(2014) 09 UK CK 0005

In the Uttarakhand High Court

Case No : Trade Tax Revision No. 1 of 2010

Dharmpal Satyapal Ltd. APPELLANT

Vs

State of Uttarakhand RESPONDENT

Date of Decision : 05-09-2014

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11(2)

Citation : (2015) 321 ELT 227

Hon'ble Judges : K.M. Joseph, C.J;V.K. Bist, J

Bench : Division Bench

Advocate : Siddhartha Sah, Advocate for the Appellant; Puja Banga, Brief Holder, Advocate for the Respondent;

Judgement

K.M. Joseph, C.J.

1. This is a revision filed under Section 11(2) of the U.P. Trade Tax Act, 1948. Revisionist deals with the commodity called ''Double Mazza'' (Pan Masala with Tobacco). It was recited under An-nexure-I with penalty of ` 84,000/- under Section 15A(1)(o) of U.P. Trade Tax Act, 1948. According to the revisionist, there was stock transfer of fifty cartons of ''Double Mazza'' Pan Masala, having a total value of ` 3,12,500/- from Noida (U.P.) to Haldwani (Uttarakhand). It was checked by the officer and, on that basis, proceedings were taken under Section 28A read with Section 13A of the U.P. Trade Tax Act, 1948. Finding the value of the goods at ` 2,10,000/-, penalty was levied @ 40%, i.e. ` 84,000/-. The revisionist lost before the 1st Appellate Authority as well as before the Tribunal and now it is before us. Following substantial questions of law, i.e. question Nos. (i), (ii) & (v) were pressed before us:-

"(i) Whether the product in question ''Double Mazaa'' already suffered additional excise duty in lieu of sales tax, hence a State Government has no right to impose sales tax/trade tax on the same?

(ii) Whether the product in question ''Double Mazaa'' is "Pan masala containing tobacco" thereby covered within the sub-heading 2409.49 of the First Schedule of the Additional Duties of Excise (Goods of Special Importance) Act, 1957? (v) Whether in view of the judgment of the Hon''ble Apex Court in the case of Kothari Products Ltd. Vs. Govt. of A.P., the product in question ''Double Maza'' would be ''gutka'' and thus no trade tax can be charged on the same by State of Uttarakhand?"

2. We have heard learned counsel for the revisionist and the learned Brief Holder for the State/respondents.

3. The learned counsel drew our attention to a judgment of the Apex Court, reported in Kothari Products Ltd. Vs. Govt. of A.P., . That is a case, which arose under the Andhra Pradesh General Sales Tax Act, 1957. The revisionist therein was engaged in manufacture and sale of Gutka under the brand name ''Pan Parag''. Section 8 of the State Sales Tax Act provided for exemption from tax in respect of goods under the Fourth Schedule. Entry 7 of the Fourth Schedule referred tobacco and the explanation in this behalf in regard to Entry 7 was "shall be goods included in the relevant heads and sub-heads of the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957, but does not include goods, where no additional duties of Excise are leviable under that Schedule". The said Additional Duties of Excise Act, in Entry 2404 referred to "gudaku" under the sub-heading "other manufactured tobacco". Thereafter, we find the following reasoning given in Para 4 of the said judgment:-

"4. Clearly, therefore, gutka is a tobacco that is covered by an entry in the First Schedule to the said Additional Duties of Excise Act and the branded gutka that the appellant''s manufacture is liable to tax thereunder. Gutka, therefore, is "goods" covered by the Explanation to the Fourth Schedule to the State Sales Tax Act and, therefore, covered by the exemption contained in Section 8 thereof. The Schedule to the State Act could, therefore, not have been amended by including gutka as a kind of pan masala in Entry 194 of its First Schedule. It must, therefore, be held that the inclusion of gutka in the said Entry 194 in the manner in which it is done is bad in law struck down. The appellants will be entitled to all consequential benefits."

4. It may be true that the product in question is subjected to duty under the Additional Duties of Excise Act as contended by the learned counsel for the revisionist. Unlike the provisions of the Andhra Pradesh Act, there is no provision which exempts the product of the revisionist on the basis of that it is subjected to tax under the Additional Duties of Excise Act. We were also shown the Additional Duties of Excise (Goods of Special Importance) Act, 1957. We do not find therein anything which would in any way foreclose the State to impose sales tax/VAT on those commodities which are subjected to duty under the Additional Duties of Excise (Goods of Special Importance) Act, 1957. As far as the State of Uttarakhand is concerned, in the predecessor State, i.e. the State of U.P., law relating to sales tax is contained in the U.P. Trade Tax Act. The learned counsel for the revisionist does have a case that after the amendment which the Act

suffered in the year 1999, the product in question has become taxable. After the State was born on 9th November, 2000 and the U.P. Trade Tax Act as applied in the State of Uttarakhand, the position is that there is no exemption in favour of the product in question unlike the position under the Andhra Pradesh Trade Tax Act, which was considered by the Supreme Court but the product is taxable. If that is so, no reliance can be placed on the judgment of the Supreme Court and we answer question No. (v) against the revisionist.

5. As far as the impact of the levy under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 on the levy under the U.P. Trade Tax Act is concerned, as we have already noted, there is no obstruction which is brought to our notice in the State levying tax on a commodity which has already been visited with levy under the Additional Duties of Excise (Goods of Special Importance) Act, 1957. Therefore, even if the product is covered under subheading 2404.49 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957, it will not in any way deprive the State of power to levy tax under the U.P. Trade Tax Act as applicable to the State of Uttarakhand. In such circumstances, we find no merit in the revision. The revision fails and is dismissed. No order as to costs.