(2010) 12 AHC CK 0188

In the Allahabad High Court

Case No : Trade Tax Revision No''s. 106 and 121 of 2003

Commissioner, Trade Tax, U. P., Lucknow APPELLANT

Vs

Aristo Printers Pvt. Ltd. RESPONDENT

Date of Decision : 08-12-2010

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 3F

Citation : (2011) 41 VST 102

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajes Kumar, J.—These are two revisions against the order of the Tribunal dated August 6, 2002 for the assessment years 1996-97 and 1997-98 under the U. P. Trade Tax Act, 1948 (hereinafter referred to as, "the Act") raising the following questions :

(1) Whether, on the facts and in the circumstances of the case, the Trade Tax Tribunal was legally justified to set aside the tax imposed on the sale of goods transferred in execution of works contract ?

(2) Whether, on the facts and in the circumstances of the case, the Trade Tax Tribunal has rightly treated the printing work as job-work in the light of the decision of the honourable Supreme Court in the case of M/s. Associated Cement Companies Ltd. Vs. Commissioner of Customs,

2. The respondent-assessee (hereinafter referred to as, "the assessee") was engaged in printing of lottery tickets. The printing was carried on the paper supplied by the parties. The ink and processing material including chemicals, used in the printing, have been provided by the assessee. The assessing authority levied tax on the value of ink and processing material used in the printing u/s 3F of the Act. The consumable purchased and used in the printing has not been taxed.

3. Being aggrieved by the order of the assessing officer, the assessee filed appeal before the Deputy Commissioner (Appeals), IInd, Trade Tax, Ghaziabad. It was contended by the assessee that the ink, chemicals and other processing materials have not been passed on to the parties concerned and, therefore, the value of such goods could not be liable to tax u/s 3F of the Act. The appellate authority has accepted the claim of the assessee and deleted the tax assessed on the value of ink and processing materials including chemicals. He, however, upheld the levy of tax on the packing materials.

4. Being aggrieved by the order of the first appellate authority, the Commissioner of Trade Tax as well as the assessee filed appeals before the Tribunal. The Tribunal, by the impugned order, allowed the appeal of the assessee and dismissed the appeal of the Commissioner of Trade Tax. The Tribunal has upheld the order of the first appellate authority deleting the tax on the value of ink and other processing materials, including chemicals. The Tribunal has relied upon the decision of the Karnataka High Court in the case of Keshoram Surindranath Photo-Mag (P.) Ltd. v. Assistant Commissioner of Commercial Taxes, Bangalore reported in (2001) 121 STC 175 (Karn): (2001) 30 STJ 44 and the decision of the Bombay High Court in the case of Commissioner of Sales Tax, Maharashtra State, Bombay v. R. M. D. C. Press Pvt. Ltd. reported in (1999) 112 STC 307 (Bom): (1999) 14 NTN 132 (Bom).

5. Being aggrieved by the order of the Tribunal, the Revenue filed the present revisions raising the aforesaid questions of law. In the revision, the Revenue has only disputed the order of the Tribunal so far as it upheld the order of the Deputy Commissioner (Appeals) deleting the tax on the ink and other processing materials, including chemicals, etc., which have been used in the printing. The Revenue has not disputed the order of the Tribunal deleting the tax on the packing materials.

6. Heard Sri B. K. Pandey, learned standing counsel and Sri Ashok Kumar, Advocate appearing on behalf of the respondent-assessee.

7. The learned standing counsel submitted that it is wrong to hold that in the printing, ink and chemicals do not pass on to the customers. The inks are diluted in a chemical and thereafter solution of the ink is used in the printing and both ink and chemical passed on to the customers as they are obviously visible on a plain paper. In support of the contention, he relied upon two Division Bench decisions of the Bombay High Court, namely, Sau. Suvarna Prakash Patil Vs. Anil Hindurao Powar and Others, and Commissioner of Sales Tax Vs. Hari and Company,

8. In the case of Commissioner of Sales Tax Vs. Hari and Company, the Bombay High Court held that the case of R. M. D. C. Press Pvt. Ltd. Case (1999) 112 STC 307 (Bom): (1999) 14 NTN 132, has been held per incurium in view of the decision of the Full Bench of the Bombay High Court in the case of Sarvodaya Printing Press v. State of Maharashtra reported in (1994) 93 STC 387 (Bom) (FB)

which has been upheld by the apex court in the case of State of Maharashtra Vs. Sarvodya Printing Press Fine Art Printer, . He submitted that in the case of Sau. Suvarna Prakash Patil Vs. Anil Hindurao Powar and Others, it has been held that in the contract of dyeing and printing of cloth, transfer of property in colours, dyes and chemical are passed on to the customers.

9. In the case of Commissioner of Sales Tax, Mumbai v. Hari and Company reported in (2006) 148 STC 92: (2006) 31 NTN 398, the Division Bench of the Bombay High Court held that in the photocopying, ink is passed on to the customers.

10. Sri Ashok Kumar, counsel for the assessee submitted that in the process of printing the ink loses its identity. Therefore, it does not pass on to the customers. He further submitted that the chemical is consumed in the process and, therefore, it does not pass on to the customers inasmuch as u/s 3F of the Act the value of consumable is not liable to tax.

11. I have considered the rival submissions of the parties and the impugned orders.

12. In my view the order of the Tribunal is not sustainable. Section 3F of the Act levies tax on the value of goods involved in execution of works contract. The printing work has been held to be works contract by the apex court in the case of State of Maharashtra Vs. Sarvodya Printing Press Fine Art Printer, The question for consideration is whether in the printing of lottery tickets, ink and processing materials, namely, chemicals, etc., are passed on to the customers. Undoubtedly, ink passed on to the customers as it is apparent on the printing paper. The inks are diluted in chemicals (processing material) and such ink in the diluted forms are being used in the printing, therefore, both ink and chemical (processing material) are passed on to the customers. It was not the case of the assessee at any stage that the chemical (processing material) was consumable and evaporates in the process of printing and is not passed on to the customers. Therefore, I am of the view that both the ink and chemical used in the printing are passed on to the customers. It may be mentioned here that the assessee had also purchased and used consumable but the same has not been taxed.

13. The Division Bench of the Bombay High Court in the case of Sau. Suvarna Prakash Patil Vs. Anil Hindurao Powar and Others, has held that the contract of dyeing and printing of cloth is a works contract and there is a transfer of property in colours, dyes and chemical.

14. In the case of Commissioner of Sales Tax Vs. Hari and Company, , the Division Bench of the Bombay High Court has held that the contract for bringing out the xerox copies amounts to works contract and the ink used for providing xerox copies is passed on to the customers and, therefore, its value is liable to tax

15. It may be mentioned here that the decision in the case of R.M.D.C. Press Pvt.

Ltd. (1999) 112 STC 307 (Bom); (1999) 14 NTN 132 relied upon by the Tribunal is no longer a good law in view of the decision of the apex court in the case of M/s. Associated Cement Companies Ltd. Vs. Commissioner of Customs, and in view of the decision of the apex court in the case of State of Maharashtra Vs. Sarvodya Printing Press Fine Art Printer,

16. In view of the above, the order of the Tribunal as well as the order of the first appellate authority are not sustainable and liable to be set aside, so far it deletes the tax on the value of ink and processing materials, namely, chemical, the order of the assessing authority in this regard is restored.

17. In the result, both the revisions are allowed.

