(2006) 05 AHC CK 0015

In the Allahabad High Court

Commissioner of Trade Tax APPELLANT

Vs

Adarsh Gramodyog Prasthan RESPONDENT

Date of Decision : 25-05-2006

Acts Referred:

Citation : (2009) 20 VST 612

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Arun Tandon, J.—Heard learned Standing Counsel for the revisionist-department and Sri R.R. Agarwal and Sri Suyash Agarwal learned Counsel for the opposite party-assessee.

2. In respect of the assessment year 1993-94 under the U.P. Trade Tax Act, 1948, an assessment order under rule 41(8) of the U.P. Trade Tax Rules, 1948 was passed by the assessing officer on March 14, 1997. In the order, the claim of the assessee for exclusion of the turnover qua the footwear traded by the assessee was refused on the ground that under the certificate issued by the Khadi Gramodyog Commission, Bombay, trade in footwear manufactured by a small-scale industry or a khadi gramodyog industry alone was exempted. Since the petitioner had purchased the footwear from manufacturers, other than small-scale/khadi gramodyog industry, he was not entitled for exclusion of the turnover qua the footwear traded by him only on the ground that the assessee was registered with Khadi Gramodyog Commission at Bombay.

3. This part of the order of the assessing authority was subjected to challenge by the assessee by way of appeal before the first appellate authority being Appeal No. 1448 of 1997. The appeal was allowed by the Deputy Commissioner vide order dated March 10, 1998 and the turnover pertaining to the trade in footwear by the assessee was exempted on the ground that footwear is covered within the commodities to be manufactured in a khadi industry or a gramodyog industry.

4. Against the first appellate order, the department filed second appeal before the Commissioner, which was numbered as Second Appeal No. 97 of 1998. The appeal has also been dismissed, by means of the order dated February 19, 2004. Hence, the present trade tax revision by the department.

5. On behalf of the department, it is contended that the first appellate authority as well as the Tribunal have failed to take into consideration that the registration granted by the Khadi Gramodyog Commission, Bombay is only with reference to the goods manufactured by the assessee or manufactured by any other small-scale or gramodyog industry. The assessee, having not manufactured the footwear and having failed to establish that the footwear traded by him was manufactured by a small-scale or gramodyog industry, is not entitled to exemption from trade tax in respect of the turnover of footwear. Meaning thereby, that the assessee is not entitled to any tax exemption on the commodity purchased from other manufacturers and sold in the open market, only on the ground that he is registered with the Khadi Gramodyog Board. It is, therefore, contended that the order passed by the Tribunal is liable to be quashed.

6. Sri R.R. Agarwal, learned Counsel for the assessee submits that the notification dated March 31, 1995, Clause 3(5) as well as the certificate of the Commissioner, Trade Tax dated January 29, 2000 establish beyond doubt that trade in the exempted commodities, as per the certificate issued by the Khadi Gramodyog Board is to be excluded from the turnover, as has been held by the assessing authority. Therefore, the order passed by the Tribunal does not warrant any interference in revisional jurisdiction.

7. I have heard learned Counsel for the parties and have gone through the records of the present trade tax revision.

8. It is settled law that the Tribunal is the last fact-finding authority and therefore, all issues of fact along with issue of law raised on behalf of the aggrieved parties, by way of second appeal, must necessarily be examined by the Tribunal.

9. This court is satisfied that the Tribunal has failed to consider the contention raised on behalf of the department to the effect that under the registration certificate trading in the commodities not manufactured by a small-scale/gramodyog industry was not exempted. The issue as to whether the footwear traded by the assessee has been manufactured by any other khadi gramodyog or small-scale industry has not been examined. The Tribunal, having regard to the language of the registration certificate, notification dated March 31, 1995 and the provisions applicable, should have necessarily recorded a specific finding as to whether the present assessee, who claims to be registered under the Khadi Gramodyog Board Rules, was entitled for exclusion of the turnover in respect of the footwear traded by it, irrespective of the issue whether such footwear was manufactured by a small-scale/gramodyog industry or not.

10. The case of the assessee to the effect that trade in footwear was to be

excluded irrespective of the manufacture in view of the exemption certificate, has also not been examined by the Tribunal under the impugned order. The Tribunal should have taken into consideration the language of the notification relied upon and should have categorically recorded as to whether trading in the commodities mentioned in the certificate is also exempted in view of the notification and circular relied upon by the assessee or not.

11. The court is satisfied that the order passed by the Tribunal dated February 19, 2004 cannot be legally sustained and is hereby quashed. The second appeal is restored to its original number and the Tribunal is directed to decide the matter in light of the observations made above, by means of a reasoned speaking order at the earliest possible. All the issues are open for consideration before the Tribunal.

12. The present trade tax revision is allowed subject to the observations made above.

