(2004) 04 AHC CK 0008

In the Allahabad High Court

Commissioner of Sales Tax — APPELLANT

Vs

Kumar Motors — RESPONDENT

Date of Decision : 26-04-2004

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 10B

Citation : (2007) 5 VST 643

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prakash Krishna, J.—The present revision is directed against the order dated August 13, 1993 passed by the Sales Tax Tribunal, Bareilly, in Second Appeal No. 184 of 1990 for the assessment year 1984-85.

2. The dealer-opposite party was assessed to tax for the assessment year 1984-85 on the turnover of Rs. 1,05,01,985. The said order was revised by the Deputy Commissioner (Executive), Sales Tax, u/s 10-B of the U. P. Sales Tax Act, 1948 on the basis that the assessee had purchased Vikram three wheeler chassis by issuing form III-A to M/s. Scooters India Limited. Similarly no purchase tax was paid by it on the purchase of auto rickshaw body from M/s. Apollo Builders, a sister concern of M/s. Scooters India Limited by issuing form III-A. The revising authority imposed the purchase tax as the goods were not resold in the same form and condition. The Tribunal has set aside the order passed by the revising authority and held that the end-product that is mounted body on chassis is included in the category of motor vehicle as mentioned in the Notification No. 6606 dated December 5, 1984. The entry No. 43(l)(b) of the Notification No. 6606 reads as follows:

Motor vehicles including motor cars [other than those specified in sub-item No. (a) above], motor taxi cabs,... jeeps, station wagons and chassis of motor vehicles and bodies or tankers or motor caravans built or meant for mounting on chassis of motor vehicles, but excluding tractors whether on wheels or on tract. Tax is on the point of sale by dealer to consumer... at 10 per cent.

3. The above entry is a comprehensive entry and includes the motor vehicles, chassis, bodies, tankers built or meant for mounting on chassis. It was argued by the dealer that the intention of the Legislator is clear that the chassis and bodies built or meant for mounting on chassis of motor vehicle have been treated alike. But the Supreme Court in the case of Sri Siddhi Vinayaka Coconut and Co. and Others Vs. State of Andhra Pradesh and Others, has held otherwise which reads as follows:

...that the same commodity at different stages could be treated and taxed as commercially different articles. In A. Hajee Abdul Shakoor and Company Vs. State of Madras, , this Court held that ''hides and skins in the untanned condition are undoubtedly different as articles of merchandise than tanned hides and skins'' and pointed out that ''the fact that certain articles are mentioned under the same heading in a statute or the Constitution does not mean that they all constitute one commodity''. We may also refer to the decisions in Jagannath and Others Vs. Union of India (UOI), , where tobacco in the whole leaf and tobacco in the broken leaf were treated as two different commodities, East India Tobacco Co. Vs. State of Andhra Pradesh, , where Virginia tobacco and country tobacco were treated as two different commodities, and T.G. Venkataraman, etc. Vs. State of Madras and Another, , where cane jaggery and palm jaggery were treated as two different commodities.

4. The aforesaid judgment of the Supreme Court is by a Constitution Bench consisting of five honourable Judges.

5. In view of the above it cannot be said that the chassis of a motor vehicle and motor vehicle with body mounted over it are commercially the same thing. The mention of bodies, chassis of motor vehicle in the same entry does not mean, as held above that they all constitute one commodity. The dealer-opposite party made the purchases of body and chassis separately from different persons by issuing form III-A meaning thereby it undertook to resell them in the same form and condition. Having failed to do so, the liability to purchase tax on the purchases of body and chassis, u/s 3-AAAA of the Act is clearly attracted.

6. In view of the above the revision is allowed. No order as to costs.