(2013) 07 UK CK 0063

In the Uttarakhand High Court

Case No : Trade Tax Revision No. 21 of 2008

Commissioner, Commercial Tax — APPELLANT

Vs

Cafe Coffee Day — RESPONDENT

Date of Decision : 12-07-2013

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

Citation : (2013) 65 VST 177

Hon'ble Judges : Barin Ghosh, C.J;Servesh Kumar Gupta, J

Bench : Division Bench

Advocate : Chetan Joshi, Brief Holder, for the Appellant; S.K. Posti, for the Respondent

Judgement

Barin Ghosh, C.J.—Section 3A of the U.P. Trade Tax Act, 1948 prescribes the rate of tax. Sub-section (1)(d), with which we are concerned, is as follows: (1) Except as provided in section 3D, the tax payable by a dealer under this Act shall be levied,--

(d) on the turnover in respect of goods specified in the Schedule, at such point and at such rate, not exceeding twenty percent, 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.

There is a proviso to clause (d) of sub-section (1) of section 3A of the said Act, to which we are not concerned. The Schedule to the Act contains 77 description of goods. The 24th description of the goods, contained in the Schedule, is coffee, cocoa and chicory. The 63rd description of the goods, in the said Schedule, is soda water, lemonade, fruit juices and other soft beverages and syrups, squashes, jams and jellies. In exercise of power, exercisable under clause (d) of sub-section (1) of section 3A of the Act, a notification was issued on January 15, 2000. In that, the 25th description of the goods was coffee, cocoa and chicory and the rate of tax prescribed was 10 percent; whereas, the 64th description of the goods was soda water, lemonade, fruit juices and other soft beverages and syrups, squashes, jams and jellies and the rate of tax prescribed was 15 percent.

2. The assessee sells, amongst others, cold coffee to its customers. The assessing officer felt that cold coffee is a soft drink. No attempt was made to ascertain, whether it was a soft beverage or not. It was felt that soft beverage is equal to soft drink. Clause (e) of sub-section (1) of section 3A of the Act is as follows:

(1) Except as provided in section 3D, the tax payable by a dealer under this Act shall be levied,--

(e) on the turnover in respect of goods, other than those referred to in clauses (a), (b), (c), (c1) and (d) at the point of sales by the manufacturer or importer at the rate of ten percent.

3. There is no dispute that cold coffee has not been described as goods in the Schedule referred to in section 3A(1)(d) of the Act. The question, therefore, was, whether cold coffee is coffee and, if so, does it carry a tax liability of 10 percent or it is a soft beverage and, accordingly, carries a tax liability of 15 percent or it is not such a goods dealt with in section 3A(1)(d) and, accordingly, is other than those goods and, therefore, taxable at the rate of 10 percent? Whereas "beverage" means "drink other than water"; "drink" means "a liquid consumed as refreshment or nourishment". So, therefore, any liquid consumed as refreshment or nourishment, excluding water, will be beverage. That beverage is qualified by the word "soft", which signifies basically non-alcoholic. No drink is possible without water. Therefore, beverage will have water, but it will not be pure water. Something in addition to water will be beverage. It is not in dispute that coffee is added to water with milk, sugar, etc., and, thereafter, the temperature thereof is reduced before serving the same as cold coffee to the customers. The question is, can it be said that it is a beverage? The larger question, however, is, once coffee has been specified in the Schedule, can it be said that, when coffee is sold in any form, the scheduled description of coffee will not apply to it? In other words, when beverage is also coffee in the sense hot or cold coffee, can it be said that it is no longer coffee, but it has become a beverage? That was the real issue to be decided. The same has not been decided either at the assessment stage Or at the appellate stage or at the Tribunal stage.

4. We, accordingly, interfere; set aside the assessment order, the appellate order and the order of the Tribunal; and remit back the matter to the assessing authority to decide the same on the basis of the questions as put above. The revision application, accordingly, stands disposed of.

