(2011) 08 AHC CK 0011

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No. 797 of 2004

Ajay Trading Co. — APPELLANT

Vs

Commissioner, Trade Tax, U.P., Lucknow — RESPONDENT

Date of Decision : 24-08-2011

Acts Referred:

Citation : (2012) 54 VST 495

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Kunwar Saksena, for the Appellant;

Final Decision : Allowed

Judgement

Arun Tandon, J.—Heard Sri Kunwar Saksena, learned counsel for the assessee and learned standing counsel for the Department. The assessee by means of the present trade tax revision challenges the order of the Trade Tax Tribunal dated January 5, 2004 passed in Second Appeal No. 58 of 2003 (assessment year 2000-01) wherein the waste product, namely, fibre glass sheet cuttings were sold to the manufacturers of helmet, roofing sheet, toys, bambar auto-light cover, washing machine and cooler body, etc.

2. According to the assessee, the goods so sold were covered by entry 29 of the Notification dated February 17, 2000 and therefore, taxable at the rate of five per cent.

3. According to the Department, the assessee was a dealer and he was not a manufacturer himself. The goods sold by him were unclassified and even otherwise, not a waste product, for the purchaser, as they had used the same for manufacturing of the items referred to above. It has therefore, rightly been held by the Tribunal that the goods are not covered by entry 29 of the notification dated February 17, 2000. Accordingly, tax at the rate of 10 per cent as applicable to unclassified goods is justified.

4. I have considered the submissions made by the learned counsel for the parties and have examined the records of the present trade tax revision.

5. The Trade Tax Tribunal under the impugned order has accepted the contention raised on behalf of the Department and has come to a conclusion that the fibre glass sheet cutting sold by the assessee cannot be said to be of no value, in any case, the goods, as sold by the assessee, had value at the hands of the manufacturer of the items referred to above. Therefore, the goods sold cannot be said to be waste products covered by entry 29 of the notification dated February 17, 2000. Since the goods are not classified, they are liable to tax at the rate of 10 per cent.

6. A Division Bench of this court in the case of J & J Enterprises, Saharanpur v. Commissioner, Trade Tax reported in [1996] 102 STC 51 (All); [1996] UPTC 471 has examined the issue with regard to the discretion between a "waste product" and "waste material". The Division Bench in paragraph 10 of the said judgement has clarified that waste product is a product that has gone waste in the manufacturing process or in other words what becomes waste for the manufacturer during the manufacturing process. The Division Bench in paragraph 13 has proceeded to hold that waste products of a manufacturer sold to another manufacturer either directly or through an intermediary will continue to retain the original character of waste product.

7. For appreciating the controversy, it would be worthwhile to reproduce entry 29 of notification dated February 17, 2000 which reads as follows :

8. Definition of "waste products" as per entry 29 has been considered by the Division Bench in the case of J & J Enterprises [1996] 102 STC 51 (All); [1996] UPTC 471. In paragraph 10 of the said judgement after referring to various definitions as contained in the dictionaries, it has been held as follows (page 53 in 102 STC) :

10. From the meaning of the words ''waste product'' as given in the above dictionaries, it appears, that waste product is a product that has gone waste in the manufacturing process or in other words what becomes waste for the manufacturer during the manufacturing process.

9. The Division Bench in the case of J & J Enterprises [1996] 102 STC 51 (All); [1996] UPTC 471, in paragraph 13, has thereafter proceeded to hold that the waste products of a manufacturer sold to another manufacturer either directly or through an intermediary will continue to retain the original character of waste products.

10. In view of the law laid down by the Division Bench of this court in the case of J & J Enterprises [1996] 102 STC 51 (All); [1996] UPTC 471, the sale of waste product of a manufacturer, i.e., "fibre sheet glass cuttings" by the assessee would be a sale by a intermediary to the other manufacturer of helmet, roofing sheet, toys, bambar auto-light cover, washing machine and cooler body, etc. The

goods, i.e., "waste product" will not lose its original character of being a waste product. Therefore, the Trade Tax Tribunal is not justified in recording a finding that the goods sold by the assessee were not covered by entry 29 of notification dated February 17, 2000. In view of the aforesaid, the order of the Trade Tax Tribunal dated January 5, 2004 is quashed. The present trade tax revision is allowed.