(2011) 05 AHC CK 0018

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No''s. 1599 and 1642 of 2003

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

Vs

Shakti Tubes RESPONDENT

Date of Decision : 16-05-2011

Acts Referred:
Constitution of India, 1950 — Article 14
Uttar Pradesh General Clauses Act, 1904 — Section 21

Citation : (2012) 50 VST 267

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Advocate : K.M. Sahai, for the Appellant; S. D. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Pankaj Mithal J.

1. Heard Sri K. M. Sahai, learned standing counsel for the revisionists and Sri S. D. Singh, learned counsel for the opposite party/ dealer.

The question raised in both these revisions is about the taxability of the high density poly ethylene fabric (hereinafter referred to as the "H, D. P. E. fabric").

2. The opposite-party is a dealer carrying on business of H. D. P. E. filter cloth. The Tribunal has exempted H. D. P. E. cloth manufactured by the opposite-party/ dealer from tax in view of Notification No. ST-II- 7038/X-7 (23)/83-U. P. Act XV-48 Order - 85, dated January 31,1985 read with Notification No. ST-II-3714/ X-6 (1)-85-U. P. Act 15-48-Order-85, dated June 5, 1985, wherein certain items were exempted from payment of tax under the U. P. Sales Tax Act, 1948.

3. The relevant extract of Notification No. ST-2-7038/X-7 (23)/83-U. P. Act/ XV-48-Order-85, dated January 31,1985, is reproduced hereinbelow :

(Published in U. P. Gazette, Extraordinary, dated January 31,1985) In exercise of the powers under clause (a) of 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

1

2

3

1.

2.

?.

53.

?.

58

???

???

Textiles of the following varieties manufactured on power-loom, 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) woollen fabrics of all varieties;

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

(e) Canvas cloth, tarpaulins and waterproof cloth.

Annexure?

(i) Hand printed, dyed or embroidered fabrics, and dhoties, sareeschadars, bedspreads, bed-sheets, counterpanes, table-cloth, handkerchiefs, towels, scarfs, napkins and dusters, made out of fabrics of any of the varieties mentioned in sub-clauses (a), (b), (c) or (d) above;

(ii) cotton velvets and velveteen but excluding embroidered velvets;

(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 water-proof fabrics, whether single textured or double textured.

??

?.?

4. Subsequently, another notification to the same effect was issued on June 5, 1985 with some changes. However, it makes no distinction with regard to the taxability or exemption of H. D. P. E. cloth.

5. A plain reading of the aforesaid notification demonstrates that the textiles of the varieties mentioned in entry No. 53 of the notification have been exempted from payment of tax. The aforesaid entry No. 53 exempts textiles manufactured on power looms but excludes H. D. P. E. fabrics from exemption of tax. However, the above entry further goes on to say that apart from excluding the items mentioned therein goods specified in Annexure to the said entry are to be included in the exemption. One of the items included in the list contained in the Annexure to entry No. 53 is "rubberised or synthetic water proof fabrics, whether single textured or double textured''".

6. H. D. P. E. fabric manufactured by the dealer herein is admittedly a synthetic water proof fabric and the findings of the authorities below are also that the H. D. P. E. cloth manufactured by the opposite-party/dealer is a water proof cloth.

7. A Division Bench of this court in the case of Mahalaxmi Polyplast Private Limited v. State of Uttar Pradesh [1992] 86 STC 523 (All); [1990] UPTC 956, while considering the aforesaid notification dated June 5,1985 viz-a-viz entitlement of exemption from sales tax of H. D. P. E. fabric held as under (page 527 in 86 STC) :

10. It will thus be seen that there is ample authority to support the contention of the petitioner that plain H. D. P. E. fabric is a synthetic fabric. And it is further conceded by the respondents that 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 June 5, 1985. Clause (vi) specifically exempts synthetic water-proof fabrics from

levy of sales tax. The learned standing counsel, however, submitted that mere lamination would not take the H. D. P. E. fabrics being manufactured by the petitioner from out of the purview of the exception specifically made under entry 53, i.e., being H. D. P. E. fabrics it cannot claim exemption from sales tax in view of entry 53 which excepts various items of textiles from the benefit of exemption granted under the notification dated June 5,1985. The learned standing counsel vehemently contended that even after lamination the basic character or texture of the item continues to be H. D. P. E. fabrics.

11. We regret the submission of the learned standing counsel cannot be accepted. It is true that the notification specifically excepts certain items of textiles from the benefit of exemption. These items have been mentioned in entry 53 (quoted above). Among the items excepted H. D. P. E. fabrics also finds place. But within this exception another area has been carved out consisting of items specified in the Annexure to the notification which were intended to continue to receive the benefit of exemption. Even if therefore, in its broadest sense, laminated H. D. P. E. fabrics would also be H. D. P. E. fabrics but if it falls within one or the other of the items mentioned in the Annexure it would not be liable to tax, i.e., the exception carved out under entry 53 would not affect the immunity of such items from taxation.

12. The same result is reached by another process of reasoning. If the item in question falls under one or the other clauses mentioned in the Annexure, it will become entitled to exemption from sales tax irrespective of whether the species might fall within the excepted genus specified under item 53. If the article is specifically exempt from sales tax under notification under consideration, it becomes entitled to exemption and to that extent the rigor of exception mentioned in entry 53 stands whittled down.

8. In short, the Division Bench held that a water proof H. D. P. E. fabric which is a laminated cloth is entitled to exemption of tax in view of the aforesaid notification.

9. A learned single judge in the case of Commissioner of Trade Tax v. Rajesh Kumar Vikas Kumar Pandey, Gorakhpur [1999] UPTC 595 "held H. D. P. E. fabrics have been excluded from the exemption, but the exclusion has been diluted by specifying certain goods in the Annexure in which item No. (vi) is in respect of rubberised or synthetic water-proof fabrics whether single-textured or double textured. The exemption is, thus, in respect of water proof fabrics. No exemption is available to H. D. P. E. fabrics unless it is a water proof fabric."

10. Necessary corollary of the above is that the H. D. P. E. fabric which is water proof is exempt from payment of sales tax by virtue of the aforesaid notification.

11. However, a contrary view has been taken by another learned single judge in Gaurav Traders, Gorakhpur v. Commissioner of Trade Tax [2009] 26 VST 23 (All); [2007] UPTC 914. The learned single judge therein held that the Tribunal was correct in holding H. D. P. E. fabrics which is commonly called and understood as

nylon fabric or fishnet fabric or mosquitonet fabrics is not exempted from tax under entry "textile" being specifically excluded from such entry.

12. The learned single judge in deciding the above question has mentioned about the decision of the Division Bench of this court in the case of Mahalaxmi Polyplast Private Limited, Muzaffarnagar [1992] 86 STC 523 (All); [1990] UPTC 956 and Commissioner of Trade Tax v. Rajesh Kumar Vikas Kumar Pandey, Gorakhpur [1999] UPTC 595 but has not dealt with or discussed the aforesaid authorities so as to deviate from the ratio laid down therein.

13. A perusal of the judgment of the learned single judge in Gaurav Traders, Gorakhpur [2009] 26 VST 23 (All); [2007] UPTC 914, further reveals that the second part of entry No. 53 of the notification dated 31st January, 1985 was not considered and, as such, the effect of expression "but including the goods specified in annexure hereunder:...rubberised or synthetic water-proof fabrics, whether single textured or double textured" was completely ignored.

14. The principle of "stare decisis" obliges the court dealing with a matter to be guided by the accumulated wisdom of the Judges rendered on the subject in past and to prevent frequent overruling of earlier decisions, particularly without disclosing reasons for deviation. A ratio of law which had stood for a length of time need not be disturbed unless there are compelling reasons.

15. The ratio laid down in Gaurav Traders, Gorakhpur [2009] 26 VST 23 (All); [2007] UPTC 914 cannot be recognised as a good and a binding precedent. First for the reason it though mentioned the Division Bench decision in Mahalaxmi Polyplast Private Limited, Muzaffarnagar [1992] 86 STC 523 (All); [1990] UPTC 956 but failed to discuss, analyse and to give reasons for deviating from it though being of a Larger Bench was binding upon the learned single judge. Secondly, it had been rendered in ignorance of the last part of the notification in question which has the statutory force.

So the decision in Gaurav Traders, Gorakhpur [2009] 26 VST 23 (All); [2007] UPTC 914 can be avoided as per incuriam.

16. The apex court recently in V. Kishan Rao Vs. Nikhil Super Speciality Hospital and Another, clearly laid down that when a judgment is rendered by ignoring provisions of a statute and earlier Larger Bench decisions on the point, such a decision is per incuriam.

17. The reliance placed by Sri Sahai on a Division Bench decision of this court in [1995] UPTC 1107 (Kanpur Plostipack Ltd. v. State of U. P.) is totally misplaced and is of no help to him. In the aforesaid case the court only considered the validity of the aforesaid notification dated January 31,1985 in relation to H. D. P. E. woven fabric and held it is not arbitrary and violative of article 14 of the Constitution of India. The issue about exemption of water proof H. D. P. E. fabric from sales tax was not dealt with therein.

18. Thus, following the view taken by Mahalaxmi Polyplast Private Limited,

Muzaffarnagar [1992] 86 STC 523 (All); [1990] UPTC 956 and Commissioner of Trade Tax v. Rajesh Kumar Vikas Kumar Pandey, Gorakhpur [1999] UPTC 595, I hold that H. D. P. E. fabric which is water proof is exempt from payment of tax under the above referred notification and, as such, there is no illegality in the impugned order of the Tribunal. The revisions, as such, have no substance and are hereby dismissed, however, with no costs.

