(2005) 05 AHC CK 0103

In the Allahabad High Court

Case No : Trade Tax Revision No''s. 13, 14 and 16 of 1998

Cattle Feed Plant, Pradeshik Cooperative Dairy Federation Limited	APPELLANT
Vs	
Commissioner, Trade Tax	RESPONDENT

Date of Decision : 04-05-2005

Acts Referred:
Uttar Pradesh General Clauses Act, 1904 — Section 21
Uttar Pradesh Trade Tax Act, 1948 — Section 11, 4

Citation : (2005) 05 AHC CK 0103

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : Kunwar Saksena, for the Appellant;

Final Decision : Allowed

Judgement

Rajes Kumar, J.—These three revisions u/s 11 of U.P. Trade Tax Act (hereinafter referred to as "Act") hereinafter referred to as "Act") are directed against the order of Tribunal dated 21.10.1997 relating to the assessment years 1986-87, 87-88 and 93-94.

2. In all the cases dispute relates to the taxability of cattle feed, which the applicant had sold in the name of "Parag Pashu Aahar". Tribunal observed that Parag Pashu Aahar is manufactured by mixing molasses wheat makka, rice bran etc. and are not fed in the same form while it is used as tonic alongwith chuni, bhusi, chhilks, chokar, jave etc. to provide the strength. Tribunal upheld the view of the assessing authority levying the tax as an unclassified item.

3. Heard learned counsel for the parties.

4. Learned counsel for the applicant submitted that cattle feed manufactured by the applicant, sold in the name of "Parag Pashu Aahar" was fed by the cattle and had not been excluded from the "cattle fodder" (under the notification). He submitted that Parag Pashu Aahar, which is fed by cattle falls under the category

of "Cattle Fodder" and was exempted from tax. He submitted that cattle feed has been specifically excluded from cattle fodder w.e.f. 10.10.1994 vide notification No. TT-II-3401 dated 10.10.1994 and therefore, prior to 10.10.1994 cattle feed was included in "cattle fodder". In support of his contention, he relied upon the decision of this Court in the case of Omrao Industrial Corporation (Pvt.) Ltd., v. Sales Tax Officer, Kanpur and Anr. reported in 33 STC, 343, the decision of Gujarat High Court in the case of Glaxo Laboratories (India) Ltd. Vs. The State of Gujarat, , Shree Ramakrishna Cattle Feed Manufacturers v. Commercial Tax Officer and Anr. 1990 (76) STC 10 All, C. Rathinam v. State of Tamil Nadu Madras High Court 1995 (98) STC 167 Mad, Ram Chandra Asha Ram Ghaziabad v. Commissioner of Sales Tax, reported in 1996 UPTC, 1328. Trade Tax Revisions No. 1045 of 1996, CTT v. S/S Paras Ram Lachhi Ram, Muzaffarnagar, decided on 03.12.2004 and decision of Apex Court in CST v. Ram Chandra Asha Ram, reported in 2000 UPTC 636 SC. He submitted that the decision of learned Single Judge in the case of CST v. S/S Cattle Feed Plant, Meerut, 2001 STI, 607 and in STR Nos. 588 and 589 of 1989 CST v. S/S Cattle Feed Plant, Meerut 2003 23 NTN 878 are not applicable and are not good law in view of Apex Court decision in the case of CST v. Ram Chandra Asha Ram (supra).

5. Learned Standing Counsel submitted that cattle feed manufactured and sold by the applicant was in concentrated form and was a tonic provided to the cattle alongwith other items, namely, chokar, chuni and bhusi and is not provided as a food to the cattle and, therefore, it is not cattle fodder within the meaning of notification No. ST-II-3714/X-6(1)/85-U.P. Act 15/48, dated 05.06.1985. He submitted that in the case of applicant itself this Court in the case of CST v. Cattle Feed Plant, Meerut, reported in 2001 STI, 607, which has been followed in Sales Tax Revision No. 588 and 589 of 1989, CST v. Cattle Feed Plant, Meerut, reported in 2003 NTN (23) 878 held that Parag Pashu Aahar sold and manufactured by the applicant is not cattle fodder and not exempted from tax.

6. The relevant Notification No. ST-II-3714/X-6(1)/85-U.P. Act 15/48 dated 5.6.1985 reads as follows:-

"10-Cattle fodder including green fodder chuni, bhusi, Chhilka, Chokar, Jave (popularly known as Churjai), gowar, de-oiled cake, de-oiled rice police, de-oiled rice bran or de-oiled rice husk, but not including oilcake (kahali), rice police, rice bran or rice husk."

7. In the case of Glaxo Laboratories (India) Ltd. Vs. The State of Gujarat, . Division Bench of Gujarat High Court has considered the meaning of word "Cattle Feed" in great detail. Division Bench held as follows:

"According to Corpus Juris Secundum, Volume 36, page 631, the said word "as a noun is used as referring to articles to be fed to animals, particularly domestic animals". In Webster''s New Twentieth Century Dictionary (Unabridged), at page 671, several meanings of the word "feed", when used as a noun, are given. The appropriate meanings, as applicable in the context of the use of the said noun in the entries in question, however, are as follows: "(1) food given to animals, fodder; pasture; (2) the customary amount of fodder given at one time; as, to carry on a journey two feeds of oats; and (6) a meal." In the Oxford English Dictionary, Volume IV, at page 130, various meanings of the word "feed" are given and out of them only the following meanings appears to be relevant: "(3) Food (for cattle); fodder, provender; (4) A meal; a sumptuous meal; a feast." It would thus appear that etymologically the word "feed" means animal food or fodder.

The word "cattle-feed" has acquired a precise meaning in the field of live stock farming and so also has the word "concentrates". In the book entitled "Nutritive Values of Indian Cattle Feeds and the Feedings of Animals" by Shri K.C. Sen, which has been published by the Indian Council of Agricultural Research, New Delhi, Chapter I, entitled "Nutrition of Animals", deals with the feeding stuffs of animals. It is there pointed out that food is essential for the maintenance of life. The nutrients in a feeding stuff enable the animal body to maintain energy, to perform the vital processes of life and provide the material to replace the essential tissues breakdown which occurs in the body continuously. Food also provides the constituents and the energy required for body growth. All feeding stuffs are composed of water, and organic and mineral matter. Organic matter is composed of proteins, fats, crude fibre and soluble carbohydrates. Besides the above, there are certain substances known as vitamins, which are considered to be essential for the proper nutrition of farm stock. Of these, the more important ones, from the point of view of cattle nutrition, are vitamins A and D, because these have to be supplied to the animals through their feed; but vitamins B and C can be synthesized in the ruminant body. The learned author proceeds to pint out that the ration of an animal may be divided for convenience into two pars, lone for maintenance ration is that portion of the died which just enables the animal at rest to carry on the essential processes of life, such as breathing and circulation of blood, without either gain or loss of weight. As, however, no animal is kept in a farm in a state of non-production, the requirements for maintenance form only a convenient basis for the calculation of rations for productive purposes. Whatever is supplied to the animal over over and above its maintenance requirement is available for production, such as for growth or fattening, for production of calf, for production of milk or for output of work. These observations contained in a standard book published by the Indian Council of Agricultural Research establish two things: first, that in the context of live-stock, which is not intended to be kept in a state of non-production, food consists not only of that constituent which is essential for the maintenance of life but also of the other constituents which provide the energy required for production, be it the production of calf, or milk or output of work and, secondly, that vitamins are considered essential for the proper nutrition of farm stock and some of the vitamins like vitamins A and D have to be supplied to the animals through their feed. If this concept of cattle-feed is borne in mind, it would become immediately clear that the said expression is not understood by the people conversant with the rearing of live-stock as merely consisting of ration for maintenance but also as comprehending ration for production purposes.

Reference may also be made in this connection to Encyclopaedia Britannica, Volume 9, page 144, where the subject "Feed Animal" has been dealt with. It has been observed there that the materials on which animals are fed differ widely in chemical composition and nutritive value. For convenience they are divided into two general classes; concentrates and roughages. Concentrates include a large variety of feeds that have a high value because they are rich in easily digested nutrients, such as starch, fat and protein, and are low in fibre, or woody material, which is not well-digested. Roughages have a much lower value because they are relatively high in fibre and contain less of the more digestible nutrients. Good nutrition is necessary if animals are to be able to maintain health and produce satisfactory amounts of milk, eggs, meat, wool or work. Animals require each day food furnishing sufficient amounts of protein; energy, chiefly supplied by the carbohydrates and fat; essential minerals; and vitamins. Plenty or water and air are also needed. Dealing in detail with the role of vitamins in animal feed, the learned authors have pointed out that the numerous scientific discoveries concerning vitamins had a profound effect upon live-stock farming by increasing the efficiency of animal production and preventing serious nutritional diseases. Vitamin A, which is required for growth, reproduction, milk production and even for the maintenance of mature animals, is most apt to be lacking in live-stock feeds. A serious deficiency of this vitamin makes animals especially subject to diseases of the respiratory tract and they often die of pneumonia. Next to vitamin A, attention is given to vitamin D in live-stock feeding. This vitamin is needed to enable animals to assimilate and use the minerals, calcium and phosphorus. A deficiency of this vitamin causes serious bone disease such as rickets in young growing animals. Because poultry have especially high vitamin D requirements, special vitamin D supplements are included in their rations, particularly under winter conditions, or when they are confined away from the direct sunlight. This analysis of animal feeds also establishes two things; first, that amongst the materials on which animals are fed are included concentrates which include a wide variety of feeds that have a high value and, secondly, that in order that animals are able to maintain health and produce satisfactory amounts of milk, eggs, meat, wool or work they require sufficient amounts inter alia of vitamins including vitamins A and D, some of which are lacking in the traditional live-stock feed.

Reference may be made next to McGraw-Hill Encyclopedia of Science and Technology, Volume 1, page 457. Under the heading "Animal-feed Composition", it has been there pointed out that the chemical composition of animal feeds can be considered as falling into three categories; water content (moisture), certain groups of natural organic compounds and inorganic or mineral elements. A group of essential but unrelated organic compounds, occurring in smaller concentration, consists of vitamins. At page 458, under the heading "Feed Supplements" it has been observed that the manufacture of commercial mixed feeds has become a very important industry in the United States. Prior to 1949, the principal feed additives used in these mixed feeds were minerals and protein concentrates. Since that date, there has been enormous expansion in large scale manufacture of vitamins, antibiotics, hormones and essential amino acids. These substances have been added to mixed feed as supplements having either direct action on metabolism and growth or indirect action through control of bacterial growth and infection. Although an ample supply of all vitamin requirements of live-stock usually can be made up through the use of common feeds, vitamins are becoming more general as feed additives in commercial feeds. Various kinds of vitamins are added to commercially mixed feeds for poultry, swine, and to a limited extent, for calves. Increasing amounts of fat-soluble vitamin A are being produced for all types of live-stock. This vitamin, which formerly was supplied as a fish liver oil to be fed separately because of the rapid destruction of the vitamin or oxidation, is available in a stabilized form with small particles of the covering of a synthetic wax, gelatin, or other material. The antirachitic vitamin (vitamin D) in the form of irradiate ergosterol is also included as an additive in some mixed feeds for poultry, swine and young calves. This study of animal feed composition and feed supplements brings into clear limelight the fact that in the manufacture of commercially mixed feeds, several feed additives are used and that amongst them are included vitamins A and D. These two vitamins are added as supplements in mixed feeds for cattle, poultry, swine and young calves.

The foregoing discussion would show that on a true and correct interpretation of the words "cattle-feed" and "poultry-feed", those terms must include not only that food which is supplied to domestic animals or birds as an essential ration for the maintenance of life but also that feed which is supplied over and above the maintenance requirements for growth or fattening and for production purposes, such as for reproduction, for production of milk, eggs, meat, wool or feathers and, in the case of animals, also for efficient output of work. In modern times, "cattle feed" and "poultry-feed" include a large variety of concentrates, in addition to roughages, that have a high value because they are rich in easily digested nutrients and feed supplement. Amongst the feeds which are considered essential for the proper nutrition of animals and birds, which are to be kept in a state of efficient production, are included vitamin and, more particularly, vitamins A and D, which have been found to have a profound effect upon live-stock farming by increasing the efficiency of animal production and preventing serious nutritional diseases. Vitamin A, which is required for growth, reproduction, production and even for maintenance and vitamin D, which is needed to enable the animal to assimilate and use other important elements of its feed, are most apt to be lacking in natural live-stock feeds and that they are included as additives in mixed feeds so as to make good the deficiency.

Whichever way one looks at the matter, therefore, whether one looks at it from the angle of the etymological meaning of the word in the context in which it is used there along with fodder and concentrates, or whether one looks at it from the angle of a person conversant with the industry or trade of live-stock farming or poultry raising, the words, "cattle-feed" and "poultry-feed" cannot any longer be considered as meaning only that conventional food which is necessary for the bare maintenance of cattle or birds, as the case may be. Such feed must consist of both the elements, namely, ration for maintenance and ration for production purposes."

8. In the case of Omrao Industrial Corporation (Pvt.) Ltd., v. Sales Tax Officer, Kanpur and Anr. (supra), the Division Bench of this Court held as follows:-

"The word "Fodder" has been defined in the Chamber''s 20th Century Dictionary as "food supplied to cattle; feed". Thus it seems to us, that there is no material difference between "cattle fodder" and "cattle feed". Anything, which is used as cattle feed, could as well be called cattle fodder within the meaning of the aforesaid Notification. In our opinion, the de-oiled rice bran was covered by the expression "cattle fodder" in the aforesaid Notification and was, as such, exempt from sales tax.

9. In the case of Shree Ramkrishna Cattle Field Manufactures v. Commercial Tax Officer No. 1 Virudhunagar and Anr. reported in 1990 STC (76) , Cattle feed was manufactured by mixing Rice Bran, Wheat Bran, Dust of Grams mixed with Molasses and Salt and Madras High Court held that such mixtures falls within the ambit of Cattle feed and exempted from the tax. In the case of C. Rathinam v. State of Tamil Nadu, reported in 98 STC 167, the Division Bench of Madras High Court has held that mixture of Rice Bran, Wheat bran, Dust of Pulses and Gram, Cholam ragi and Salt falls under the category of Cattle Feed. In the case of Ram Chandra Asha Ram v. Commissioner of Sales Tax, U. P. reported in 1996 UPTC 1328. The item involved was damaged Wheat. Learned Single Judge of this Court held as follows:-

"5- The view taken by the Tribunal and canvassed by the learned Standing Counsel that only green fodder chuni, bhusi, Chilka, Chokar, Jave (popularly known as Churjai), gowar, de-oiled cake, de-oiled rice polish, de-oiled rice bran or de-oiled rice husk, are cattle fodder and nothing else can be treated as cattle fodder for the purposes of this section is not correct. The aforesaid items have been stated in the definition only by way of illustration. Anything that is called the cattle fodder in the general of trade sense of the word has to be treated as such unless it comes within the excluded items, namely, oil cake, rice polish, rice bran or rice husk. The definition is only illustrative and excludes certain specific items and includes certain items by way of illustration. Therefore, a thing, which is admitted to be cattle fodder and by virtue of the aforesaid notification, no tax can be levied on it. The Tribunal''s order is, therefore, not legally tenable."

10. The aforesaid decision of learned Single Judge has been affirmed by Hon''ble Supreme Court in the case of Commissioner of Sales Tax, U.P. v. Ram Chandra Asha Ram reported in 2000 UPTC 636. The Apex Court held as follows:-

"4- "What is exempted under the notification of 5th June, 1985 is cattle fodder. In generic sense the expression "cattle fodder" is inclusive of everything that is fed to cattle including damaged wheat. In the decision relied on by the learned Counsel for the appellant, this aspect is noticed but in the particular case fodder was defined as "fodder except cotton seed and oil cakes". In the present case, there is no such exclusion of the damaged wheat that is processed and used as for the cattle. If that is so, we do not think that there is any justification to interfere with the view taken by the High Court. The appeal is dismissed. However, in the circumstances of the case three shall be no order as to costs.

11. The notification does not say that the items in roughage form fed by the cattle only falls under the "Cattle Fodder". Cattle Fodder even includes de-oiled cake, de-oiled rice polish, de-oiled rice bran or de-oiled rice husk, which are concentrated form and therefore, "Cattle Fodder" can not be confined to food in roughage form only. As considered by the Gujrat High Court in detail in the case of Glaxo Laboratories (India) Limited v. State of Gujrat referred hereinabove. Cattle Feed is not only the food, which is supplied to domestic animals as an essential ration for the maintenance of life but also that food which is supplied over and above the maintenance requirements for growth or fattening and for production purposes, such as for reproduction, for production of milk. It include high value of nutrient and food supplement with required vitamins.

12. In the present case, it was not disputed that the "Cattle Feed" items sold by the dealer is fed to cattle. Cattle feed has not been exclude from "Cattle Fodder" in the aforesaid notification referred hereinabove. Cattle feed has been excluded from the "Cattle Fodder" by notification No. TT-3401, dated 01.10.1994 w.e.f. 01.10.1994.

13. Notification No. TT-2-3401/XI-9(116)/94-U.P. Act-15/48-Order-94, dated 01.10.1994 reads as follows:

"In exercise of the powers under Clause (a) of Section 4 of the Uttar Pradesh Trade Tax Act, 1948 (U.P. Act No. 15 of 1948), read with Section 21 of the Uttar Pradesh General Clause Act, 1904, (U.P. Act No. 1 of 1904), the Governor is pleased to make, with effect from October 1, 1994, the following amendment in Government Notification No. St.-II-7038/X-7(23)/83-U.P. Act-XV/48-Order-85, Dated January 31, 1985, as amended from time to time:

AMENDMENT

In the Schedule to the aforesaid notification-

(i) the entry at serial No. 5 shall be omitted;

(ii) for the entry at serial No. 7, the following entry shall be substituted, namely:-

"Books that is to say the books prescribed in the syllabus by the Basic Shiksha Parishad, Uttar Pradesh, Board of High School and Intermediate Education, Uttar Pradesh/National Council for Educational Research and Training (upto class XII) Central Board of Secondary Education or Indian Council of School Education, and magazine."

(iii) for entry at No. 10, the following entry shall be substituted, namely:-

"10. Cattle fodder including green fodder, chuni, bhusi, chhilka, chokar, javi, gowar, de-oiled cake, deoiled rice polish, de-oiled rice bran or de-oiled rice husk but excluding oil cake, rice polish, rice bran, rice husk or balanced poultry feed, cattle feed or fish feed."

(iv) the entries at serial Nos. 11, 32-A, 37-A and 55 shall be omitted."

14. The exclusion of cattle feed from cattle fodder by notification no. TT-3401 w.e.f. 10.10.1994 also show that cattle feed was included in "Cattle Fodder" being fed by cattle and was not excluded in the Notification No. ST-II-3714/ X-6(1)/85-U.P. Act 15/48, dated 05.06.1985.

15. The decision of Learned Single Judge in the case of CST v. S/S Cattle Feed Plant, Meerut, reported in 2001 STI page 607, and in STR nos. 588 and 589 of 1989 CST v. S/S Cattle Feed Plant, Meerut 2003 NTN 23 are not applicable to the present case, in as much as they relates to the prior assessment and not considered the notification No. ST-II-3714/X-6Z(1)/85-U.P. Act-15/48, dated 05.06.1985 and in view of the decision of Apex Court in the case of CST v. Ram Chanda Asha Ram (Supra) it lost its significase.

16. For the reasons stated above, it is held that turn over of cattle feed was exempted from tax during the year under consideration. Order of the Tribunal is accordingly, set aside.

17. In the result, all the revisions are allowed and order of tribunal is set aside.