(2003) 04 AHC CK 0238

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1251 of 1991 connected with W.P. No''s. 1256 of 1991 and 153 of 1993

Goodage Rubber Works APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 18-04-2003

Acts Referred:
Constitution of India, 1950 — Article 226
Uttar Pradesh Trade Tax Act, 1948 — Section 4A

Citation : (2004) 137 STC 253

Hon'ble Judges : Prakash Krishna, J;M. Katju, J

Bench : Division Bench

Advocate : Bharat Ji Agrawal and Rakesh Kumar Agarwal, for the Appellant; S.P. Kesharwani and H.R. Mishra, Standing Counsels, for the Respondent

Final Decision : Allowed

Judgement

Prakash Krishna, J.—Challenging the validity of the notice dated August 27, 1991 issued by respondent No. 3 to modify the recognition certificate and the circular dated June 11, 1991 issued by the Commissioner of Sales Tax the present writ petition has been filed. The main question involved in the present writ petition is whether the Commissioner of Sales Tax having failed to establish his contention before the Trade Tax Tribunal that the product in question is not a "rubber product", can subsequently issue the impugned circular directing the authorities concerned not to treat "rubber roller" as "rubber product" and modify the recognition certificate accordingly.

2. The petitioner is manufacturer of rubber roller. According to the petitioner rubber roller have one iron rod which is coated with thick rubber shed. The iron rod on which rubber shed is coated is hollowed and the rubber rollers manufactured by the petitioner are mostly used in printing press. The rubber rollers required great experience and knowledge.

3. The recognition certificate u/s 4-B of the Act in form 19 was granted to the

petitioner vide annexure 1 to the writ petition. For the assessment year 1981-82 a dispute was raised at the instance of the department that total exemption from tax on rubber roller manufactured by the petitioner, has been wrongly granted and the petitioner is not entitled for the total exemption on the raw materials, as the product produced by the petitioner is not rubber product. The matter went up to the Trade Tax Tribunal. The Tribunal by its order dated December 3, 1990 dismissed the appeal filed by the department and recorded a finding that rubber roller is rubber product. This order of the Tribunal has become final, as the department has not further challenged the said order. Thereafter the Commissioner of Sales Tax, issued a circular dated June 11, 1991. By the said circular the Commissioner of Sales Tax after obtaining legal opinion from the law department has observed that rubber roller is not rubber product and granting of total exemption on the purchase of raw material to the recognition holder is contrary to law. According to him only concessional rate of tax is admissible and not full exemption. In the light of the aforesaid circular the assessing authority issued notice dated August 27, 1991 to the petitioner, which is impugned herein. The said notice is u/s 4B(iv) of the Sales Tax Act with a view to modify the recognition certificate No. 1621 dated July 29, 1981 and withdraw the total exemption and substitute the same by a concessional rate of tax. Challenging the aforesaid circular and notice present writ petition has been filed.

4. We have heard Sri Bharat Ji Agrawal, Senior Advocate, learned counsel for the petitioner and Sri S.P. Kesharwani, learned counsel for the respondents and have perused the record of the case.

5. Learned Standing Counsel has raised the question of maintainability of the writ petition, as only a notice has been challenged in the present case. Learned counsel for the petitioner submits that the writ petition is maintainable and the alternative remedy is wholly illusory in the facts of the present case as the authorities under the Act are bound by the circular issued by the Commissioner of Sales Tax. This matter has been considered by a division Bench of this Court reported in [2002] 128 STC 476 : 2002 UPTC 262 (P.N.C. Construction Company Limited v. State of U.P.). It has been held that it is the well-settled legal position that where the proceeding is wholly without jurisdiction, the High Court can entertain the writ petition and pass appropriate orders. Therefore, we do not find any substance in the contention of learned Standing Counsel. The submission on the other hand is that the impugned notice is wholly without jurisdiction, as the Tribunal has set the matter at rest and the Commissioner of Sales Tax cannot take a different view on the question of law. Moreover the said circular is binding on the sales tax authority and it is not expected that the sales tax authorities will go beyond the circular of the Commissioner of Sales Tax. The plea that the petitioner has an alternative remedy by way of replying to show cause notice and filing of appeal, etc., has no substance on the face of the circular issued by the Commissioner of Sales Tax. It is well-settled that alternative remedy is not an absolute bar to a writ petition. The petitioner has placed reliance on a number of materials filed as annexures 5 to 10 to the writ petition. It has been submitted

that the Industries department treated the rubber roller as rubber product. The U.P. Financial Corporation which is financing the rubber product units are treating rubber roller as rubber product. The Rubber Board, Government of India, has also treated it as rubber product. The reliance was placed upon the handbook issued by Government of India, Director General of Technical Development, Ministry of Industries, New Delhi, for the said proposition. It was further submitted that in common parlance rubber roller manufactured by the petitioner was always treated as rubber product and that is why as far as back in the year 1981 the department itself granted recognition certificate to the petitioner. At this time there is no occasion to amend or modify the said recognition certificate merely because the department is of the opinion that rubber roller is not rubber product.

6. We have carefully considered the respective submissions of the parties. The question whether rubber roller is rubber product or not had already cropped up in the case of the petitioner itself for the assessment year 1981-82. The First Appellate Authority in Appeal No. 220 of 1988 for the assessment year 1981-82 as well as the Tribunal in Appeal No, 51 of 1988 had held that rubber roller is rubber product and the Commissioner of Sales Tax was very much party in the said proceeding. The Commissioner of Sales Tax did not challenge the order of the Tribunal holding that the rubber roller is rubber product. Almost on identical facts this Court in the case of P.N.C. Construction Company [2002] 128 STC 476 : 2002 UPTC 262 , has held that the Revenue officers are bound by the decision of the appellate authority. The Tribunal being the appellate authority its order is binding upon the assessing authority and also the Commissioner of Sales Tax. Following the judgment of the Supreme Court in the case of Union of India and others Vs. Kamlakshi Finance Corporation Ltd., it was held that the principles of judicial discipline requires that the order of the appellate authority should be followed by their subordinate authorities and if this rule is not followed the result will be undue harassment to the litigant and chaos in the administration of justice.

7. It is well-settled that the common parlance meaning should be given to ascertain the intention of the Legislature while interpreting a taxing entry vide Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola,

8. Following the aforesaid decision these three writ petitions are allowed. The impugned notice dated August 27, 1991 in writ petition No. 1251 of 1991 issued by respondent No. 3 is quashed. The two orders dated December 28, 1992; annexures 21 and 22 in the writ petition No. 153 of 1993 are quashed. The notice dated August 27, 1991 impugned in the writ petition is also quashed.

There will be however, no order as to costs.

