(2015) 07 AHC CK 0160

In the Allahabad High Court

Case No : Civil Misc. Writ (Tax) Petition No. 1338 of 2011

Agarwal Paper Mart — APPELLANT

Vs

Additional Commissioner, Grade-I, Commercial Tax and Others — RESPONDENT

Date of Decision : 20-07-2015

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 21, 21(2)

Citation : (2015) 7 ADJ 671

Hon'ble Judges : Tarun Agarwala, J;Surya Prakash Kesarwani, J

Bench : Division Bench

Advocate : Suyash Agrawal, for the Appellant; C.B. Tripathi, Advocates for the Respondent

Final Decision : Allowed

Judgement

1. We have heard Sri Suyash Agrawal, learned counsel for the petitioner and Sri C.B. Tripathi, learned Standing Counsel for the State. The present dispute relates to reassessment proceeding for the assessment year 2005-06. The facts leading to the filing of the writ petition is, that the petitioner is a proprietorship firm carrying on the business of purchase and sale of paper for the Assessment Year 2005-06. The books of account of the petitioner was assessed under the U.P. Trade Tax Act as well as under the U.P. Entry Tax Act. The petitioner imported paper under Form-38. The assessing officer accepted the imported paper under the Entry Tax Act as "paper" and charged entry tax @ 5%. The Assessing Officer under the U.P. Trade Tax Act also accepted the petitioner''s contention that he had imported paper and accordingly charged tax @ 5% and indicated in the assessment order that in view of the notification, the petitioner was entitled for a rebate on the paper so imported by him.

2. Subsequently, a notice under Section 21(2) of the U.P. Trade Tax Act was issued on 21st July, 2011 holding that the Assessing Officer has reasons to believe that the "tissue paper" purchased by the petitioner was not a paper in

view of the decision of the Karnataka High Court in the case of M/s. Super Market v. State of Karnataka and, therefore, "tissue paper" should be taxed as an unclassified item @ 10% instead of 5%. The petitioner filed his objections which was duly considered and rejected. The Additional Commissioner after considering the matter, passed the impugned order granting permission to the Assessing Officer to reopen the assessment proceeding based on which reassessment proceedings was initiated against which the present writ petition has been filed.

3. The learned counsel for the petitioner submits that the judgment of the Karnataka High Court is not applicable in the instant case inasmuch as the entry of "paper" and "tissue paper" is totally different and distinct under the Karnataka Sales Tax Act from the entries given under the U.P. Trade Tax Act. It was contended that the foundational requirement for reopening the assessment proceeding was lacking and was based on the judgment of Karnataka High Court which was not applicable. It was contended that it was a clear case of change of opinion which could not be done as per the settled law propounded by this Court as well as by the Supreme Court of India.

4. On the other hand, Sri C.B. Tripathi, the learned counsel for the State submits that the rebate had wrongly been obtained by the petitioner in the assessment proceeding which was against the notification dated 7th March, 2005, and therefore, the Assessing Officer was justified in initiating re-assessment proceeding under Section 21 of the U.P. Trade Tax Act.

5. Having heard the learned counsel for the parties, we find that in the case of M/s. Super Market v. State of Karnataka, decided by the Karnataka High Court, a copy of which has been annexed as Annexure 12 to the writ petition, the relevant entry which was relied by the said assessee is extracted hereunder:

"Sl. No. 125- All kinds of paper including carbon paper, blotting paper, water proof paper, PVC coated paper, ferro paper, ammonia paper, stencil paper but excluding paper falling under serial number 55, pulp boards, art boards, duplex boards, triple boards, card boards, corrugated boards, and the like, cellophane."

6. The Karnataka High Court while interpreting the said entry, held that paper napkin does not fall Serial No. 125 and that paper has to be understood in popular parlance as is used for writing, or printing, or packing, or drawing, or for decorating.

7. In the instant case, the entry relied upon by the petitioner is entry No. 1172 provided in U.P. Trade Tax Act Notification dated 7.3.2005 which is extracted hereunder:

"Paper of all kinds including (gum tape) whether meant for writing, printing, copying, packing or for any other purpose excluding cellophane, mill board, duplex board and grey board."

8. A perusal of the Notification indicates that it is a very vide Notification which includes paper of all kinds including gum tape and which would be used for any

other purpose other than writing, copying or packing. The words "any other purpose" will also include "tissue paper" which the petitioner has imported from outside the State of U.P..

9. In the light of the aforesaid, we are of the opinion that "tissue paper" would be included under the Entry No. 1172 notified under the U.P. Trade Tax Act. Consequently, we are of the opinion that the Assessing Officer did not apply its mind and it was only a case of change of opinion which is not permissible.

10. Consequently, the order dated 24th August, 2011 passed by the Additional Commissioner Grade-I, Commercial Tax, Agra Division, Agra granting sanction to reopen the assessment proceeding under the U.P. Trade Tax Act for the assessment year 2005-06 is wholly illegal and is quashed. As a result of the aforesaid, the notice dated 25th August, 2011 issued under Section 21 of the Act issued by Deputy Commissioner, Commercial Tax, Agra is also quashed. The writ petition is allowed.

