(1997) 04 AHC CK 0127

In the Allahabad High Court

Case No : Trade Tax Revision No''s. 196 and 197 of 1995

Commissioner, Trade Tax — APPELLANT

Vs

Rampur Distillery and Chemicals Co. Ltd. — RESPONDENT

Date of Decision : 07-04-1997

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 11, 29A

Citation : (2003) 133 STC 172

Hon'ble Judges : M.C. Agarwal, J

Bench : Single Bench

Advocate : U.K. Pandey, for the Appellant; Bharat Ji Agarwal, Senior Advocate and Rajesh Kumar Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

M.C. Agarwal, J.—These two revision petitions u/s 11 of the U.P. Trade Tax Act, 1948 are directed against a common order dated November 15, 1994, passed by the Trade Tax Tribunal, Moradabad, disposing of the dealer''s second appeals under the U.P. Trade Tax Act, 1948 and the Central Sales Tax Act, 1956 for the assessment year 1978-79.

2. I have heard Sri U.K. Pandey, learned Standing Counsel for the revisionist, and Sri Bharat Ji Agarwal, Senior Advocate, assisted by Sri Rakesh Kumar Agarwal, for the respondent.

3. The following question of law is stated to arise in these two revision petitions :

"Whether on the facts and in the circumstances stated above is learned Tribunal legally justified to accept the turnover as disclosed by the assessee merely on the ground that there is strict control of excise department and further to order the refund of Rs. 1,18,033.56 which is the Central trade tax charged by the assessee from the customers ?"

4. As is evident, the question relates to two controversies and there should have

been two questions covering each controversy. In fact, the first part of the question related to the estimate of the turnover relating to the assessment under the U.P. Trade Tax Act while the second part of the question relates to the refund of Rs. 1,18,033.56 relating to the assessment under the Central Sales Tax Act.

5. The assessee-respondent is a manufacturer of rectified spirit, country made liquor, and Indian made foreign liquor. The assessing officer enhanced the turnover under the U.P. Trade Tax Act taking into account the excess loss of molasses and some other matters. The Tribunal on a consideration of the entire material on the record and the circumstances of the case held that there was no justification for enhancement of the turnover because the goods manufactured by the assessee were excisable goods. This is a finding of fact and having been taken through the order of the Tribunal, I find no illegality in the Tribunal''s finding on this point. Therefore, Trade Tax Revision No. 196 of 1995, that relates to the assessment under the U.P. Trade Tax Act, deserves dismissal.

6. As regards Trade Revision No. 197 of 1995, the controversy is of Rs. 1,18,033.56 which is the tax realised by the dealer on account of Central sales tax and paid to the State treasury on rectified spirit. The turnover was held to be exempt under the Central Sales Tax Act, but the aforesaid sum deposited by the assessee was declined to be refunded because of Section 29-A of the U.P. Trade Tax Act. This view was upheld by the Deputy Commissioner (Appeals). The Tribunal, however, directed the refund.

7. Section 29-A, as introduced by Section 15 of the U.P. Sales Tax (Amendment and Validation) Act, 1971, was declared unconstitutional by this Court. The State took the matter in appeal before the honourable Supreme Court which upheld this Court''s view. The judgment of the honourable Supreme Court is reported in State of U.P. v. Annapurna Biscuit Manufacturing Company [1973] 32 STC 1.

8. Subsequently, in Kasturi Lal Harlal v. State of U.P. [1987] 64 STC 1(UP) : 1987 UPTC 135, the honourable Supreme Court considered the validity of Section 29-A of the U.P. Trade Tax Act, as introduced by Section 17 of the U.P. Taxation Laws (Amendment) Act, 1969, and upheld the same.

9. The matter came up for consideration before this Court in Kheria Brothers v. Assistant Commissioner 1995 UPTC 593 and it was held that the judgment of the honourable Supreme Court in the case of Annapurna Biscuit Manufacturing Co. v. State of U.P. [1973] 32 STC 1(UP) was not rendered ineffective by the subsequent decision of the Supreme Court in the case of Kasturi Lal Hartal v. State of U.P. [1987] 64 STC 1(U.P.) : 1987 UPTC 135. In the latter case, the honourable Supreme Court was dealing with Section 29-A, as introduced by the Amendment Act of 1969 which stood repealed by the Amendment Act of 1971. It was Section 29-A, as introduced by the 1971 Act that was declared unconstitutional by the honourable Supreme Court and, therefore, no refund can be withheld by taking recourse to the said section that has been invalidated by the Supreme Court. The Tribunal was, therefore, right in directing the refund.

For the above reasons, both the revision petitions lack merit and are hereby dismissed with costs.

