(2007) 10 AHC CK 0114

In the Allahabad High Court

Commissioner, Trade Tax — APPELLANT

Vs

Manava Gramodyog Mandal — RESPONDENT

Date of Decision : 01-10-2007

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

Citation : (2009) 20 VST 711

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

Rajes Kumar, J.—Present three revisions u/s 11 of the U.P. Trade Tax Act, 1948 (hereinafter referred to as "the Act") are directed against the order of the Tribunal dated June 28, 2002 relating to the assessment years 1996-97, 1997-98 and 1998-99.

2 At the instance of the Revenue, following questions have been raised in each year.

Assessment year 1996-97.

(i) Whether on the facts and in the circumstances of the case, the Trade Tax Tribunal is legally justified to hold that the exemption unit available up to turnover of Rs. 50,00,000 is applicable for the units of an institution separately under Notification No. 709 dated February 27, 1997?

Assessment year 1997-98.

(i) Whether on the facts and in the circumstances of the case, the Trade Tax Tribunal is legally justified to hold that the exemption unit available up to turnover of Rs. 50,00,000 is applicable for the units of an institution separately under Notification No. 709 dated February 27, 1997?

(ii) Whether on the facts and in the circumstances of the case, the Trade Tax

Tribunal is legally justified to hold that the amount received for sale is not part of turnover?

Assessment year 1998-99.

(i) Whether on the facts and in the circumstances of the case, the Trade Tax Tribunal is legally justified to hold that the exemption unit available up to turnover of Rs. 50,00,000 is applicable for the units of an institution separately under Notification No. 709 dated February 27, 1997?

3. In all the three years question No. 1 is common question. The question is whether the dealer-opposite party having certificate of khadi and village industries and being an institution is entitled for exemption of Rs. 50 lacs for each unit or for Rs. 50 lacs only for all the units under the Notification No. 709 dated February 27, 1997. The Tribunal held that each individual unit is entitled for the benefit of Rs. 50 lacs.

4. For the assessment year 1997-98 dealer had received certain compensation from the purchasing party on account of non-lifting of the goods. The assessing authority treated the said amount as part of the turnover. The first appellate authority has accepted the plea of the dealer and held that it was not a part of the turnover. Tribunal by the impugned order upheld the view of the first appellate authority.

5. Heard Sri B.K. Pandey, learned Standing Counsel and Sri Bharat Ji Agrawal, learned Senior Advocate, appearing on behalf of the dealer.

6. The learned Standing Counsel submitted that the language of the Notification dated February 27, 1997 is clear and it provides exemption of Rs. 50 lacs to the institution as a whole and not to the individual unit of the institution.

7. With regard to the second question involved in the assessment year, 1997-98, he submitted that the amount towards claim was received from the purchaser, therefore, it was the part of the turnover.

8. The learned Counsel for the dealer submitted that so far as first question is concerned, there is not much to say as from the language of the notification, it appears that the exemption was available to the institution and not to the individual unit.

9. So far as second question is concerned, he submitted that the amount which was received as a claim was not in the nature of sale consideration, but it was on account of non-lifting of the goods which was in the nature of compensation, therefore, it was not the part of the turnover. The Tribunal has rightly held so.

10. Having heard the learned Counsel for the parties, I have perused the order of the Tribunal and the authorities below.

11. The relevant Notification No. TT-2-709/XI-9(53)/91-U.P. Act-15-48-Order-97, dated February 27, 1997 reads as follows:

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?2? NwV okil yh tk ldrh gS] ;fn ,slh laLFkk,a mu "krksZ esa ls ftuds v/khu NwV vuqeU; gS] fdlh dk nq:Ik;ksx djsa A

?3? fdlh dj&fu/kkZj.k o"kZ esa dsoy ipkl yk[k :i;s fodz; /ku ?VuZ vksoj? rd NwV miyC/k gksxh A

12. On a consideration of the aforesaid notification, this Court in the case of Commissioner of Trade Tax v. Padam Gramodyog Samiti, Azamgarh reported in [2009] 20 VST 715 [App] : [2005] UPTC 844 held as follows:

In my opinion, there is no ambiguity in the language of the notification, which had contemplated the exemption only to the extent of Rs. 50 lacs in an assessment year on the turnover of the manufactured goods by the institution certified by All India Khadi and Village Industries Commission or U.P. Khadi Village & Industries Board. It does not contemplate exemption on each product manufactured by the village industries. Perusal of the Notification dated October 1, 1994 shows that where the Legislature wanted to give exemption up to certain limit in respect of the product of each of the village industry. It had been specifically stated that if the intent of the Legislature would be to provide exemption up to Rs. 50 lacs to each manufactured product, it should have been mentioned in the notification and then the same language could be used as mentioned in the notification dated October 1, 1994. The language of the notification is plain and clear and there is no ambiguity. It clearly contemplates exemption to the institution on its manufactured product up to limit of Rs. 50 lacs in an assessment year. The intent of the Legislature was clear to grant exemption on the turnover of Rs. 50 lacs only in an assessment year to the manufactured product by the institution. In my opinion, there is no scope of any contrary intendment.

13. From a bare perusal of the notification it is clear that the exemption was to the institution as a whole and not to the unit individually and, therefore, the Tribunal has erred in allowing the exemption of Rs. 50 lacs to each unit of the institution.

14. So far as second question involved in the assessment year 1997-98, 1 do not find any error in the order of the Tribunal. The amount received as a claim for non-lifting of goods under the agreement, was not in the nature of sale consideration of the goods. Finding of the Tribunal is finding of fact. The learned Standing Counsel is not able to show that the amount received was in the nature of sale consideration for being a part of the turnover. The nature of the amount should be in the form of sale consideration or it should fall within the purview of Explanation to Section 2(1) which defines "turnover". The aforesaid amount was neither the sale consideration nor it falls within the purview of Explanation to Section 2(i) which defines "turnover".

15. In view of the above, all the three revisions are allowed in part. Question No. 1 in all the three revisions are decided in favour of the Revenue and against the assessee and it is held that under the notification exemption of Rs. 50 lacs was available to the institution as a whole and not to the individual unit. So far as question No. 2 involved in the assessment year 1997-98 only is decided in favour of the assessee and the order of the Tribunal is upheld.

16. The Tribunal is directed to pass appropriate orders u/s 11(8) of the Act.