(2010) 09 UK CK 0137

In the Uttarakhand High Court

Ashok Kumar APPELLANT

Vs

State of Uttarakhand and Others RESPONDENT

Date of Decision : 01-09-2010

Acts Referred:
Constitution of India, 1950 — Article 226
Uttarakhand Value Added Tax Amendment Act, 2008 — Section 2(42)

Citation : (2010) 09 UK CK 0137

Hon'ble Judges : B.S. Verma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.S. Verma, J.—By means of this petition, under Article 226 of the Constitution of India, the petitioner has sought a writ, in the nature of certiorari to quash the Circular dated 18-03-2009 (Annexure No. 1 to the writ petition) and letter No. 172/XXVII/AA. SA.V./2009, dated 06-03-2008 (Annexure No. 2 to the writ petition. Further prayer was also made to issue a writ, order or direction in the nature of mandamus declaring the above impugned Circular dated 18-03-2009 and letter dated 06-03-2008, inconsistent against the Uttarakhand Value Added Tax, 2005.

2. Brief facts giving rise to this petition, are that the petitioner is a registered dealer with the Commercial Tax Department and dealing in sale and purchase of agriculture produce as commission agent or Arhatiya. Being a commission agent, he is also registered with Krishi Utpadan Mandi Samiti as per the provision of U.P. Krishi Utpadan Mandi Adhiniyam, 1964 and rules thereof. He use to pay the market fee on the transactions of sale of specified agriculture produce in the market area at such rates, being not less than one percentum and not more than two and half percentum of the price of the agriculture produce sold, as the State Government may specify by notification, and development cess which shall be payable on such transactions of sale at the rate of half percentum of the price of the agriculture produce sold, under the provisions of Section 17(iii)(b) of U.P.

Krishi Utpadan Mandi Adhiniyam, 1964.

3. So far as the facts narrated above are concerned, they are not in dispute.

4. The grievance of the petitioner is that respondent No. 1, State of Uttarakhand through its Principal Secretary Finance, issued a Circular on 18-03-2009 stating therein that the market-fee (Mandi Shulk) is included in Sale Price as defined u/s 2(42) of the Uttarakhand Value Added Tax, 2005, whereas the same is not included in the definition of Sale Price. It is also averred in the petition that the impugned circular was issued by respondent No. 1 after obtaining the advice of Law Secretary, State of Uttarakhand. According to the petitioner, the impugned circular is against the definition of Sale Price, hence liable to be quashed.

5. The respondents contested the writ petition by filing counter affidavit and alleged that definition of ?Sale Price? in the Value Added Tax explicitly mentions ?Tax? and ?Duty/Shulk?. It also mentions the words ?excise duty?, ?special excise duty or any other duty or tax?. The intention of legislature is that any sum charged in the nature of ?tax? ?duty? or ?shulk? should be included in the ?Sale Price?(with the exception of amount of tax charged separately under the Value Added Tax Act). It is also alleged in the counter affidavit that the Mandi Shulk is charged in the sale memo/bill forms which is an integral part of the Sale Price and the same should be included in the sale price for calculation and charging of tax under the Value Added Tax. It is further stated in the counter affidavit that Mandi Shulk is neither cash discount or commission or trade discount nor cost of outward freight or delivery or the cost of installation nor the amount of tax under the Value Added Tax Act, therefore, it is covered by the definition of ?Sale Price?.

6. I have heard Sri H.M. Bhatia, learned Counsel for the petitioner and Sri Sudhir Kumar, learned Brief Holder on behalf of the respondents and perused the record.

7. The only question in the instant writ petition to be decided by this Court is-

Whether the market fee (Mandi Shulk) realized by the Commission Agent or Arhatiya, in the transactions of sale or purchase of agriculture produce, could be the part of ?Sale Price? or not?

8. Learned Counsel for the petitioner has argued that ?Sale Price? include five categories- firstly, amount of valuable consideration received and receivable by the dealer, secondly, any sum charged for any thing done by the dealer in respect of goods at the time or before the delivery thereof, thirdly, excise duty, fourthly, any other duty and fifthly, tax, and according to learned Counsel in none of the above categories of ?Sale Price? market-fee (Mandi Shulk) is included.

9. Learned Counsel for the petitioner further submitted that Commission Agent or Arhatiya collects the Mandi Shulk from the purchaser and he shall be liable to pay the same to the Committee, therefore the fee realized by him from the purchaser cannot be treated as part of the turnover for purposes of levy of sales tax.

10. In support of his above contention learned Counsel has cited before me the case of Anand Swarup Mahesh Kumar Vs. Commissioner of Sales Tax, , and raised emphasis on the contents of paragraph No. 15, which is quoted below:

15. We do not find any substantial difference between Section 21-1 of the Madras Prohibition Act 1937 and Section 17(ii)(b) (1) of the Adhiniyam. Whereas the levy u/s 21-A of the Madras Prohibition Act, 1937 was sales tax payable to the Market Committee and secondly whereas the former provision stated that ? every person or institution which sells foreign liquor?. Shall collect from the purchaser and pay over to the Government??., the latter provision states that ?if the produce is sold through a commission agent, the commission agent may realize the market fees from the purchaser and shall be liable to pay the same to the committee?. The levies in both the cases are statutory although under the Madras Prohibition Act, 1937, it is a tax payable to the Government and under the Adhiniyam, it is a fee payable to the Market Committee which is a statutory body. The only distinguishing feature between the two laws is that whereas the Madras Act provides that every person who sells foreign liquor shall collect sales tax from the purchaser, the Adhiniyam provides that the commission agent may realize the market fees from the purchaser. The use of shall in the former case and of ?may? in the latter case is not of much consequence in so far as the question involved in the present case is concerned, because in both the cases the seller or the commission agent who is liable to pay the tax or the fee, as the case may be, is entitled statutorily to realize it from the purchase and wherever a dealer is authorized by law to do so, the tax or fee realized by him from the purchaser cannot be treated as part of the turnover for purposes of levy of sales tax. The contention of the appellant that market fees payable under the Adhiniyam cannot be include in the turnover of purchases has, therefore, to be upheld.

11. Learned Brief Holder appearing on behalf of the State has urged that Uttaranchal Value Added Tax Act, 2005 (Act No. 29 of 2005) has been amended by Act No. 05 of 2008, and definition of ?Sale Price? has been included u/s 2 Sub-section 42 of the Act and nowhere it has been mentioned therein that market fee collected by the dealer shall be excluded for the purposes of levy of tax. Learned Brief Holder also submitted that plain reading of definition of ?Sale Price? clearly point out towards ?any other duty? which denotes to ?any other shulk? in Hindi version and market fee collected by the dealer/commission agent is covered under this head.

12. Learned Counsel for the petitioner vehemently refuted the above submission of learned Brief Holder and submitted that Hindi version of definition of ?Sale Price? is in conflict with the English version, hence preference should be given to English version and words ?any other duty? in the definition of ?Sale Price? do not cover Mandi Shulk. In support of his contention he has cited before me a Full Bench case of Allahabad High Court, Smt. Ram Rati and Others Vs. Gram Samaj, Jehwa and Others, . In paragraph No. 8 this question was dealt by the Hon?ble

Court and it was concluded that even though U.P. Consolidation of Holdings Act was passed by the State Legislature in Hindi, yet its translation in the English Language shall be regarded its authoritative text and shall prevail over its Hindi version.

13. On this subject, learned Counsel also cited the case of Park Leather Industry (P) Ltd and Anr. v. State of U.P. and Ors., reported in (2001) 3 SCC 135, in which the Hon?ble Apex Court in paragraph 23 has held as under:

23. Even otherwise, our above view is supported by the Hindi version of the definition. As has been set out in the case of Krishi Utpadan Mandi Samiti, it is well known that in U.P. all legislations are in Hindi. Of course an English version is simultaneously published. Undoubtedly, if there is conflict between the two then the English version would prevail. However, if there is no conflict then one can always have assistance of the Hindi version in order to find out whether the word used is ?Chamra?. There can be no dispute that the term ?Chamra? would included ?leather? in all its forms.

14. Therefore, in view of the above cited cases, it is quite clear that where Hindi version is in conflict with the English version then English version shall prevail. But in the instant case I do not find any conflict in the Hindi version and English version. In the definition of ?Sale Price? words ?any other duty? has been mentioned and in Hindi version ^^dksbZ vU; ''kqYd** is denoted. If we see the meaning of word ?duty? in English to Hindi Dictionary, then we find the meaning of word ?duty? as ^^''kqYd**. In this way I do not find any substance in the submission of learned Counsel for the petitioner that the Hindi version of the definition of ?Sale Price? cannot be relied upon. Now there remains no doubt that the words ?any other duty? mentioned in the definition of ?Sale Price? given u/s 2(42) of Uttarakhand (The Uttaranchal Value Added Tax Act, 2005) Amendment Act, 2008, would certainly include market fee within ^^vU; ''kqYd** (?any other duty?).

15. It is also pertinent to mention here that in the definition of ?Sale Price? it has been specifically mentioned that cash discount, commission or trade discount, cost of outward freight or delivery or the cost of installation in case where such cost is separately charged and the amount of tax under this Act, if separately charged by the dealer, shall not include, but nowhere it has been mentioned that market fee (Mandi Shulk) would not be included in the ?Sale Price?.

16. Learned Counsel for the petitioner further contended that a fee cannot be deemed to be a tax. In support of his contention learned Counsel has cited before me the case of Sri Krishna Das Vs. Town Area Committee, Chirgaon, 3 Supreme Court Cases 645. The Hon?ble Apex Court in paragraph 22 of the above cited case has observed that a fee is not ordinarily considered to be a tax. However if the object of the fee is to provide general revenue of the authority rather than to compensate it, and the amount of the fee has no relaltion to the value of the services, the fee will amount to a tax.

17. Therefore, it is quite clear that a fee may be termed as a tax, where the fee is to provide general revenue of the authority rather than to compensate it, and the amount of fee has no relation to the value of the services, the fee will amount to tax. The respondents in their counter affidavit has specifically stated that the Mandi Shulk is charged in the sale memo/bill forms which is an integral part of the Sale Price and the same should be included in the sale price for calculation and charging of tax under the Value Added Tax. It does mean that Mandi Shulk is to provide general revenue of the authority. Therefore, the submission of learned Counsel for the petitioner in this regard is not tenable.

18. So far as the observations made by the Hon?ble Apex Court in the case of Anand Swarup Mahesh Kumar Vs. Commissioner of Sales Tax, Supreme Court 440, (supra) is concerned, as stated earlier, the question before me is to the effect that whether the definition of ?Sale Price? given u/s 2(42) of Uttarakhand (The Uttaranchal Value Added Tax Act, 2005) Amendment Act, 2008, includes the market fee (Mandi Shulk) or not, therefore, the observations of Hon?ble Apex Court cannot be taken into account to solve the controversy before this Court.

19. It will not be out of place to mention here that the petitioner has not challenged the validity of the definition of ?Sale Price? given u/s 2 of Sub-section 42 of the Act, rather he has sought the relief for the quashment of impugned circular, in which the respondent No. 1 has made interpretation to this effect that Mandi Shulk is included in the ?Sale Price?.

20. Therefore, in view of discussion made above, and in the peculiar facts and circumstances of the case, I find that the petitioner is not entitled to get the relief sought by him in the instant writ petition and the same is liable to be dismissed.

21. The writ petition is dismissed.

