(2000) 07 AHC CK 0028

In the Allahabad High Court

Case No : Trade Tax Revision No''s. 891 to 900 of 1999

Chhata Sugar Co. Ltd. APPELLANT

Vs

Commissioner, Trade Tax RESPONDENT

Date of Decision : 18-07-2000

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 2, 3(1), 3A(1), 3AB

Citation : (2001) 124 STC 33

Hon'ble Judges : R.K. Agrawal, J

Bench : Single Bench

Advocate : Vivek Kumar Birla, for the Appellant; B.K. Pandey, for the Respondent

Final Decision : Allowed

Judgement

R.K. Agrawal, J.—These ten revisions bearing Nos. 891 to 900 of 1999 have been filed by the assessee-applicant against a common order dated September 25, 1999 passed by the Trade Tax Tribunal, Bench 4, Agra in Second Appeal Nos. 41 of 1995 [1985-86] State, 42 of 1995 [1985-86] Central, 43 of 1995 [1986-87] State, 44 of 1995 [1986-87] Central, 268 of 1993 [1987-88] State, 269 of 1993 [1987-88] Central, 85 of 1994 [1988-89] State, 84 of 1994 [1988-89] Central, 516 of 1994 [1989-90] State and 517 of 1994 [1989-90] Central. The applicant is a sugar mill and is engaged in the business of manufacture and sale of sugar. For the consecutive assessment years 1985-86 to 1989-90 both under the U.P. and Central Sales Tax Acts, the applicant did not admit any tax liability on gunny bags purchased by it for the packing of sugar as according to it sugar being exempt from levy of sales tax and the applicant having not charged the price of gunny bags separately from its customers, there was no liability for payment of sales tax on the gunny bags which were used in the packing of sugar. The assessing authority did not accept the claim put forward by the applicant and imposed sales tax on the value of the gunny bags treating it to be an implied sale.

2. The first appeals filed by the applicant were dismissed by the first appellate

authority which orders have been upheld by the Trade Tax Tribunal, Bench 4, Agra in second appeals filed by the applicant vide order dated September 25, 1999. The applicant is aggrieved against the aforesaid order of the Tribunal.

3. I have heard Shri V.K. Birla, learned counsel appearing for the applicant and Shri B.K. Pandey, learned Standing Counsel, who represented the respondent.

4. The learned counsel for the applicant submitted that the applicant having not charged any price for the gunny bags which it had used in the packing of sugar while effecting the sale of sugar to its customers cannot be subjected to tax on the ground of implied sale of gunny bags. He submitted that this Court in series of decisions have held that unless a separate price is charged for the gunny bags, the supply of sugar in gunny bags would not result in specific sale of the gunny bags so as to attract sales tax. Reliance in this behalf has been placed on the decision of this Court in the case of Commissioner of Sales Tax v. L.H. Sugar Factory, Pilibhit reported in 1996 UPTC 101, U.P. Sugar Co. Ltd., Padrauna v. Trade Tax Officer, Padrauna reported in 1999 UPTC 326 and Kichha Sugar Co. Ltd., Kichcha, Nainital v. Commissioner of Sales Tax, U.P., Lucknow reported in 1999 UPTC 716.

5. Shri B.K. Pandey, learned Standing Counsel, however, submitted that this Court as far as back in the year 1991 in the case of the applicant itself, viz., Chhatta Sugar Company Ltd. v. Commissioner of Sales Tax reported in 1991 UPTC 341, had already held that the applicant is liable to pay sales tax on gunny bags used in the packing of sugar while effecting the sale of sugar as there is an implied contract of sale of gunny bags and the price of gunny bags has been taken into consideration while fixing the price under the levy sugar scheme by the Government of India. He submitted that the applicant had purchased gunny bags from outside the State of U.P. and had used those gunny bags in the sale of free sale sugar effected by it. He relied upon the findings recorded by the Tribunal in this behalf which is reproduced below for the sake of convenience :

"Appeal karta dwara vishisth prakar ke bore ki kharid prant bahar se ki gai hai tatha un boron ka prayog kewal khule bazar me bikri kiya gaya hai tatha levy ki chini ke sath ve bore nahi diye gaye hai. Khule bazar me jo chini bechi gai hai uska mulya bhi adhik tha tatha uske saath vishesh prakar ke borey diye hai atah borey ka mulya chini ke mulya ke saath vasool kiya gaya hai jo boro ki bikri ka apratyach contract ke tulya hai jo borey chini ke saath supply kiye gay hai ve punah prayog kiye ja sakte hai tatha unki punah bikri ki ja sakti hai. Atah Vidwan adhiwakta ke is tark me bal nahi hai ki boron ka mulya chini ke saath vasool nahi kiya gaya hai."

6. He submitted that in the light of the findings recorded by the Tribunal the applicant has included the price of gunny bags while effecting the sale of free sale sugar in the market and therefore, the tax has been rightly imposed by the authorities.

7. Having heard the learned counsel for the parties I find that the dispute in the

present case is only in respect of those gunny bags which have been used by the applicant in the packing of free sale sugar and not of levy sugar as would be clear from the findings recorded by the Tribunal which has been reproduced above.

8. The decision of this Court in the case of the applicant reported in Chhatta Sugar Company Ltd. v. Commissioner of Sales Tax 1991 UPTC 341 relates to the sale of levy sugar as in that case the price fixation done by the Central Government in respect of levy sugar was taken into consideration. It did not relate to free sale sugar. Thus, the said decision is not at all applicable to the facts of the present case. On the other hand the principles laid down by this Court in the case of L.H. Sugar Factory 1996 UPTC 101, U.P. Sugar Co. Ltd. 1999 UPTC 326 and Kichha Sugar Co. Ltd. 1999 UPTC 716 are fully applicable. It is not in dispute that the applicant has not charged the price of gunny bags separately from its customers. The price of free sale sugar depends upon a number of factors. No doubt, the cost of gunny bags is taken into consideration in the cost of production of sugar but that by itself does not mean that the applicant has charged or realised the price of gunny bags from its customers while effecting free sale sugar.

9. It may be mentioned here that the intention of the State was always not to levy any tax on packing materials where the goods sold in the packing material is not liable to any tax. Section 2(i) of the U.P. Trade Tax Act, hereinafter referred to as "the Act" defines the word "turnover" to mean the aggregate amount for which goods are supplied or distributed by way of sale or are sold, by a dealer, either directly or through another, on his account or on account of others, whether for cash or deferred payment or other valuable consideration. However explanation II provides that the amount for which goods are sold or purchased shall include the price of the packing material in which they are packed, amongst other things. Section 3 of the Act provides for the liability to tax under the Act. Sub-section (1) of Section 3 provides that every dealer shall, for each assessment year, pay a tax at the rate provided by or u/s 3-A or Section 3-D on his turnover of sales or purchases or both, as the case may be, which shall be determined in such manner as may be prescribed.

10. Section 3-A provides for the rate of tax to be levied on the turnover in respect of the goods. Section 2(i) and the Explanation II(i), Section 3(1) and Section 3A(1) of the Act are reproduced below :

"2(i) ''turnover'' means the aggregate amount for which goods are supplied or distributed by way of sale or are sold by a dealer, either directly or through another, on his account or on account of others, whether for cash or deferred payment or other valuable consideration : "

Explanation II.-- Subject to such conditions and restrictions, if any, as may be prescribed in this behalf,--

(i) the amount for which goods are sold or purchased shall include the price of the packing material in which they are packed, and any sums charged for anything done by the dealer in respect of the goods sold, at the time of or before the delivery thereof, other than cost of freight or delivery or cost of installation or the amount realized as sales tax or purchase tax, when such cost or amount is separately charged ;

Section 3. Liability to tax under the Act.--(1) Subject to the provisions of this Act, every dealer shall, for each assessment year, pay a tax at the rates provided by or u/s 3-A or Section 3-D on his turnover of sales or purchases or both, as the case may be, which shall be determined in such manner as may be prescribed.

Section 3-A. Rates of tax.--(1) Except as provided in Section 3-D, the tax payable by a dealer under this Act shall be levied,

(a) on the turnover in respect of ''declared goods'', at the point of sale to the consumer at the maximum rate for the time being specified in Section 15 of the Central Sales Tax Act, 1956 or where the State Government, by notification, declares any other single point or a lesser rate, at such other point or at such lesser rate ;

(b) on the turnover in respect of any food or drink served for consumption in a hotel or restaurant or part thereof, with which a cabaret or floor show is provided therein, at such rate, not exceeding forty per cent, as the State Government may, by notification, declare ;

(c) on the turnover of spirits and spirituous liquors of all kinds, including methyl alcohol and motor spirit, diesel oil and alcohol as defined under the United Provinces Sales of Motor Spirit, Diesel Oil and Alcohol Taxation Act, 1939, at the point of sale by the manufacturer or importer or such other single point as the State Government may by notification declare at the rate of twenty per cent or at such rate not exceeding twenty-six per cent, as the State Government may, by notification declare :

Provided that no tax shall be levied on any goods under this clause if tax is payable on purchase or sale of such goods, under any other Uttar Pradesh Act for the time being in force.

(d) on the turnover in respect of goods specified in the Schedule, at such point and at such rate, not exceeding fifteen per cent, as the State Government may, by notification, declare, and different points and different rates may be declared in respect of different goods comprised in any entry in the said Schedule :

Provided that the State Government may, by notification, omit the entry relating to any goods from the Schedule and may, in the like manner, restore any entry so omitted, and upon the issue of any such notification omitting or restoring any entry, the said Schedule shall, subject to the provisions of Sub-section (2), be deemed to be amended accordingly ;

(e) on the turnover in respect of goods, other than those referred to in Clauses (a), (b), (c) and (d), at the point of sale by the manufacturer or importer at the rate of eight per cent :

Provided that the State Government may, from time to time by notification, modify the rate or point of tax on the turnover in respect of any such goods, with effect from such date as may be notified in that behalf, so, however, that the rate does not exceed eight per cent."

11. From the reading of the aforesaid sections it is clear that the tax levied under the provisions of the Act is upon the turnover of goods and the goods include price of the packing material in which they are packed thus the intention of the State was always to levy tax on the amount for which the goods are sold irrespective of the cost of packing material in which they are packed. This intention was made clear by insertion of Section 3-AB which was inserted with effect from August 1, 1990 in the U.P. Trade Tax Act by U.P. Act No. 28 of 1991. Section 3-AB of the Act reads as follows :

"Section 3-AB. Rate of tax on packing material sold with goods.--Notwithstanding anything to the contrary in this Act, where goods are sold or purchased together with packing materials, the sale or purchase of the packing material shall--

(a) be liable to tax at the rate applicable to the sale or purchase of the goods sold or purchased together with such packing material.

(b) not be liable to any tax, if the sale or purchase of such goods is exempt from tax at the hands of the dealer."

12. The Statement of Objects and Reasons while introducing the Bill inserting Section 3-AB in the Act was to clarify certain provisions. The Statements of Objects and the Reasons attached to the Bill is reproduced below :

"In order to remove difficulties experienced in the implementation of certain provisions of the Uttar Pradesh Sales Tax Act, 1948 and to clarify certain provisions, raise financial resources of the State, grant in the interest of development of industries, exemption from tax to certain units and to validate certain Acts, it was decided to amend the said Act. Since the State Legislature was not in session the Uttar Pradesh Sales Tax (Amendment and Validation) Ordinance, 1990 (U.P. Ordinance No. 10 of 1990) was promulgated for the purpose on April 25, 1990. Replacing Bill could not be introduced due to very short session of the Legislature hence successively U.P. Ordinances No. 17 of 1990, No. 29 of 1990, No. 19 of 1991 and No. 26 of 1991 had to be promulgated. The Uttar Pradesh Sales Tax (Amendment and Validation) Bill, 1991 has been prepared to replace the aforesaid Uttar Pradesh Sales Tax (Amendment and Validation) (Second) Ordinance, 1991 (U.P. Ordinances No. 26 of 1991). The main features of the Bill are as under :

(1) ....

(2)................................

(3) The sale or purchase of packing materials is being made liable to tax at the rate applicable to the sale or purchase of goods packed in such packing materials in order to bring uniformity in the payment of sales tax..................

(4) ....

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(23)................................

(24) ....

This Bill is introduced accordingly to replace the aforesaid U.P. Ordinance No. 26 of 1991."

13. In Crawford''s Statutory Construction, at page 107, paragraph 74 reads as follows :

"74. Declaratory statutes.--Generally speaking, declaratory statutes can be divided into two classes : (1) those declaratory of the common law, and (2) those declaring the meaning of an existing statute. Obviously, those declaratory of the common law should be construed according to the common law. Those of the second class are to be construed as intended to lay down a rule for future cases, and to act retrospectively. They closely resemble interpretation clauses, and their paramount purpose is to remove doubt as to the meaning of existing law, or to correct a construction considered erroneous by the Legislature."

14. In Francis Bennion''s Statutory Interpretation (Second Edn.) 1992, page 105, the learned author says "Declaratory Acts.--A declaratory Act or enactment declares what the law is on a particular point, often ''for the avoidance of doubt''."

15. In Justice G.P. Singh''s Principles of Statutory Interpretation (Sixth Edn., 1996) under the heading "Declaratory Statutes", the learned author has summed up as follows :

"Declaratory statutes.--The presumption against retrospective operation is not applicable to declaratory statutes. As stated in Craies and approved by the Supreme Court :

''For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reasons for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually if not invariably, such an Act contains a preamble, and also the word "declared" as well as the word "enacted".''

But the use of the words ''it is declared'' is not conclusive that the Act is declaratory for these words may, at times, be used to introduce new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is ''to explain'' an earlier Act, it would be without object unless construed retrospectively. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well-settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. The language ''shall be deemed always to have meant'' is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law when the Constitution came into force, the amending Act also will be part of the existing law."

16. The honourable Supreme Court in the case of Commissioner of Income Tax, Bombay etc. Vs. M/s. Podar Cement Pvt. Ltd. etc., had accepted the statement regarding declaratory statute made by the learned authors while holding that

amendment made in Section 22 of the Income Tax Act by the Financial Bill, 1987 was declaratory/clarificatory.

17. Thus from the Statement of Objects and Reasons reproduced above it will be clear that Section 3-AB of the Act has been inserted to clarify the provisions. Even though the aforesaid section was inserted with effect from August, 1990, it only clarifies the intention of the State not to levy any tax on packing materials where the goods sold in the said packing material are exempt from tax. The effect of the aforesaid insertion of Section 3-AB is of a declaratory/ clarificatory amendment.

18. Thus, the insertion of Section 3-AB in the U.P. Trade Tax Act by (U.P. Act No. 28 of 1991) is retrospective.

19. In view of the aforesaid discussions it is held that the Tribunal was not at all justified in levying tax on gunny bags used by the applicant in the packing of sugar. In the result, all the revisions succeed and are allowed. There shall be no order as to costs.