(2007) 07 AHC CK 0002

In the Allahabad High Court

Commissioner, Trade Tax — APPELLANT

Vs

Decent Metal Industries — RESPONDENT

Date of Decision : 04-07-2007

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

Citation : (2008) 13 VST 429

Hon'ble Judges : Vikram Nath, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vikram Nath, J.—Heard Sri K.M. Sahai, learned Counsel for the applicant.

2. Despite notice to engage another counsel no one has put in appearance for dealer-opposite party.

3. The dispute relates to the assessment year 1994-95. The Commissioner of Trade Tax has questioned the order of the Trade Tax Tribunal, Bench II, Aligarh, dated August 8,1994 by means of this revision u/s 11 of the U.P. Trade Tax Act, 1948 (in short, referred to as, "the Act") and has sought to raise the following question of law:

Whether, on the facts and under the circumstances of the case, the learned member of the Trade Tax Tribunal was justified to have held that L.T. open clamps A-type were taxable at the rate of four per cent as iron and steel?

4. The dealer is involved in supply of goods to various parties including Government Departments. It was initially assessed by order dated December 1,1998. However, certain transactions relating to supply of goods being L. T. open clamps A-type were noticed to have not been disclosed in the returns filed by the dealer and therefore, proceedings for reassessment u/s 21 of the Act were initiated. In the assessment order u/s 21 of the Act, the assessing officer vide order dated September 22, 1989 found that the transactions to the tune of Rs.

1,50,000 of sale of L.T. open clamps A-type to Government department had escaped assessment. Accordingly, treating the said goods to be of unclassified category, he applied rate of tax at eight per cent and determined the tax liability of Rs. 12,000. The dealer preferred an appeal which was dismissed by the Assistant Commissioner (Judicial) by order dated May 3,1990. However, in second appeal the Tribunal though held that the proceedings u/s 21 of the Act were valid but allowed the second appeal of the dealer only to the extent that the rate of tax applicable on sale of such goods would be four per cent and not eight per cent and accordingly reduced the tax liability by Rs. 6,000. Aggrieved by the same the present revision has been filed.

5. The submission of the learned Standing Counsel is that the reliance placed by the Tribunal on the decision of this court in the case of Commissioner, Sales Tax, U.P., Lucknow v. Ravi Industries, Bareilly reported in [1988] 69 STC 288 : [1987] STI 309 is misplaced. It is not applicable at all to the facts of the present case. The order of the Tribunal is, therefore, vitiated. It is further submitted that L.T. open clamps A-type cannot be placed in the same category as iron and steel. Reliance was placed upon the decision of the apex court in the case of Bengal Iron Corporation v. Commercial Tax Officer reported in [1993] 90 STC 47 : [1993] UPTC 1312.

6. In the case of Commissioner, Sales Tax Vs. Ravi Industries, this court was dealing with the interpretation of the entry at serial No. 7A in the notification dated October 1, 1965, which reads as follows:

Electrical equipment, plants and their accessories required for generation, distribution and transmission of electrical energy.

7. The goods sold in the said case were clamps and channels used for giving support to the electrical wire. The rate of tax applicable on the said entry 7A was seven per cent. Otherwise the rate of tax would be four per cent. The court was of the view that the clamps and channels in no way could be said to be covered by entry at serial No. 7A as they had no nexus with the electrical equipments, plants and their accessories required for generation, distribution and transmission of electrical energy and accordingly applied the lower rate of tax. In the present case the issue involved though relates to sale of iron clamps being L.T. open clamps A-type but is not covered by the decision in the case of Commissioner, Sales Tax Vs. Ravi Industries, The contention of the dealer in the present case before the appellate authority and the Tribunal was that the goods involved, i.e., L.T. open clamps A-type were to be treated in the category of iron and steel and not that they were covered by the notification involved in the case of Commissioner, Sales Tax Vs. Ravi Industries,

8. In the case of Bengal Iron Corporation [1993] 90 STC 47 : [1993] UPTC 1312, the apex court held that "cast iron" is different from "cast iron castings". While dealing with the issue the apex court observed as follows in para 6 of the report (at page 52 of STC):

6. It is thus clear that ''cast iron'' is different from ''cast iron castings'' manufactured by the appellant. ''Cast iron'' is purchased by the appellant and from that ''cast iron'', he manufactures several goods like man-hole covers, bends, cast iron pipes, etc. In other words ''cast iron'' used in item (iv) of Section 14 of the Central Act is the material out of which the petitioner''s products are manufactured. Position remains the same, even if the appellant purchases iron and mixes it with carbon and silicon thereby deriving ''cast iron'' and then pours it into different moulds. In sum, ''cast iron'' is different from the cast iron pipes, man-hole covers, bends, etc., manufactured and sold by the appellant. It cannot be denied, in such a situation that the products manufactured by the appellant are, in commercial parlance, different and distinct goods from the cast iron....

9. Applying the ratio laid down in the case of Bengal Iron Corporation [1993] 90 STC 47 (SC) : [1993] UPTC 1312 the L.T. open clamps A-type cannot be held to be iron and steel and therefore, the Tribunal erred in applying the lower rate of tax applicable to iron and steel.

10. In the present case, the assessing officer had rightly applied the rate of unclassified items and not treating it to be iron and steel. It may also be noticed that the dealer had not raised this issue before the assessing officer, as is apparent from the perusal of the assessment order u/s 21 of the Act.

11. In view of the discussion made above, the revision succeeds and is allowed. The order of the Tribunal dated August 8, 1994 is set aside and that of the assessing officer is maintained.

In the facts and circumstances of the case, there shall be no order as to costs.

