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(2004) 04 AHC CK 0063

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No''s. 332, 333 and 334 of 1989

Amar Deep Oil Extraction APPELLANT

Vs

Sales Tax Officer (A) RESPONDENT

Date of Decision : 02-04-2004

Acts Referred:
Central Sales Tax Act, 1956 — Section 21, 22, 3A, 3D, 4

Citation : (2004) 04 AHC CK 0063

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : Sunil Gupta, for the Appellant;

Final Decision : Dismissed

Judgement

M. Katju and R.S. Tripathi, JJ.—These three writ petitions involve common questions of law and fact, and hence are being disposed off by a common judgment.

Heard learned counsel for the parties.

2. The petitioner carries on a business of de-oiled cake of Neem, Mahuwa and Groundnut. The dispute relates to the question of Sales Tax (now known as Trade Tax) on sale of the above products during the assessment years 1981-82, 1982-83 and 1983-84. The sales of the above products were held to be exempt from sale tax relying on the judgment of a learned Single Judge of this Court in C.S.T. v. Amur Jyoti Industries 1986 U.P.T.C. 391, copy of which is Annexure-2 to the petition. True copy of the assessment orders under the U.P. and Central Sales Tax Act are Annexures- 3 and 4 to the writ petition.

3. Subsequently the impugned notice dated 10.2.1989 u/s 22 of the U.P. Sales fax Act was issued, copy of which is Annexure-1 to the writ petition. A similar notice was issued for all the three assessment orders in question. It is this notice which has been challenged in this petition.

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4. Learned counsel for the petitioner submitted that the impugned notice u/s 22 of the Act was invalid because there was no error apparent on the record for issuing such a notice. He has also pointed out that against the judgment of the learned Single Judge of this Court in C.S.T. v. Amar Jyoti Industries (supra) an SLP was filed in the Supreme Court which has been rejected (vide Annexure-5 to the writ petition).

Counter and rejoinder affidavits have been filed and we have perused the same.

5. By Notification No. 911 dated 31.3.1956 and Notification No. 3471 dated 16.7.1956 oil cake was exempted u/s 4 of the Act. Subsequently by Notification No. 2994 dated 3.4.1975 u/s 4 of the Act, the following entry was substituted by amending Notification No. 911 dated 31.3.1956:

"Cattle Fodder including Green Fodder, Chuni, Bhusi, Chilka, Chokar, Gowar, but not including Khali (Oil Cake), Rice Polish, Rice Husk."

6. By another Notification No. 2995 dated 3.4.1975 ''oil cake'' was made liable to tax @ 2% u/s 3-D of the Act. Thus two Notifications i.e. Notification No. 2994 and 2995 were simultaneously issued on 3.4.1975 by which oil cake was taken out of the Exemption Notification and the same notified to be taxable @ 2%.

7. Thereafter by Notification No. 8447 dated 1.10.1975 (entry at Sl.No. 5) u/s 3-D of the Act ''oil cake'' including de-oiled cake was notified to be liable to tax @ 4%.

8. By Notification No. 5787 dated 7.9.1981 u/s 3-D of the Act (entry at Sl.No. 13) ''oil cake'' was continued to be made liable to tax @ 4%.

9. Later by vide Notification No. 3712 dated 5.6.1985 u/s 3-D of the Act, ''de-oiled cake'' was excluded from the entry ''oil cake''.

10. From the above facts it appears that prior to Notification No. 2994 and 2995 dated 3.4.1975 oil cake was exempted, but vide aforesaid Notification No. 2995 dated 3.4.1975 it was made liable to tax @ 2%. Although oil cake includes de-oiled cake, but to clarify this position the aforesaid Notification No. 8447 dated 1.10.1975 was issued which specifically provided ''oil cake'' (including de-oiled cake) to be liable to tax @ 4%. Since then the taxability on de-oiled cake is continuing, which fact is further evident from specific Notifications No. 5787 dated 7.9.1981 and 3712 dated 5.6.1985.

11. Since the period of assessment involved in the instant writ petitions are assessment years 1981-82, 1982-83 and 1983-84, they are governed by Notification No. 5787 dated 7.9.1981 with regard to taxability of oil cake. Hence non imposition of tax on the transactions of de-oiled cake by the assessing authority in the assessment orders for these assessment years was, in our opinion a mistake apparent on the record and as such rectifiable u/s 22 of the Act. Hence the impugned notices are valid.

12. As regards the dismissal of the SLP against the judgment of the learned

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Single Judge of this Court in C.S.T. v. Amar Jyoti Industries (supra) it is well settled that dismissal of an SLP does not amount to merger vide Caryaire Equipments India Pvt. Ltd. v. Ministry of Finance 2004 U.P.T.C. 252 which has followed the decision of the Supreme Court in Kunhayammed and Others Vs. State of Kerala and Another, . It may be noted that the order dismissing the SLP (Annexure 5 to the petition) does not give reasons.

13. In C.S.T. v. Agra Belling Works 1987 U.P.T.C. 850 the Supreme Court has held that when after a notification granting exemption from liability, a subsequent notification u/s 3-A of the U.P. Sales Tax Act prescribes the rate of tax, it is beyond doubt that the intention is to withdraw the exemption and make the sale liable to tax at the rate prescribed. It is not necessary that a notification of recall of the exemption must be issued for imposing the tax.

14. The same view has been taken by the Supreme Court in Sales Tax Officer, Sector IX, Kanpur Vs. Dealing Dairy Products and another,

14. In Narain Chemical Industries v. Sales Tax Officer 1970 U.P.T.C. 605 a division Bench of this Court held following the earlier division Bench decision in C.S.T. v. Rohilkhand Glass & Syndicate Works (1969) 24 S.T.C. 413 SC that a mistake in applying the rate cannot be corrected u/s 21, but can be corrected u/s 22 of the U.P. Sales Tax Act.

15. Thus there is a difference between Sections 21 and 22 of the U.P. Sales Tax Act (now known as U.P. Trade Tax Act). The limitations in Section 21 are not contained in Section 22. A similar view was taken in the analogous provision in the Income Tax Act by the Supreme Court in M.K. Venkatachalam, I.T.O. and Another Vs. Bombay Dyeing and Mfg. Co., Ltd.,

16. Following the said decisions we find no merit in these writ petitions and they are all dismissed.

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