(2008) 07 AHC CK 0262

In the Allahabad High Court

Commissioner of Trade Tax APPELLANT

Vs

Supersonic Industries RESPONDENT

Date of Decision : 07-07-2008

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2010) 28 VST 318

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Judgement

Prakash Krishna, J.—The above revision has been filed against the judgment and order dated August 28, 1997 passed by the Trade Tax Tribunal, Meerut in Second Appeal No. 279 of 1994 relating to the assessment year 1983-84 (U. P.) (second part).

2. The dealer-opposite party carries on the business of manufacturing and sale of electric aluminium and copper wires. The account books were rejected on the basis of adverse material found against it in the survey. The rejection of the account books has been upheld by all the three authorities below. The assessed turnover has been reduced by the Tribunal by the order under revision. In the memo of revision, the following questions of law have been framed:

(i) Whether the honourable Trade Tax Tribunal is legally justified in reducing the turnover and rate of tax on electric wire made of copper and aluminium whereas the assessing authority has assessed the turnover on the basis of evasion detected on the survey dated November 25, 1983 and imposed the tax at the rate of 12 per cent as the dealer has manufactured the electric wire made of aluminium and copper ?

(ii) Whether, on the facts and in the circumstances of the case, the Trade Tax Tribunal has properly utilized the material available on record ?

3. Heard the learned standing counsel for the Department. None appeared on behalf of dealer-opposite party.

4. So far as the reduction in the turnover is concerned, I find that the Tribunal has estimated the suppressed turnover on the basis of relevant consideration. It has taken pains to discuss the adverse material found at the time of survey dated November 25, 1983 conducted by the Trade Tax Officer S. I. B. At the time of survey, certain account books were seized. On the basis of the seized material, an interference of suppressed sales was drawn by the assessing officer and the turnover of such sales was estimated. The Tribunal reduced the quantum of estimated suppressed sales, on valid ground.

5. The apex court in Commissioner, Sales Tax, U. P. v. Mohan Brickfield [2006] 148 STC 638 : [2007] 1 UPTC 1 and Commissioner of Sales Tax, U.P. v. Kumaon Tractors and Motors, (2002) 9 SCC 379 has laid down that u/s 11 of the U. P. Trade Tax Act, the High Court possesses a limited jurisdiction which is limited only to the question of law. The same view has been reiterated in Rashtriya Audyogik Sansthan v. Commissioner of Trade Tax, U. P. [2007] 6 VST 763. If a finding of fact is vitiated for non-consideration of relevant material or taking into consideration irrelevant material, it can be said that the said finding is vitiated and question of law is involved.

6. In the present case the learned standing counsel could not point out any illegality or perversity in the finding of the Tribunal reducing the estimated turnover. In this view of the matter, I do not find any justification to interfere with the order of the Tribunal estimating the suppressed taxable turnover.

7. Then, it was urged that the Tribunal was not justified under law to levy the tax on aluminium and copper wires at the rate of four per cent on the turnover Rs. 1,50,000, treating it as a "metal". Learned standing counsel submits that aluminium and copper wires are not included in the notification relating to "metal". In this connection, reliance was placed on notification No. 5785 dated September 7, 1981 (Sl. No. 3). The said notification reads as follows:

-- Sl. Description of goods Point of Rate of tax No. tax -- 3 All kinds of minerals, ores, metals, scraps and M or I four per cent alloys including sheets and circles used in the manufacture of brassware, except those included in any other entry or any other notification issued under the Act. --

8. The said notification was amended by notification No. 6075 dated October 1, 1983. The following entry was substituted instead:

-- Sl. Description of goods Point of Rate of tax No. tax -- 3 (a) All kinds of minerals. M or I four per cent (b) All kinds of ores, metals, scraps and alloys, M or I two per cent including sheets and circles used in the manufacture of brasswares, except those included in any other entry or any

other notification issued under the Act.
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9. The aforesaid entry has been subject-matter of consideration by the apex court in Hindustan Aluminium Corporation Ltd. Vs. State of Uttar Pradesh and Another, In Commissioner of Sales Tax v. Vijay Aluminium Works, Kanpur [1999] UPTC 1089 this Court has considered the amended notification also in the light of the judgment of the apex court in the case of Hindustan Aluminium Corporation Ltd. Vs. State of Uttar Pradesh and Another, and has held as follows:

6. Thus, the relevant entries in so far as minerals, ores, metals and alloys are concerned were similar and the ratio of Hindustan Aluminium Corporation Ltd. Vs. State of Uttar Pradesh and Another, was squarely applicable to the facts of the case. This Court''s judgment in the case of Devi Dayal Aluminium Industries Pvt. Ltd. [1992] UPTC 115 having been set aside by the Supreme Court, the basis on which the Tribunal proceeded stood knocked off and it has to be held that aluminium sheets and circles were to be treated as unclassified items and not as metal.

10. It may be noticed that the Tribunal while granting relief to the dealer-opposite party had relied upon judgment in the case of Devi Dayal Aluminium Industries Pvt. Ltd. [1992] UPTC 115 which has been set aside by the Supreme Court in the case of Hindustan Aluminium Corporation Ltd. Vs. State of Uttar Pradesh and Another,

11. In view of the above discussions, I find sufficient force in the argument of the learned standing counsel that the commodity in question was liable to be taxed as unclassified item as was taxed by the assessing officer and not under the aforestated notification at the rate of four per cent. Aluminium and copper wires are not included in "metal" and thus are liable to be taxed as unclassified item.

12. In the result, the revision succeeds and is allowed in part. Question No. 1 so far as it relates to rate of tax at the rate of four per cent on the aluminium and copper wires is concerned, is answered in favour of the Department by holding that the said commodities were taxable at the rate of 12 per cent. So far as the remaining part of question No. 1 is concerned I find no force in the revision.

13. No order as to costs.

