
(2014) 04 AHC CK 0183

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No. 194 of 2004

Ajudhiya Distillery

APPELLANT

Vs

Commissioner of Trade Tax

RESPONDENT

Date of Decision : 01-04-2014

Acts Referred:

Central Sales Tax Act, 1956 — Section 2(h), 2(i), 2(j), 8(2A)

Citation : (2014) 73 VST 389

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Bharat Ji Agrawal, Senior Advocate assisted by Shubham Agarwal and Gaurav Mahajan, Advocate for the Appellant

Judgement

Sudhir Agarwal, J.—Following questions of law are involved in this matter, which have been pressed by Sri Bharat Ji Agrawal, learned senior advocate assisted by Sri Shubham Agarwal, learned counsel appearing for the revisionist:

(i) Whether the Tribunal was justified in exempting inter-State sales of rectified spirit and denatured spirit along with export duty?

(ii) Whether the export pass fee payable by ex-U.P. purchaser on purchase of denatured spirit from distillery is liable to be included in the taxable turnover of the revisionist/assessee?

Sri Bharat Ji Agrawal, learned senior advocate, assisted by Sri Shubham Agarwal, learned counsel appearing for the assessee and learned standing counsel appearing for the Revenue, agreed that so far as question No. 1 is concerned, it has already been answered against assessee and in favour of Revenue by a Division Bench of this court in its judgment dated February 19, 2014 in Sales/Trade Tax Revision No. 1238 of 1989 Commissioner of Sales Tax Vs. Upper Doab, Sugar Mills Ltd., and other connected matters, while answering three questions referred to Division Bench, as under (pages 346 and 347 in 69 VST):

"(1) United Provinces Sales of Motor Spirit, Diesel Oil and Alcohol Taxation Act,

1939 is a "sales tax law" within the meaning of section 2(i) of the Central Sales Tax Act, 1956. The alcohol being taxable under the 1939 Act, payment of Central sales tax on inter-State sale of alcohol was not exempted as per provisions of section 8(2A) of the 1956 Act even though there was general exemption u/s 4 of the 1948 Act.

(2) The judgment of learned single judge in Oudh Sugar Mills Ltd. Vs. Commissioner of Sales Tax, does not lay down the correct law. The other three judgments of the learned single judges as noted above taking the same view following the judgment of Oudh Sugar Mills Ltd. Vs. Commissioner of Sales Tax, also for the same reasons are disapproved.

(3) The Tribunal fell in error in taking the view that the assessee was not liable for payment of Central sales tax on the inter-State sale of alcohol. The orders of the Tribunal impugned in these revisions are hereby set aside."

2. In view thereof, question No. 1 is answered against the assessee and in favour of the Revenue.

3. So far as question No. 2 is concerned, it is also covered by a Division Bench judgment of this court in Hindustan Sugar Mills Ltd., Kheri v. State of U.P. [2007] UPTC 622 and earlier single judge judgment of this court in Commissioner of Trade Tax v. Rampur Distillery and Chemicals Ltd., Rampur [2005] UPTC 538.

4. In Hindustan Sugar Mills Ltd. [2007] UPTC 622, in paras 11 and 12 of judgment, this court said as under:

"11. The liability for payment of export pass fee is that of the ex-purchaser and not on the distillery from where denatured spirit and special denatured spirit is to be exported. The amount of export pass fee, which is paid by the ex-U.P. purchaser, cannot be treated as part of the turnover of the petitioner's company. Since it has neither received nor it was receivable by the petitioner in respect of the sales of denatured spirit and special denatured spirit and it cannot be treated as the sale price or turnover as contemplated u/s 2(j) and 2(h) of the Central Sales Tax Act.

12. In the instance case, it is the admitted case of the parties that the amount of export pass fee was paid by the ex-U.P. purchaser for the purchase of denatured spirit and special denatured spirit from the petitioner. Thus the person who is exporting the denatured spirit and special denatured spirit is not liable to pay the export pass fee on denatured spirit and special denatured spirit and the same is to be paid by the persons who purchase the same from the petitioner. The said amount of export pass fee cannot be included in the turnover of the petitioner."

5. In earlier single judge judgment in Commissioner of Trade Tax v. Ram-pur Distillery and Chemicals Ltd. [2005] UPTC 538, in para 7, the court said:

"7. So far as export pass fee is concerned, it is the liability of the exporter to pay while getting the export permit. Dealer has neither realised the export pass fee

from its customer nor it was paid by it, there was no liability of payment of export pass fee on the dealer under the Excise Act. In these circumstances, there was no question of treating the export pass fee as part of the turnover. First appellate authority as well as the Tribunal have rightly deleted the addition. I do not find any error in the order of the Tribunal which requires no inference by this court."

6. In view of the above, question No. 2 is answered in favour of the assessee and against the Revenue. In the result, the revision is partly allowed. The judgment of the Tribunal, impugned in this revision, to the extent as above, is hereby set aside. The matter is remanded to the Tribunal to pass consequential order in the light of what has held above and in accordance with law. No costs.