
(2007) 09 AHC CK 0219
In the Allahabad High Court

Commissioner, Trade Tax

APPELLANT

Vs

Avadh Export

RESPONDENT

Date of Decision : 06-09-2007

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2008) 16 VST 42

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 September 28, 2002 relating to the assessment year 1996-97.

2. The dispute relates to the levy of tax on consideration received on the sale of import licence which has been issued from the office of the Joint Director General of Foreign Trade, Moradabad. The claim of the dealer was that it was neither manufacturer nor importer in respect of the said transaction and, therefore, the sale consideration was not liable to tax. The assessing authority, however, levied the tax treating the dealer as manufacturer. First appellate authority deleted the tax, which has been confirmed by the Tribunal. Both the authorities have held that the dealer was neither importer nor manufacturer in respect of sale of import licence.

3. Heard learned Standing Counsel.

4. Issue involved is squarely covered by the decision of this Court in the case of Commissioner of Trade Tax v. Object De Art India, Moradabad reported in [2008] 16 VST 22 : [2006] UPTC 790 in which this Court held as follows:

From the perusal of the aforesaid cases it would appear that some process has to be carried out on a commodity to obtain a new manufactured commodity. In

every case of manufacture there has to be some process whether slight or extensive. This act of processing can be carried out only in tangible goods and not in respect of intangible goods ; therefore, definition of the term "manufacture" given u/s 2(e1) of the Act applies only to tangible goods and not to intangible goods. REP licence/exim scrips being intangible goods are incapable of being manufactured in the sense in which term "manufacture" has been defined under the U.P. Trade Tax Act. Thus, the authority granting licence cannot be treated as manufacturer of licence.

It may be mentioned here that the first notification in respect of patents, trade mark, import licence, export permit or licence or quota was issued by the State Government in exercise of powers under proviso to Section 3A(1)(e) of the Act vide Notification No. ST-710, dated February 27, 1999 whereby sales of the aforesaid goods were made liable to tax at four per cent in the hands of importer or the person in whose name the licence permit had been issued. The proviso under which this notification has been issued stated that the State Government may modify the rate of the point of tax while subjecting these goods to tax. Significantly the liability of tax under the aforesaid notification has not been fastened on the manufacturer of these permits and licences. This is so apparently because these permits and licences are not manufactured and there can be no manufacturer thereof. In fact, licences or permits are issued or granted and not manufactured and, therefore, in the said notification the word manufacturer is significantly missing. It is also important to mention that the aforesaid notification has been issued under the same provisions, i.e., u/s 3A(1)(e) under which the Revenue wants in the present case to levy tax on the dealer treating him to be a manufacturer.

5. In view of the above, the order of the Tribunal is upheld.

In the result, revision fails and is, accordingly, dismissed.