(2006) 08 AHC CK 0023

In the Allahabad High Court

Commissioner, Trade Tax — APPELLANT

Vs

Diamond Sales Corporation — RESPONDENT

Date of Decision : 24-08-2006

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

Citation : (2009) 24 VST 146

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—The present three revisions u/s 11 of the U.P. Trade Tax Act, 1948 (hereinafter referred to as "the Act") are directed against the orders of the Tribunal dated April 1, 2004 relating to the assessment years 1996-97 and 1997-98 both under the U.P. Trade Tax Act, 1948 and Central Sales Tax Act, 1956.

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

(i) Whether, on the facts and in the circumstances of the case, the Tribunal is legally justified in holding that CCF sold by the assessee, were not taxable. Since the CCF has been held to be not taxable in the case of Commissioner, Sales Tax, U.P. v. Arora Material Store [1982] 51 STC 235 : [1982] UPTC 50 although this case has been distinguished by the Division Bench of this honourable court in the case of AMC Coated Fabrics Pvt. Ltd. v. State of U.P. reported in [1992] UPTC 896 and when the assessee has imported the goods under consideration against form XXXI on 25 occasions without mentioning on the documents that the assessee had been importing tax-free CCF against those form XXXI ?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal is legally justified in remanding the case after deciding the main issue of the case on incorrect application of law ?

(iii) Whether the Tribunal is legally justified in remanding the case on the point of enquiring into the fact of under-valuation, closing stock and goods return, etc., when all the required facts were available on record that had been well considered by the assessing authority as well as by the first appellate authority when nothing new has been furnished by the assessee before the Tribunal and when the issue could have been decided by the Tribunal itself.

(iv) Whether the Tribunal is legally justified in giving another opportunity to the assessee for re-agitating its case before the assessing authority when the assessing authority had rejected the account books of the assessee for cogent reasons mentioned in the assessment order?

3. During the course of the argument, learned Standing Counsel has pressed question No. 1 which relates to the taxability of the cotton- coated fabrics (hereinafter referred to as "CCF"). The assessing authority levied the tax on CCF on the ground that the dealer has imported such goods against the declaration form as contemplated in Section 28A of the Act. The assessing authority was of the view that if the goods was CCF, the same should not have been imported against the declaration form inasmuch as the declaration form was applicable only in case of import of taxable goods. Tribunal has allowed the exemption on the turnover of CCF on the ground that the dealer has purchased CCF and has sold CCF. The Revenue is not able to show that any other item was sold. The Tribunal was of the view that the CCF has been held exempted from tax in the decision of the Allahabad High Court in the case of Commissioner, Sales Tax, U.P. v. Arora Material Store reported in [1982] 51 STC 235 : [1982] UPTC 50 under the entry "cotton fabrics of all varieties" of the Notification No. ST-II-7038/X-7 (23)/83-U. P. Act-XV/48-Order-85, dated January 31, 1985.

4. Heard learned Standing Counsel.

5. I do not find any error in the order of the Tribunal. Learned Standing Counsel is not able to show that the dealer has sold any other item other than CCF, which was cotton fabrics. If the dealer has purchased the CCF and sold the CCF merely because it was imported against declaration form, the tax cannot be levied. In the case of Commissioner, Sales Tax, U.P. v. Arora Material Store reported in [1982] 51 STC 235 : [1982] UPTC 50, this Court held that the cotton-coated fabrics is exempted from tax under the notification issued u/s 4 of the Act being covered under the entry "cotton fabrics of all varieties".

6. In the result, all the three revisions fail and are, accordingly, dismissed.

