(2009) 10 AHC CK 0080

In the Allahabad High Court

Commissioner, Trade Tax		APPELLANT
	Vs	
Associated Distributors Ltd.		RESPONDENT

Date of Decision : 27-10-2009

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

Citation : (2010) 30 VST 482

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajes Kumar, J.—This is a revision u/s 11 of the U.P. Trade Tax Act, 1948 at the instance of the Revenue against the order of the Tribunal dated May 14, 2001 for the assessment year 1994-95.

2. The Revenue has raised the following question for consideration by this Court:

1. Whether, on the facts and in the circumstances of the case, the Trade Tax Tribunal is legally justified to hold that ''panjon'' is bulk drug and is taxable at the rate of six per cent under Notification No. 1912 dated June 1, 1994 despite panjon or its formulation are not specified under Schedule First or Second to the Drug (Prices Control) Order, 1987?

3. The applicant was dealing in sugar candy, confectionery, plastic goods, chewing gum, panjon, etc. The dealer has admitted the liability of tax on the sale of panjon at the rate of six per cent plus surcharge under Notification No. ST-2-1912/IX dated June 1, 1994. Treating it as a bulk drug the assessing authority has not accepted the plea of the dealer and has assessed panjon at the rate of eight per cent plus surcharge.

4. Being aggrieved by the order, the dealer filed an appeal before the Deputy Commissioner (Appeals), Trade Tax, Ghaziabad. The Deputy Commissioner (Appeals) has accepted the plea of the dealer and held that panjon is a drug

containing paracetamol and is a bulk drug, which is notified under the Second Schedule of the Drug (Prices Control) Act and is liable to tax at the rate of six per cent.

5. The Commissioner, Trade Tax, filed an appeal before the Tribunal. The Tribunal rejected the appeal of the Commissioner, Trade Tax, so far as the taxability of panjon is concerned.

6. Being aggrieved by the order, the Revenue filed the present revision.

7. Heard learned standing Counsel and Sri Praveen Kumar holding brief of Sri Ashok Kumar.

8. The learned standing Counsel submitted that the Tribunal has accepted that according to the boucher the panjon is made by the following formulation:

(a) Acetyl salicylic acid, i.p., 300 mg.

(b) Paracetamol, i.p., 150 mg.

(c) Caffeine anhydrous, i.p., 50 mg.

9. He submitted that caffeine anhydrous is not specified as bulk drug under any of the Schedule and, therefore, panjon does not fall within the category of bulk drug under the notification.

10. Sri Praveen Kumar submitted that the panjon falls under category II of the Third Schedule of the notification, which says, "all formulations based on bulk drugs specified in the Second Schedule either individually or in combination with other bulk drugs". He submitted that "bulk drugs" specified in the Second Schedule in combination of the other bulk drugs may not necessarily be specified in the Second Schedule also falls under category II formulations of the Third Schedule. He submitted that what is necessary is that the other drugs should be bulk drugs, not necessarily fall under the Second Schedule. He submitted that acetyl salicylic acid is a chemical name of aspirin. Aspirin is a bulk drug specified in the Second Schedule. Paracetamol is also specified in the Second Schedule. Caffeine anhydrous, though not specified in the Second Schedule, is a bulk drug, as defined under the Drug (Prices Control) Order, 1987. He referred the definition of "bulk drug" as defined in para 2(a) of the order, which says "''bulk drug7 means any substance including pharmaceutical, chemical, biological or plant product or medicinal gas conforming to pharmacopoeial or other standards accepted under the Drugs and Cosmetics Act, 1940 (23 of 1940), which is used as such, or as an ingredient in any formulation;". He submitted that "bulk drug" is a very wide term and it includes all substance conforming to pharmaceutical or other standards accepted under the Drugs and Cosmetics Act, 1940.

11. The learned standing Counsel submitted that under Category II of the Third Schedule the words mentioned are "all formulations based on bulk drugs specified in the Second Schedule either individually or in combination with other bulk drugs". The "other bulk drugs" referred in the category can only be those

bulk drugs which are specified in the Second Schedule and not in other bulk drugs. He submitted that for the purposes of notification only those bulk drugs which are specified in the Schedule are to be considered as a bulk drugs either individually or in combination thereof. If any drug is not mentioned in the Schedule, it may not be considered as the "bulk drug" for the purposes of the notification.

12. Having heard learned Counsel for the parties, I have perused the impugned orders.

13. The Notification dated June 1, 1994 reads as follows:

Notification No. T.T.-2-1912/XI-9(217)-92 - U.P. Act-15-48 ? Order 94, dated June 1, 1994, published in U.P. Gazette, Extraordinary, Part 4, Section (kha), dated June 1, 1994.

Whereas, the State Government is satisfied that it is necessary so to do in public interest;

Now, therefore, in exercise of the powers under the proviso to Clause (e) of Sub-section (1) of Section 3A read with Section 25 of the Uttar Pradesh Trade Tax Act, 1948 (U.P. Act No. XV of 1948), and Section 21 of the Uttar Pradesh General Clauses Act, 1904 (U.P. Act No. 1 of 1904), the Governor is pleased to make, with effect from May 1, 1994, the following amendment in Government Notification No. ST-2-5785/X-10(1)-80 - U.P. Act-15/48 ? Order 81, dated September 7, 1981, as amended from time to time:

Amendment

In the list to the aforesaid notification, for the entries at the serial No. 29, the following entries shall be substituted columnwise, namely:

-- S. No. Description of goods Point of tax Rate of tax -- 1 2 3 4 -- 29(a)(i) Bulk drugs specified as on 31st M or I 6 per cent March, 1994 in the First and Second Schedules to the Drugs (Prices Control) Order, 1987. (ii) Formulations specified as on 31st M or I 6 per cent March, 1994 in the Third Schedule to the Drugs (Prices Control) Order, 1987.

(b) Drugs not included in item (a) M or I 8 per cent above. --

14. Under the aforesaid notification, "bulk drugs" specified as on March 31, 1994 in the First and Second Schedules to the Drugs (Prices Control) Order, 1987 and the formulation specified as on March 31, 1994 in the Third Schedule to the Drugs (Prices Control) Order, 1987 are liable to tax at the rate of six per cent and the drugs not included in the above are liable to tax at the rate of eight per cent. It is the case of the dealer that panjon is formulation specified as on March 31,

1994 in the Third Schedule to the Drugs (Prices Control) Order, 1987 and, therefore, liable to tax at the rate of six per cent. The case of the Revenue is that it is not covered under the aforesaid entry and, therefore, liable to tax at the rate of eight per cent under the residuary entry.

15. The question for consideration is whether Panjon falls under the entry formulations specified as on March 31, 1994 in the Third Schedule to the Drugs (Prices Control) Order, 1987. It is also useful to refer to the Second and Third Schedules of the Drugs (Prices Control) Order, 1987, which are as follows:

The Third Schedule

(See paragraphs 2(4), 7, 8, 9, 10, 12, 18 and 27)

Category I and Category II formulations

1. Category I Formulations

All formulations based on the bulk drugs specified under the First Schedule either individually or in combination with other bulk drugs.

2. Category II Formulations

All formulations based on bulk drugs specified in the Second Schedule either individually or in combination with other bulk drugs except the following:

(i) Single ingredient formulations based on the bulk drugs specified in the Second Schedule and sold under generic name,

(ii) All single ingredient vitamin formulations containing individual vitamins specified in the Second Schedule, sold either in brand name or in generic name, except the single ingredient vitamin formulations based on the bulk drugs vitamin A and vitamin C sold in brand name.

(The above Schedules are as per the Drugs and Cosmetics Act, 1940 - By Vijay Malik. Published by Eastern Book Company, 34 Lalbagh, Lucknow 226001.)

16. Admittedly formulation of panjon, as referred to in the order of the Tribunal, is as follows:

(a) Acetyl salicylic acid, i.p., 300 mg.

(b) Paracetamol, i.p., 150 mg.

(c) Caffeine anhydrous, i.p., 50 mg.

17 Webster''s Encyclopedic Unabridged Dictionary of the English Language defines "aspirin" as follows:

aspirin. 1. Pharma white, crystalline derivative of salicylic acid used to relieve the pain of headache, rheumatism, gout, neuralgia, etc.; acetylsalicylic acid. 2. an aspirin tablet; I took four aspirins and went right to bed.

18. It appears that acetyl salicylic acid is a chemical name of aspirin. Both aspirin and paracetamol are mentioned in the Second Schedule of the Order, 1987 and, admittedly, caffeine anhydrous is not mentioned in the Second Schedule. The question is that a formulation based on a bulk drug specified in Second Schedule in combination with other drugs includes those drugs which are not specified in the Second Schedule of category II Formulation of Third Schedule. In my view the plain reading of the language of category II formulation of the Third Schedule shows that it confines to a combination of the bulk drugs mentioned in the Second Schedule only and not a combination of the bulk drugs mentioned in the Second Schedule with other bulk drugs not mentioned in the Schedule. The combination should be of the bulk drugs specified in the Second Schedule. Caffeine anhydrous, admittedly, is not mentioned in the Second Schedule. It may be drugs but it cannot be treated as bulk drugs for the purposes of the notification unless it is specified in the Second Schedule.

19. In view of the above, I am of the view that panjon is not a formulation of the bulk drugs specified in the Second Schedule and, therefore, does not fall within the category of formulations specified as on March 31, 1994 in the Third Schedule under the Drugs (Prices Control) Order, 1987 and falls only under the residuary entry not included in item (a) above and liable to tax at the rate of eight per cent plus surcharge. The Tribunal has committed an error in levying the tax at the rate of six per cent under the entry "formulations specified as on 31st March, 1994" in the Third Schedule to the Drugs (Prices Control) Order, 1987.

20. In the result the revision is allowed. The order of the Tribunal is set aside to the extent stated above. The Tribunal is directed to pass appropriate order in accordance with the law.