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(2004) 05 AHC CK 0217

In the Allahabad High Court

Commissioner of Sales Tax APPELLANT

Vs

Ganeshi Lal RESPONDENT

Date of Decision : 21-05-2004

Acts Referred:

Uttar Pradesh General Clauses Act, 1904 — Section 6C
Uttar Pradesh Trade Tax Act, 1948 — Section 4

Citation : (2008) 11 VST 406

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prakash Krishna, J.—The present revision is at the instance of Commissioner of Sales Tax and is directed against the order dated April 11, 1991 passed in Second Appeal No. 122 of 1990 for the assessment year 1984-85.

2. The facts of the case are almost undisputed. The assessee has been doing business of jewellery, jewellery beeds and loose precious stones. Its books of account have been accepted. But the assessing authority has denied its claim of exemption on the sale of Rs. 8,14,000 made to foreign buyer against the foreign currency. The claim has been denied by the assessing authority on the basis that notification granting exemption having been rescinded the said turnover of the dealer is not now exempted u/s 4 of the U.P. Sales Tax Act, 1948. In contra the contention of the dealer was that in view of the fact that by Notification No. 1672 dated May 1, 1981 the Notification No. 6946 dated September 30, 1977 having been rescinded the earlier Notifications No. 2414 dated June 30, 1976 and Notification No. 1603 dated July 18, 1977 have been revived. The Tribunal by the impugned order has accepted the said contention of the dealer.

3. Therefore the controversy involved in the present revision is about the applicability or revival of the Notification No. 2414 dated June 30,1976 and Notification No. 1603 dated July 18, 1977.

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4. Before proceeding further it is desirable to notice, in brief, the contents of the notifications issued by the State Government u/s 4 of the Act on the question of sale made to the foreign buyer against the foreign currency.

5. The Governor of Uttar Pradesh issued Notification No. 2414 dated June 30, 1976 granting exemption from tax under the U.P. Sales Tax Act by providing that no tax shall be payable by any dealer on his sales of gems and jewellery to the foreign tourist against foreign currency subject to the following conditions:

(1) that the dealer shall indicate on the bill or the cash memo the full name of the foreign tourist, his passport number and the amount of foreign currency received as consideration for the sale; and

(2) that the foreign currency so received shall be deposited in such banks only which are authorised by the State Government in this behalf.

6. From the aforesaid notification the foreign currency so received against the sale to foreign buyers was required to be deposited only on such banks which were authorised by the State Government in this behalf. This condition was made liberal by the State Government by issuing Notification No. 1603 dated July 18, 1977 and the dealer was authorised for the purpose of Clause (2) of the earlier notification dated June 30, 1976 to deposit the sale proceeds in a nationalised bank holding permission of Reserve Bank of India or of the Government of India to accept and deal in foreign exchange.

7. The aforesaid two notifications were superseded by Notification No. 6946 dated September 30, 1977 and sale of any goods to foreign tourist against the foreign currency were exempted subject to the following conditions:

(1) that the dealer shall indicate on the bill or the cash memo the full name of the foreign tourist, his passport number and the amount of foreign currency received in consideration of the sale; and

(2) that the foreign currency so received shall be deposited in such nationalised banks which, for the time being, hold permission of the Reserve Bank of India, or of the Government of India to accept and deal in foreign exchange.

8. This notification has been rescinded by Notification No. 1672 dated May 1, 1981. The said notification reads as under:

In exercise of the powers u/s 4 of the U.P. Sales Tax Act, 1948 (U.P. Act No. XV of 1948), read with Section 21 of the U.P. General Clauses Act, 1904 (U.P. Act No. 1 of 1904), the Governor is pleased to rescind, with effect from May 1, 1981, Government Notification No. ST-II-6946/X-11(24)/75-U.P. Act-XV/48-Order-77 dated September 30, 1977.

9. The Tribunal opined that there is distinction in between "supersession of notification" and "rescinding of notification" and as such, on account of rescinding of Notification No. 6946 dated September 30, 1977, the earlier notifications which were superseded by Notification No. 6946 shall be revived.

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10. Heard learned Counsel for the parties and perused the record.

It appears that the attention of the Tribunal was not drawn towards Sections 6 and 6C of the U.P. General Clauses Act, 1904. Section 6 of the U.P. General Clauses Act reads as under:

6. Effect of repeal: where any Act repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any remedy, or any investigation or legal proceeding commenced before the repealing Act shall have come into operation in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such remedy may be enforced and any such investigation or legal proceeding may be continued and concluded, and any such penalty, forfeiture or punishment imposed as if the repealing Act had not been passed.

11. Section 6C of the U.P. General Clauses Act, 1904 reads as under:

6C Repeal of expiration of law making textual amendments in other laws.--(1) Except as provided by Sub-section (2) where any Uttar Pradesh Act amends the text of any Uttar Pradesh Act or Regulation by the express omission, insertion or substitution of any matter, the amending enactment is subsequently repealed, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.

(2) Where any such amendment of text is made by any temporary Uttar Pradesh Act or by an Ordinance or by any law made in exercise of the powers of the State Legislature by the President or other authority referred to in Sub-clause (a) of Clause (1) of Article 357 of the Constitution, and such Act, Ordinance or other law ceases to operate without being re-enacted (with or without modifications) the amendment of text made thereby shall also cease to operate.

12. Section 7 of the U.P. General Clauses Act, 1904 deals with the provision of revival of repealed enactments. It provides any enactment wholly or partially repeal shall not be revived either wholly or partially unless expressly so states. The Supreme Court in the case of West Uttar Pradesh Sugar Mills Association and Others Vs. State of Uttar Pradesh and Others, has interpreted Section 6 along

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with Section 20 of the U.P. General Clauses Act and has come to the conclusion that in view of Section 6-C of the U.P. General Clauses Act any statutory rules framed by the Government of U.P. substituted the rule after it become inoperative the old rule would not revive. Section 4(42B) of the U.P. General Clauses Act defines statutory instrument and it shall mean any notification, order, scheme, rule or bye-law issued under any enactment and having the force of law. By virtue of Section 20 of the U.P. General Clauses Act where the power to issue any statutory instrument is conferred the expiration used in the statutory instrument shall, unless there is anything repugnant in the subject or context, for the same respective meaning as in the Act conferring the power. Section 7 of the U.P. General Clauses Act will be applicable in the present case read with Section 20 by virtue of supersession of Notification No. 6946 dated September 30, 1977 by the Notification No. 1672 dated May 1, 1981 the earlier notification shall not be revived. Meaning thereby the notification, which has been superseded by another notification the later notification having been rescinded, the earlier notification would not be revived.

13. In the result the order of the Tribunal cannot be sustained. The revision is allowed. The order of the Tribunal is set aside and the second appeal of the dealer-opposite party before the Trade Tax Tribunal stands dismissed.

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