
(2007) 09 AHC CK 0022
In the Allahabad High Court

Commissioner, Sales Tax

APPELLANT

Vs

Tata Oil Mills Co. Ltd.

RESPONDENT

Date of Decision : 11-09-2007

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2007) 09 AHC CK 0022

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—Present revision u/s 11 of the U.P. Trade Tax Act, 1948 (hereinafter referred to as "the Act") is directed against the order of the Tribunal dated May 4, 1993 for the assessment year 1986-87.

2. At the instance of the Revenue, the following questions have been raised:

(i) Whether the Sales Tax Tribunal was legally justified to hold that filtered coconut oil is taxable under the category of "oil of all kinds" at the rate of four per cent despite the fact that the aforesaid commodity falls under the category "hair oil" and is consequently taxable under the entry (all kinds of cosmetics) at the rate of 12 per cent with effect from September 7, 1981 vide Notification No. ST-II-5784/x-(1)/80 U.P. Act 15/48-Order-81 dated September 7, 1981 ?

(ii) Whether the Sales Tax Tribunal was legally justified to hold that the product in question manufactured and sold by the assessee is cattle feed and balance poultry feed which is exempt from payment of sales tax despite the fact that cattle feed is taxable as an unclassified commodity ?

(iii) Whether the Sales Tax Tribunal was legally justified to hold that the assessee was not liable for tax on sale of blue detergent cakes as it was sold after purchasing from Carona Cosmetics and Chemicals Ltd., Kanpur a unit holding eligibility certificate granted u/s 4A of the Act despite the fact that this dealer

himself is a manufacturer in the real sense of the aforesaid commodity ?

3. Heard Sri B. K. Pandey, learned Standing Counsel and Sri Bharat Ji Agrawal, Senior Advocate, assisted by Sri R. S. Agrawal, learned Counsel for the opposite party.

4. First question relates to the rate of tax on the filtered coconut oil. The claim of the assessee was that it was liable to tax under the entry "oil of all kinds" at the rate of four per cent while the assessing authority had levied the tax under the entry "cosmetics" treating it as hair oil at the rate of 12 per cent. The Tribunal held that filtered coconut oil falls under the entry "oil of all kinds" and liable to tax at four per cent. The Tribunal held that merely because coconut oil is filtered and packed in tin container it does not cease to be oil. The Tribunal further held that the Commissioner of Trade Tax has issued a circular dated December 19, 1989 directing all the assessing authorities to treat filtered coconut oil under the entry of "oil of all kinds".

5. A similar question came up for consideration before this Court in the case of dealer itself for the assessment year 1983-84 in revision No. 49 of 1990 and for other assessment years in revisions Nos. 60, 61, 62 and 63 of 1990. This Court vide order dated September 5, 1997 upheld the order of the Tribunal and held that "filtered coconut oil" is liable to tax under the entry of "oil of all kinds."

6. Learned Standing Counsel is not able to show anything in the contrary. It is settled principle of law that the circulars are binding upon the Revenue authority as held in the case of Commissioner of Sales Tax, U. P. v. Indra Industries reported in [2001] 122 STC 100 : [2000] UPTC 472. The apex court held as follows (page 102 of STC):

A circular by tax authorities is not binding on the courts. It is not binding on the assessee. However, the interpretation that is thereby placed by the taxing authority on the law is binding on that taxing authority. In other words, the taxing authority cannot be heard to advance an argument that is contrary to that interpretation.

7. In the case of The Paper Products Ltd. Vs. Commissioner of Central Excise, the apex court held as follows:

... This question is no more res integra in view of the various judgments of this Court. This Court in a catena of decisions has held that the circulars issued u/s 37B of the said Act are binding on the Department and the Department cannot be permitted to take a stand contrary to the instructions issued by the Board. These judgments have also held that the position may be different with regard to an assessee who can contest the validity or legality of such instructions but so far as the Department is concerned, such right is not available. See Collector of Central Excise, Patna Vs. Usha Martin Industries, etc., In the case of M/s. Ranadey Micronutrients etc. Vs. Collector of Central Excise, this Court held that the whole objective of such circulars is to adopt a uniform practice and to inform

the trade as to how a particular product will be treated for the purposes of excise duty. The court also held that it does not lie in the mouth of the Revenue to repudiate a circular issued by the Board on the basis that it is inconsistent with a statutory provision. Consistency and discipline are, according to this Court, of far greater importance than the winning or losing of court proceedings. In the case of Collector of Central Excise, Bombay Vs. Jayant Dalal Private Ltd., this Court has held that it is not open to the Revenue to advance an argument or even file an appeal against the correctness of the binding nature of the circulars issued by the Board. Similar is the view taken by this Court in the case of Collector of Central Excise, Bombay Vs. Kores (India) Limited, Thane,

8. Similar view has been taken by the apex court in a recent decisions in the case of SACI Allied Products Ltd., U.P. Vs. Commissioner of Central Excise, Meerut, and Union of India and Another Vs. Azadi Bachao Andolan and Another,

9. In view of the above, so far as question No. (i) is concerned, the order of the Tribunal is upheld and the question is answered in favour of the assessee.

10. So far as question No. (ii) is concerned, both the parties are agreed that so far as taxability of cattle feed is concerned, issue is covered by the decision of this Court in the case of Cattle Feed Plant, Pradeshik Co-operative Dairy Federation Ltd., Meerut v. Commissioner of Trade Tax reported in [2008] 18 VST 139 [App.] : [2005] UPTC 968 in which the cattle feed sold in the name of Parag Pashu Aahar has been held covered under the entry of cattle fodder, including green fodder chuni, bhusi, chhilka, chokar, Java, gowar, de-oiled cake, de-oiled rice polish, de-oiled rice bran or de-oiled rice husk but not including oil-cake (khali), rice polish, rice bran or rice husk by Notification No. ST-II-3714/x-6(1)/85-U.P. Act 15/48 dated June 5, 1985 and exempted from tax. The aforesaid judgment has been relied upon and approved by the division Bench of this Court in the case of Uptons India Ltd. v. State of U.P. reported in [2008] 18 SC 148 : [2007] UPTC 1008. So far as poultry feed is concerned, the division Bench of this Court in the case of Piya Pharmaceuticals Works v. Deputy Commissioner (Executive), Sales Tax, Ghaziabad reported in [1998] UPTC 209 has held that the balanced poultry feeds is covered under the poultry feeds supplements and exempted from tax.

11. Following the aforesaid decisions, the order of the Tribunal is upheld and the question is answered in favour of the dealer.

12. Coming to the question No. (iii), the brief facts are that the dealer-opposite party had purchased the blue detergent bars and cakes from M/s. Karona Cosmetics and Chemicals Ltd., Kanpur unit holding eligibility certificate u/s 4A of the Act. The dealer entered into an agreement with Karona Cosmetics and Chemicals Ltd., Kanpur, for the purchases of blue detergent bars and cakes and under the terms of the agreement, the manufacturer was required to purchase raw materials of the specification provided by the dealer. In view of the aforesaid clause of the agreement, the assessing authority held that Karona Cosmetics and

Chemicals Ltd., Kanpur had manufactured the detergent bars on behalf of the dealer and after the manufacturing it is the dealer who had made the first sale and therefore was liable to tax, being a "manufacturer" defined under the definition of the Act. The plea of the dealer was that purchases were made on principal-to-principal basis and the title on the goods before the sale was with the manufacturer, Karona Cosmetics and Chemicals Ltd., Kanpur and only after the purchases from the said manufacturer, the dealer had become the owner and therefore, the sale of the dealer was the second sale hence it was not liable to tax being neither manufacturer nor importer. The Tribunal has accepted the plea of the dealer and exempted the sales of such detergent bars and cakes purchased from Karona Cosmetics and Chemicals Ltd., Kanpur.

13. I have perused the order of the Tribunal and the authorities below. I do not find any error in the order of the Tribunal. Merely because under the terms of the agreement, Karona Cosmetics and Chemicals Ltd., Kanpur had purchased the raw materials, chemicals, etc., as per specification and the quality prescribed by the dealer it cannot be said that the manufacturing was carried on on behalf of the dealer. The terms of the agreement reveals that agreement was for the sales on principal-to-principal basis. Therefore the sales of blue detergent bars and cakes purchased from Karona Cosmetics and Chemicals Ltd., Kanpur by the dealer to different parties were the second sales and thus, not liable to tax.

14. Reliance is placed on the decision of this Court in the case of Commissioner of Trade Tax v. D.C.M. Ltd. Daurala Sugar Works, Daurala reported in [2008] 14 VST 27 : [2007] UPTC 946.

15. In view of the above, the order of the Tribunal is upheld and the question is decided in favour of the dealer.

In the result, revision fails and is dismissed.