(2017) 02 AHC CK 0201

In the Allahabad High Court

Case No : Trade Tax Revision No. 410 of 2016

Commissioner,Commercial Tax APPELLANT

Vs

S/S. Raghunath International Ltd. RESPONDENT

Date of Decision : 17-02-2017

Acts Referred:

Citation : (2017) 95 UPTC 346

Hon'ble Judges : Ashwani Kumar Mishra, J.

Bench : Single Bench

Advocate : S.C, for the Applicant

Final Decision : Disposed Off

Judgement

Ashwani Kumar Mishra, J.—In view of the office report dated 10.11.2016, service of notice upon the assessee has already been held to be sufficient vide order dated 6.12.2016. None has entered appearance on behalf of the revisionist.

2. The matter accordingly is taken up for hearing. The question framed for consideration of this revision is as to whether the tribunal was justified in holding that Pan Masala containing tobacco is not taxable for the period from 1.4.2001 to 31.8.2001?

3. It is not disputed by learned Standing Counsel that w.e.f. 1.9.2001 Gutkha is an exempted commodity for the purposes of levy of tax under the Act. The question as to whether prior thereto tax was liable to be imposed upon Gutkha, treating it to be an unclassified item, was the subject matter of consideration before this Court in M/s Sarin and Sarin v. The Commissioner of Trade Tax: 2014 UPTC 647. Following questions were framed for consideration in the aforesaid judgment:-

"A. Whether in view of the decision of Supreme Court in Kothari Products Ltd. v. Government of Andhra Pradesh 2000 STC (119) 553, ''Gutkha'' being covered under Central Excise Tariff Item No. 2404.11 and 2404.12, hence a declared goods, under Section 14(ix) of the Central Sales Tax Act, and, it cannot be subjected to tax as an ''unclassified item''?

B. Whether no notification having been issued in respect of declared goods, namely, ''Gutkha'', falling under Section 14(ix) of Central Sales Tax Act, hence in view of decision of Hon''ble Supreme Court in Commissioner of Sales Tax, U.P. v. Agra Belting Works, 2001 (121) STC 396, no tax was payable by the applicant?

C. Whether in view of the facts and circumstances of the case, the Trade Tax Tribunal was justified in imposing tax on the sale of ''Gutkha'' @ 10%?

D. Whether the Trade Tax Tribunal was justified in imposing tax on the sale of ''Generator'' in running condition treating it as ''old discarded and unserviceable machinery''?

E. Whether Trade Tax Tribunal was justified in imposing tax at the rate of 8% on the sale of ''Generator''? "

4. After considering all the notifications and provisions of law, the issue has been answered by this Court in following words in para 30:-

"30. In the result, I have no hesitation in holding that tax imposed upon sale of Gutkha in the case in hand treating it to be ''unclassified item'' and imposing tax at the rate of 10% is absolutely valid and correct. Questions A, B & C are accordingly answered in favour of Revenue and against assessee."

5. Despite the aforesaid proposition, tribunal has taken a contrary view relying upon the orders passed by this Court on 2.8.2014 in Revision No.1320 of 2008 and Revision No.62 of 2009 dated 26.8.2014, as well as Revision No.572 of 2014 decided on 13.1.2015. The three judgments relied upon have been annexed as Annexure Nos.5, 6 & 7. Perusal of these orders would go to show that these judgments have not taken note of the adjudication made in M/s Sarin and Sarin (supra) and the revisions have been dismissed in limine. There is no consideration of the legal question formulated and reference was answered apparently on facts, without noticing the questions of law already dealt with and answered. The summary dismissal, on facts, must give way to an adjudication made after consideration of relevant notifications and the law. It also appears that earlier law was not brought to the notice of this Court in three subsequent decisions and the principles of per incuriam would otherwise be attracted vis-a-vis subsequent decisions.

6. In view of the above, I am of the opinion that as question with regard to imposition of tax upon the Gutaka containing tobacco has been extensively dealt with and answered in M/s Sarin and Sarin (supra), the question referred for consideration in the present case is also answered in light of the principle of law laid down by this Court in M/s Sarin and Sarin. It is, therefore, held that the tribunal was not justified in holding Pan Masala containing tobacco to be not taxable for the period between 1.4.2001 to 31.8.2001 under the provisions of the U.P. Trade Tax Act or the provisions of Central Sales Tax Act.

7. The revision stands disposed of accordingly.