(1994) 07 AHC CK 0003

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 178 of 1988

Ashoka Paper Products and Another APPELLANT

Vs

State of Uttar Pardesh and Others RESPONDENT

Date of Decision : 22-07-1994

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 4B

Citation : (1994) 55 ECR 415

Hon'ble Judges : Surya Prasad, J;S.H.A. Raza, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This writ petition has been directed against the show-cause notice issued to the petitioner to show as to why higher percentage of tax to the extent of 8% be not levied on the bituminized paper. This question has cropped up for consideration before the Divisional Bench of this Court in a proceedings u/s 4-B of the U.P. Sales Tax Act in the case of Mahabir Industries, Saharanpur v. State of U.P. and Anr. reported in 1986 U.P.T.C. 369, wherein it was indicated that the "Product is neither paper in appearance, nor can it be used for purpose for which a paper is ordinarily used".

2. But the Hon''ble Single Judge in a case of Mis. Advance Paper Products, Agra v. Commissioner of Sales Tax, U.P. reported in 1992 U.P.T.C. 954, held that the entry No. 68 of the Notification No. 332, dated 15.11.1971 and entry No. 68 of Notification No. 5785, dated 7.9.1981 it was held that "the common parlance meaning or the terms as understood in the commercial parlance is adopted only when the phraseology or the relevant Notification is not clear. The Notifications dated 15.11.1971 and 7.9.1981 use the words "paper of all kinds (including)" and whether meant for writing, printing, copying, packing or for any other purpose". (Emphasis supplied). The words used are "meant for packing or for any other purposes". Thus the entry is wide enough to include all kinds of paper. Simply because the bitumen layer has been laid between two sheets of craft

paper, it does not cease to be paper as has been held as a finding of fact by the Tribunal when it said ''it is not disputed that the product of the dealer is bituminised packing paper'', which is also known as Water-proof packing paper is covered by entry No. 68 of the Notification No. 332, dated 15.11.1971 and the entry No. 36 of Notification No. 5785, dated 7.9.1981 and the said paper is to be taxed at the rate of 5% and 6% for the period of which these two notificates relates".

3. In view of the fact that the said writ petition has been field against the show cause notice, the determination of this question by the Court at this stage is not necessary. It was incumbent upon the petitioner to have filed a reply to show cause notice. Thereafter the matter could have been looked into by the Assessing Authorities, but the petitioner has rushed before this Court before the decision of the Assessing Authorities. Section 9 of the Act provides for filing an appeal. If any of order adverse to a dealer is passed by the Assessing Authority, thereafter there exists a provision for filing a Second Appeal and thereafter a Revision before this Court.

4. We are of the view that the petitioner has not availed the alternative remedy provided to him under the provisions of the Act. Hence this writ petition is dismissed. The petitioner is directed to approach the Assessing Authorities by filing a reply. While passing the final assessment order, the Assessing Authorities would pass appropriate after considering the facts as enunciated in the aforesaid precedents.