(2004) 04 AHC CK 0016

In the Allahabad High Court

Commissioner of Trade Tax	APPELLANT
Vs	
Gita Traders	RESPONDENT

Date of Decision : 30-04-2004

Acts Referred:
Central Sales Tax Act, 1956 — Section 14
Uttar Pradesh Trade Tax Act, 1948 — Section 4(1)

Citation : (2008) 11 VST 135

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prakash Krishna, J.—This revision is at the instance of Commissioner of Sales Tax and in the memo of revision following question of law involved in the revision has been mentioned:

Whether on the facts and in the circumstances of the case the Tribunal is legally justified to knock off the tax on Cotton coated fabrics cell?

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

The dispute relates to the assessment year 1986-87. The opposite party carried on the business of purchase and sale of cotton coated cloth and plastic film sheets, etc. The assessing authority vide its order dated March 30, 1990 rejected the contention of the dealer that cotton coated fabrics is not taxable on the ground that it contained less than 40 per cent of cotton. The assessing authority granted exemption on the same commodity, which were not imported against form XXXI. However, it taxed the commodity in question, which were imported against form XXXI treating it to be taxable commodity. In appeal the Assistant Commissioner (Judicial), Trade Tax, set aside above part of the assessment order. This order has been confirmed by the Tribunal vide order under revision.

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

Learned Standing Counsel submitted that the finding was recorded by the assessing authority on the basis of sample that percentage of cotton was less than 40 per cent. Therefore the commodity in question is liable to be taxed. However, said aspect of the case was considered in detail by the first appellate authority. The first appellate authority has observed that from the record it does not appear that the assessing authority got the sample verified through any medium to hold that the commodity in question contains less than 40 per cent of the cotton. The first appellate authority also examined the commodity in question. He has recorded a finding that there is similarity in the commodity which was imported against form XXXI and the commodity which was imported without form XXXI. In both the commodity percentage of cotton is more than 40 per cent. Apart from the above it has also recorded a finding that additional excise duty was paid by the dealer on the cotton coated fabrics. The additional excise duty having been paid by the dealer, he was of the opinion that no sales tax could be levied on the said commodity.

4. The Governor of Uttar Pradesh issued a notification u/s 4(1) of the U.P. Sales Tax Act, 1948 Notification No. 4064 dated November 25, 1958, granting exemption to the goods unconditionally from payment of tax under U.P. Sales Tax Act with effect from July 1, 1958. The said notification contained list of three items namely, "sugar", "cigars" and "textiles". The relevant portion relating to textiles which includes cotton fabrics of all varieties reads as under:

3. Textiles of the following varieties manufactured on power-looms, excluding duries, carpets, druggets, hosiery goods and ready-made garments, but including the goods specified in the Annexure hereunder:

(a) Cotton fabrics of all varieties,

(b) Rayon or artificial silk fabrics, including staple fibre fabrics of all varieties,

(c) Woollen fabrics of all varieties,

(d) Fabrics made of a mixture of any two or more of the above fibres, viz, cotton, rayon or artificial silk or stapple fibre or wool.

(e) Canvas cloth, tarpaulins and water-proof cloth;

Annexure

(i) Hand-printed, dyed and embroidered fabrics and dhoties, sarees, bed-spread, bedsheets, counterpanes, table cloths, handkerchiefs, towels, napkins and dusters made out of fabrics of any of the varieties mentioned in Sub-clauses (a), (b), (c) and (d) of Clause 3 in the list above.

(ii) Cotton valvets and velveteen

(iii) Tapes, niwars and laces

(iv) Hosiery cloth in length.

5. From the above notification it is clear that cotton fabrics of all varieties are included in the entry "textiles", one of the exempted items unconditionally from payment of tax under the U.P. Sales Tax Act.

6. This Court in the case of The Commissioner, Sales Tax Vs. Arora Material Store, , has held that cotton coated) fabrics are exempt from levy of sales tax under notification dated November 25, 1958. The cotton fabrics of all varieties have not been defined in the Notification No. 4064. This Court has taken into consideration the definition of "cotton fabrics" as given in Section 14 of the Central Sales Tax Act, which defines "cotton fabrics" in item No. 19 thereof.

7. In Agrawal Transport Co. v. Commissioner of Trade Tax, U.P. Lucknow [1998] UPTC 1144 , has held that cotton coated fabrics and PVC laminated are exempted items under entry No. 31, as mentioned in the notification dated June 5, 1995.

8. The Supreme Court in the case of Collector of Central Excise, Hyderabad Vs. Fenoplast (P) Ltd. (II), has held that rexine manufactured by the dealer, containing only 8 per cent cotton fabrics, remaining 92 per cent being coating material, PVC resin, plasticizers and other fillers is cotton fabrics. It has been observed that may be rexine cloth is not called or dealt with as cotton fabrics in commercial word or in common parlance, but that does not prevent from treating it as cotton fabrics. It has taken into consideration tariff item No. 19 before its amendment in 1969 to arrive at the above conclusion.

9. Apart from the above first appellate authority has disagreed with the finding of the assessing authority that the commodity in question contains less than 40 per cent of the cotton fabrics. The said finding has not been disturbed by the Tribunal. The Tribunal has proceeded to decide the controversy on the premise that the view of the assessing authority that since cotton coated fabrics was imported by issuing form XXXI and, therefore, it will become taxable commodity is not correct. This appears to be the basis of assessment order so far as it relates to imported cotton fabric against form XXXI is concerned. Learned Standing Counsel could not point out any error of law in the order of the Tribunal for taking the aforesaid view. The idea of issuing form XXXI is to inform the department that the dealer has imported certain goods inside the State of U.P. It has no relevancy about the taxability or otherwise of the goods in question while making import in the State of U.P.

10. In the result there is no error of law in the order of the Tribunal. The revision is dismissed.

