(2006) 06 UK CK 0001

In the Uttarakhand High Court

Case No : Trade Tax Revision No. 42 of 2005

Dehradun Tea Company Ltd. — APPELLANT

Vs

State of Uttaranchal and Others — RESPONDENT

Date of Decision : 26-06-2006

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 2
Uttar Pradesh Trade Tax Act, 1948 — Section 11(1), 3, 3AAAA

Citation : (2006) 148 STC 56

Hon'ble Judges : J.C.S. Rawat, J

Bench : Single Bench

Advocate : S.K. Posti, for the Appellant; Additional Advocate-General, for the Respondent

Final Decision : Allowed

Judgement

J.C.S. Rawat, J.—This is a revision petition filed u/s 11(1) of the Trade Tax Act against the judgment and order dated April 19, 2005 passed by the Trade Tax Tribunal, Dehradun. The learned Tribunal reversed the findings of the first appellate authority and restored the judgment of the assessing authority.

2. Brief facts for the disposal of this appeal are that the revisionist deals in sale of tea leaves grown in his own garden and he also purchased some tea leaves from East Hope Town Company, Dehradun for the assessment year 2000-2001 and he also submitted that he had no purchase tax liability on the turnover. He indicated in the said turnover the purchase of the tea from East Hope Town Company and he also submitted that the purchase tax is not liable to be taxed on the said purchase. The assessing authority did not accept the said turnover and levied the purchase tax on the resale of the tea leaves after getting it processed from East Hope Town Company. Feeling aggrieved by the said order he preferred the first appeal before the Joint Commissioner (Appeal), Trade Tax, Dehradun and he allowed the appeal and exonerated the assessee from the tax. Thereafter the department preferred the second appeal before the Trade Tax Tribunal. The

Tribunal reversed the order of the first appellate authority and allowed the appeal and restored the order of the assessing authority. Feeling aggrieved by the said order, the present revision has been preferred before this court.

3. I have heard the learned Counsel for both the parties and gone through the entire record of the case.

4. The only controversy that arises in this revision is as to whether the assessing authority was competent to levy the purchase tax upon the re-sale of the processed tea to the other dealers. It has also to be seen as to whether the raw tea leaves purchased from other tea gardens on which the sales tax had already been levied, if the purchaser processes it and makes it usable and re-sells the same to the dealer, as to whether the purchase tax is liable to be levied on the said goods or not.

5. To examine this aspect the definition of Section 3-AAAA of the U.P. Trade Tax Act is relevant, which is as under :

3-AAAA. Liability to tax on purchase of goods in certain circumstances.--(1) Subject to the provision of Section 3, every dealer who purchases any goods liable to tax under this Act--...

Provided...

(i) and (ii) ...

(iii) The purchasing dealer resells such goods within the: State or in the course of inter-State trade or commerce or exports out of the territory of India, in the same form and condition in which he had purchased them.

(iv) ...

6. To attract the provisions of the above Section it is essential that the person, who was selling the goods, must be a dealer and he would have purchased the goods and after purchasing, when he resells such goods within the State then the purchase tax cannot be levied if the same purchased goods had been resold in the same form and condition in which he had purchased them. It is not disputed that the assessee was purchasing the green tea leaves from the other tea gardens and thereafter the assessee was processing the same to make it usable and thereafter the assessee was reselling the same tea to others. The assessing authority had held that the purchasing dealer was not reselling the goods in the same form and condition in which he had purchased it. According to the learned Additional Advocate-General, if the assessee would have sold the green tea plucked from the tree plants to another dealer it would be covered u/s 3-AAAA, proviso (iii). According to the learned Counsel for the assessee the tea leaves plucked from the tree are not fit for consumption and these green tea leaves could not be sold in the open market. The tea leaves are often purchased from the tea garden and thereafter it is processed and packed and it is made usable for the human consumption.

7. The learned Counsel for the assessee further contended that the processing of the green leaves makes it usable for the human consumption and the processed tea did not lose its form and condition in which it had been purchased. The learned Counsel for the assessee further contended that the resale of the processed tea will be covered under the proviso (iii) of the aforesaid section. It is well-known that the tea leaves are plucked from the tea plants and the green leaves plucked from the tree are not fit for the human consumption and it cannot be sold in the open market for human consumption. It always happens that the tea gardeners sell the green leaves to the dealers and the dealer after processing and packing it sell them in the market for human consumption. The raw tea leaves are withered by exposure in the shadow of the sun or by heating in trays until pliable. Thereafter the leaves are rolled by hand or machine in order to break the leaf cells and liberate the juices and enzymes. Finally, the leaves are completely dried either by further exposure to the sun, over fires, or in a current of hot air then the tea leaves are fermented in baskets, glasses and in clothes. Thereafter the leaves were then subjected to grading with sieves of various sizes. The said leaves are finally roasted with charcoal for obtaining suitable flavour and colour. Thereafter the said tea is packed in the packets. The processing of the tea becomes marketable by minimal process they are made fit for human consumption. In my opinion all the above processes, as I have enumerated above, were necessary for the purpose of saving the tea leaves from perishing. In case the above process is not carried out immediately the entire tea leaves would be perished. If, after plucking tea leaves immediately from the tree are sold to different hands and it would be lost it reached to the processing end the tea leaves would lose its character and would not be usable at all (sic). The process, as indicated above, at no point of time crossed that limit and robbed the tea leaves of their character of being and containing as such substantially.

8. The matter came up before the honourable apex court in Commissioner of Sales Tax v. D.S. Bist reported in [1979] 44 STC 392 : [1979] UPTC 1511 in which it has been held that unlike many agricultural products tea leaves are not marketable in the market fresh from the tea-gardens. Nobody eats tea leaves. It is meant to be boiled for extracting juice out of it to make tea liquor. Tea leaves are therefore, only fit for marketing when by a minimal process they are made fit for human consumption. Of course, the processing may stop at a particular point in order to produce inferior quality of tea and a bit more may be necessary to be done in order to make it a bit superior. But that by itself will not substantially change the character of the tea leaves, still they will be known as tea leaves and sold as such in the market. In my opinion all the processes enumerated above from the primary findings of fact recorded in the order of the revising authority were necessary for the purpose of saving the tea leaves from perishing, making them fit for transporting and marketing. The process applied was minimal. Withering, crushing and roasting the tea leaves will be surely necessary for preserving them. The process of fermentation or final roasting with charcoal for obtaining suitable flavour or colour and also the process at no point of time

crossed that limit and robbed the tea leaves, the agricultural produce, of their character of being and continuing as such substantially.

9. Thereafter the matter came up before the Allahabad High Court in Dehradun Tea Company v. Commissioner of Sales Tax reported in [1980] UPTC 459 in which it has been held that green tea leaves are admittedly agricultural produce. It cannot be disputed that without processing they have no market value. What was grown was tea. And what was sold after processing was also tea. The commodity remained the same. Without processing green leaves would have rusted. The process applied was not to produce anything different but to maintain and preserve the tea grown in the field. The exemption or taxation is not dependent on the meaning of process or manufacture, but whether by application of the process some new commodity was obtained. As manufacture did not result into producing something different tea continued to be agricultural produce and could not be included in the assessee''s turnover.

10. The perusal of the above pronouncements it is clearly revealed that the cultivation and the manufacture of the tea were one integrated process. The cultivation and the processing were distinct items used for cultivation could not be taken to be item used for manufacture had been given in Section 2(e-l) which is as under :

''Manufacture'' means producing, making, mining, collecting, extracting, altering, ornamenting, finishing, or otherwise processing, relating or adapting any goods; but does not include such manufactures or manufacturing processes as may be prescribed.

11. The question raised before the honourable apex Court in Commissioner of Sales Tax, UP Vs. M/s. Lal Kunwa Stone Crusher (P)Ltd., where the definition "manufacturer" has been considered by the apex Court was as to whether gitti, stone chips and dust continued to be stone or on crushing stone boulders into gitti, stone chips and dust different commercial goods emerge so as to attract tax on their sale. It was contended before the apex Court that the process adopted by the dealer would amount to a manufacture as per the definition of ""manufacture" u/s 2(e-l) of the U.P. Sales Tax Act, 1948. Repealing the contention, the honourable apex Court held that the purpose of the Sales Tax Act is to levy tax on sale of goods of each variety and not the sale of the substance out of which they may have been made. As soon as separate commercial commodities emerge or come into existence, they become separately taxable goods for purposes of sales tax. Where commercial goods, without change of their identity as such goods, are merely subjected to some processing or finishing, they may remain commercially the same goods which cannot be taxed again. The honourable apex Court also held that even if different commercial goods may all be looked upon as separate in commercial character from stone boulders offered for sale in the market, yet it cannot be presumed that it had substantial change in its character of being stone. In the case in hand the leaves had been processed to make it human consumable, as such it does not change

the substance in nature and the contention of the learned Additional Advocate-General that the dealer was not reselling the tea leaves in the same form and condition in which he had purchased, had no force. In processed tea, in view of the pronouncements of the apex Court, the form and condition of tea was not lost at all.

12. In view of what has been discussed above/the judgment and order of the Tribunal is liable to be set aside and the revision petition is liable to be allowed.

13. The revision petition is allowed and the order dated April 19, 2005 passed by the Tribunal is hereby set aside with no order as to costs.