.90 crores claimed on account of expenses/payment made by the assessee.

2. The Department of Fertilizers, Ministry of Chemicals and



undertaking. PPL, in turn, entered into Memorandum of Understanding (MoU) with the respondent assessee/MMTC, which is also a public sector undertaking. Vide this MoU, PPL appointed MMTC as its consignment agent to make necessary arrangements for the clearance of the cargo, bagging of material and dispatch to upcountry godowns/distributors in various States as per the allocation of Department of Fertilizers on behalf of PPL. This agreement specifically provided that the MMTC would practically be in the total possession of the goods right from the moment the vessel is on the high seas. To safeguard the financial interest of PPL, MMTC was required to pay, as a security, the costs of goods and all dues to the other agencies such as port authorities, etc. Further obligation was cast upon MMTC to open a Letter of Credit in the name of Department of Fertilizers and also on behalf of PPL. Agreement also provided that on receipt of sale note from PPL, MMTC would hold the title over the above material and thereafter it shall dispose of the material through its own distributors in the concerned States as per the guidelines of Government of India/State Government. The liability arising out of this contract was also of the MMTC.

3. It is in the execution of the aforesaid contract/MoU that the MMTC/assessee suffered losses to the extent of ₹ 5.90 crores, which was claimed as loss. The ITAT has allowed the same, as it found that



were suffered. Para 13 to 17 and 21 of the MoU are relevant for this purpose and are reproduced below:-

“13. *That on receipt of sale note from PPL, MMTC shall hold the title over the above material and thereafter MMTC shall dispose off the above material through their distributors in the concerned states as per the guidelines of the GOI/State Govt.*

14. *That it has been agreed upon between PPL and MMTC that the terms and conditions as prescribed in the tender format (as amended from time to time) by the DOF, Ministry of Chemicals & Fertilizers for handling and distribution of imported UREA during 95-96 vide their letter No. 1-1/95/FA-Urea dated 16.3.95, a copy of which was also handed over at the time of discussions shall be applicable to MMTC on back to back basis. In case DOF instruct PPL not to operate through consignment agent i.e. MMTC, PPL would have its right to discontinue this arrangement after the completion of vessel already under discharge without assigning any reason thereof.*

Any liability arising out of this contract shall be to the account of MMTC. In case, at any stage, PPL has incur any expenses, the same shall be made good to PPL by MMTC.

15. *That any demurrage to the vessel, shortage of the material in the vessel/ports, if any, shall be to the account of MMTC.*

16. *That any demurrage payable to Railways on account of delay/detention in railway wagons at the loading port or at the destination end shall be on MMTC's account.*

17. *That any liability arising out of this contract with regard to payment of CST/SST at any point of time during the currency of the contract or afterwards till the assessment is finalized shall be to the account of MMTC. Further as per rules prevailing in the states of*



giving tax paid invoices to MMTC in the states where product is taxable at first point of sale.

21. *MMTC would pay to PPL a service charges of ₹ 7.5/- PMT for the quantities handled at each port on ship to ship basis.”*

4. It is clear from the above that on the execution of the aforesaid MoU, it is the MMTC who assumed the entire responsibility for the execution of the said contract and for disposal of the stocks which were to be imported. Entire amount in that behalf right from beginning, i.e., from the stage of payment of security, opening the Letter of Credit, incurring the other expenses including taxes, Central sales tax, State sales tax, etc. were to be borne by the MMTC and the ultimate liability of the contract was also assumed by the MMTC. In these circumstances, the view taken by the ITAT that it is the assessee who had taken over the contract and suffered the losses therein cannot be faulted.

5. We are of the opinion that no question of law arises. Dismissed.

A.K. SIKRI, J.

REVA KHETRAPAL, J.

SEPTEMBER 20, 2010

km