(2011) 11 AHC CK 0310

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No. 1297 of 2004

Commissioner Trade Tax APPELLANT

Vs

M/s Kyal Textiles RESPONDENT

Date of Decision : 18-11-2011

Acts Referred:

Uttar Pradesh General Clauses Act, 1904 — Section 21
Uttar Pradesh Sales Tax Act, 1948 — Section 4

Citation : (2011) 11 AHC CK 0310

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon''ble Arun Tandon, J.—Heard Sri B.K. Pandey, learned Standing Counsel for the department and Sri Piyush Agarwal, learned counsel for the assessee.

2. This trade tax revision filed by the department is directed against the judgement and order passed by the Trade Tax Tribunal dated 30th January, 2004, wherein three second appeals have been decided under common judgment. This revision arises out of judgement passed in Second Appeal No. 511 of 1997 (Assessment year 1988-1989). Under the order impugned it has been held that the H.D.P.E. fabric subject matter of consideration is exempt from trade tax as it answers the description of textile, which has been excluded from trade tax under notification dated 30th January, 1985.

3. Challenging the finding so recorded by the Tribunal, learned Standing Counsel for the department contends that the issue has been settled in favour of the department under judgement and order of the High Court in the case of M/s Gaurav Traders, Gorakhpur vs. Commissioner of Trade Tax reported in 2007 U.P.T.C.-914, wherein after specifically reproducing the notification, in paragraph-10, the Hon''ble Single Judge went on to hold that only such H.D.P.E. fabric stands excluded from tax which are water proof fabrics, all other H.D.P.E. fabric are not exempt from tax.

4. Faced with the aforesaid contention raised on behalf of the department, learned counsel for the assessee refers to the another judgment of the High Court in the case of the Commissioner, Trade Tax, U.P. Lucknow vs. S/S Shakti Tubes reported in 2011 U.P.T.C. 625, wherein the Hon''ble Single Judge went out to hold that H.D.P.E. fabric, which is high density poly ethylene fabric, is water proof and therefore, exempt from trade tax under the same notification. The Hon''ble Single Judge has further held that the issue in that regard had been examined by the Division Bench of this Court in the case of M/s. Mahalaxmi Polyplast (P) Ltd., Muzaffar Nagar vs. State of U.P. & Another reported in 1990 U.P.T.C. 956 and in the case of Commissioner of Trade Tax vs. M/s Rajesh Kumar Vikas Kumar Pandey, Gorakhpur reported in 1999 U.P.T.C. 595, which have been distinguished by the Hon''ble Judge in the case of M/s Gaurav Traders (Supra) without disclosing any reasons for the purpose.

5. This Court itself is unable to agree with that what has been recorded in the case of the Commissioner, Trade Tax, U.P. Lucknow vs. S/S Shakti Tubes (Supra), inasmuch as the Hon''ble Single Judge appears to have misread the judgements of the Division Bench of this Court in the case of M/s. Mahalaxmi Polyplast (P) Ltd., Muzaffar Nagar (Supra) as well as the judgment in the case of Commissioner of Trade Tax vs. M/s Rajesh Kumar Vikas Kumar Pandey, Gorakhpur (Supra) while holding that the two judgements lay down something contrary to what has been laid down by the Hon''ble Single Judge in the case of M/s Gaurav Traders, Gorakhpur (Supra).

6. This Court at this stage itself may reproduce the notification dated 31st January, 1985, which is the bone of contention between the parties and reads as follows:

"[Published in U.P. Gazette, Extraordinary, dated 31st January, 1985]

In exercise of the powers under Clause (a) of 2 Section 4 of the Uttar Pradesh Sales Tax Act, 1948 (U.P.Act No.XV of 1948), read with Section 21 of the Uttar Pradesh General Clauses Act, 1904 (U.P. Act No.1 of 1904) and in supersession of all previous notifications issued under the aforesaid Clause

(a) of Section 4, the Governor is pleased to exempt, with effect from February 1, 1985, the goods mentioned in Column 2 of Schedule hereunder from payment of tax under the said Act of 1948, subject to the conditions, if any, specified in Column 3 thereof:

SCHEDULE

Serial No.

Description of goods

Conditions

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Textiles of the following varieties manufactured on powerloom, excluding durries, carpets, druggets, hosiery goods, ready-made garments, hessian or jute cloth and cotton, rayon or nylon, tyre cord fabrics, tyre cord or tyre cord wrap sheets, and PVC/HDPE fabrics but including the goods specified in Annexure hereunder:

(a) cotton fabrics of all varieties;

(b) rayon or artificial silk fabrics, including staple fibre fabrics, of all varieties;

(c) woolen fabrics of all varieties;

(d) fabrics made of a mixture of any two or more of the above fibres, viz., cotton, rayon or wool;

(e) Canvas cloth, tarpoulins and waterproof cloth.

Annexure -

(i) Hand printed, dyed or embroidered fabrics, and dhoties, sarees chadars, bedspreads, bedsheets, counter panes, table-cloth, handkerchiefs, towels, scarfs, napkins and dusters, made out of fabrics of any of the varieties mentioned in sub-clause (a), (b), (c) or (d) above;

(ii) cotton valvetes and valveteen but excluding embroidered valvets;

(iii) hosiery cloth in lengths;

(iv) book binding cotton fabrics and leather cloth and inferior or imitation leather cloth ordinarily used in book binding;

(v) bandages;

(vi) rubberised or synthetic waterproof fabrics, whether single textured or double textured.

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7. From item no.53 of the notification, it is clear that textiles have been exempted from tax except the varieties as mentioned after the word "excluding" H.D.E.P. fabric is mentioned as one item after the said word "excluding". However, a further exception has been made under the words but including the goods specified in the Annexure. In the facts of the case, the relevant part of Annexure is sub-clause (vi), which read as follows:

(vi) rubberised or synthetic waterproof fabrics,whether single textured or double textured.

8. It is, thus, apparent from the simple reading of the aforesaid provision that H.D.P.E. fabrics are in itself is not exempt from tax except when the fabric is rubberised or is synthetically made water proof.

9. The Division Bench judgement of the Hon''ble High Court in the case of M/s. Mahalaxmi Polyplast (P) Ltd., Muzaffar Nagar (Supra) it is apparently clear that a specific finding was recorded that the goods which were subject matter in that case, were rubberised. In paragraph-10 of the said Division Bench judgement, it had been specifically recorded that the plain H.D.P.E. Fabrics when subjected to the process of lamination become water-proof. That being so, the article in question squarely falls within Clause (vi) of the Annexure to the above notification dated 5th June, 1985. The Division Bench judgement of this Court has, therefore, held that H.D.P.E. fabric is exempt from tax, only when such H.D.P.E. fabric has been laminated to become water proof and therefore, covered by sub-clause (vi) of the Annexure to item no. 53 of the notification dated 31st January, 1985.

10. The Hon''ble Single Judge in the case of Commissioner, Trade Tax, U.P. Lucknow vs. S/S Shakti Tubes (Supra) has skipped over the said facts and the finding of the Division Bench of this Court in the case of M/s. Mahalaxmi Polyplast (P) Ltd., Muzaffar Nagar (Supra).

11. In the case of Commissioner of Trade Tax vs. M/s Rajesh Kumar Vikas Kumar Pandey, Gorakhpur (Supra), the Hon''ble Single Judge of this Court has specifically held that exemption stood diluted by specifying certain goods in the annexure i.e. sub-clause (vi). Only rubberised or synthetic water-proof H.D.P.E. fabric is exempt from tax.

12. To similar effect is the judgment of the Hon''ble Single Judge of this Court in

the case of M/s Gaurav Traders, Gorakhpur (Supra) wherein the goods under consideration had neither been rubberised nor had undergone the process of lamination so as to held to be made water-proof. The aforesaid aspect of the matter has been ignored by the Hon''ble Single Judge in the case of Commissioner, Trade Tax, U.P. Lucknow vs. S/S Shakti Tubes (Supra), and, therefore, it cannot be said to have laid down a binding precedent to be followed by this Court.

13. Law laid down by the Hon''ble Single Judge of this Court in the case of M/s Gaurav Traders, Gorakhpur (Supra) is the correct law. Nothing different has been held by the Division Bench of this Court in the case of M/s. Mahalaxmi Polyplast (P) Ltd., Muzaffar Nagar (Supra).

14. In the facts and circumstances of the case, there is absolutely no finding recorded by the Tribunal that the H.D.P.E. fabric subject matter of consideration had been rubberised or had undergone the process of lamination so as to be made water-proof.

15. The order of the Tribunal is, therefore, set aside. All consequential actions hall be taken accordingly.

16. The present revision is allowed.

