(2006) 08 AHC CK 0007

In the Allahabad High Court

K.B. Bone Mills APPELLANT

Vs

Commissioner of Trade Tax RESPONDENT

Date of Decision : 01-08-2006

Acts Referred:

Central Sales Tax Act, 1956 — Section 9
Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2009) 20 VST 960

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—These three revisions u/s 11 of the U.P. Trade Tax Act, 1948 (hereinafter referred to as "the Act") are directed against the order of the Tribunal dated May 12, 1998 relating to the assessment years 1990-91, 1991-92 and 1992-93, all under the Central Sales Tax Act, 1956.

In all the three revisions, following common questions have been raised:

1. Whether in view of the decision of the honourable Supreme Court in the case of India Carbon Ltd. v. State of Assam reported in [1997] 106 STC 460 : [1998] UPTC 1 dated July 16, 1997, no interest can be charged under the Central Sales Tax Act on Central sales?

2. Whether in view of the Notification No. 7038 dated January 31, 1985, the applicant was not liable for payment of tax in respect of bone meal and bone meal powder which was sold by the applicant?

3. Whether the description of the goods sold having been mentioned in the bills and invoices which was purchased and consumed by Kerala Chemicals and Proteins Ltd., which was consumed also by the said purchaser, the Tribunal was not justified in treating the sale of bone meal as crushed bone on the basis of the subsequent letter dated May 14, 1994 after the consumption of the goods?

4. Whether even assuming without admitting that what was sold by the applicant was crushed bone liable to tax, the Tribunal ought to have given opportunity to the applicant to furnish ''C form in view of the decision of the Supreme Court in the case of Sahney Steel and Press Works Ltd. v. Commercial Tax Officer [1985] 60 STC 301 at pages 307 and 308?

3. Brief facts of the case are that the applicant established a new unit in the year 1988 for the manufacturing of bone meal, etc. The eligibility certificate was issued u/s 4A of the Act for the period of six years from January 5, 1985. The period of six years expired on January 4, 1991. Therefore with effect from January 5, 1991 applicant was liable for tax on its manufactured product. During the years under consideration, admittedly applicant had sold the goods to M/s. Kerala Chemicals and Proteins Limited, which is claimed to be bone meal and the exemption has been claimed as fertilizers. There is no dispute about the turnover. The assessing authority held that in fact the applicant had sold crushed bone and not bone meal. For arriving to the aforesaid conclusion, assessing authority held that at the time of survey dated September 2, 1992 stock of crushed bone was found. In reply to a letter M/s. Kerala Chemicals and Proteins Limited wrote a letter No. 31/300/787 dated May 14, 1994 in which it has been confirmed that during the years under consideration they have purchased 3/8", 5/8" size of bone from the applicant. Copies of the purchase order against which the supply was made have also been sent in which the order was for the supply of 3/8", 5/8" size of bone. On the basis of these material it has been held that the applicant had in fact sold crushed bone and not bone meal and accordingly, levied the tax on the turnover. The plea of the applicant has not been accepted in first appeal and also by the Tribunal on the basis of statement of Abdul Habib at the time of survey dated September 2, 1992; the stock of crushed bone found at the time of survey and the letter dated May 14, 1994 written by M/s. Kerala Chemicals and Proteins Limited. It has been held by the Tribunal that the supply was of crushed bone and not bone meal. The Tribunal further held that the letter dated May 14, 1994 written by M/s. Kerala Chemicals and Proteins Limited was confronted to the applicant but no explanation was given.

4. Heard learned Counsel for the parties.

5. The learned Counsel for the applicant submitted that in fact applicant had supplied bone meal and not crushed bone and the Tribunal and the authorities below have illegally treated bone meal as crushed bone and levied the tax. It is further submitted that opportunity for furnishing the form "C" was not afforded by the Tribunal. It is further submitted that the levy of interest is also unjustified in view of the decision of the apex court in the case of India Carbon Ltd. v. State of Assam reported in [1997] 106 STC 460 : [1998] UPTC 1. The learned Standing Counsel submitted that the view of the Tribunal that the applicant had in fact sold crushed bone and not bone meal is based on the material on record referred in the order itself and finding of the Tribunal is finding of fact, which does not require any interference. He further submitted that Section 9 of the Central Sales

Tax Act, 1956 has been amended by the Finance Act, 2000 with retrospective effect and in view of the amendment, the interest can be demanded under the Central Sales Tax Act. He submitted that the amendment made under the Central Sales Tax Act by the Finance Act, 2000 with retrospective effect has been upheld by the Division Bench of this Court in the case of Kajaria Ceramics Limited v. State of U.P. reported in [2003] UPTC 750. He further submitted that so far as the claim of opportunity for furnishing of form "C" is concerned, this question does not arise from the order of Tribunal, inasmuch as such prayer has not been made by the applicant before the Tribunal and applicant has not moved any application for the acceptance of form "C" before the Tribunal. Thus, there was no question of allowing any opportunity to furnish form "C".

6. Having heard learned Counsel for the parties, I have perused the order of the Tribunal and the authorities below.

7. I do not find any substance in the argument of learned Counsel for the applicant. Mere description of the goods is not decisive. If the applicant had wrongly described the goods, the liability of the goods cannot be determined on the basis of the description given by the applicant, if it is found otherwise. In the present case, at the time of survey dated September 2, 1992 stock of crushed bone was found. The inter-State sales were made only to M/s. Kerala Chemicals and Proteins Limited. In the letter dated April 15, 1994 M/s. Kerala Chemicals and Proteins Limited had stated that they have purchased 3/8", 5/8" size of crushed bone against the orders. Copy of the orders were also sent. The letter of M/s. Kerala Chemicals and Proteins Limited and the purchase orders were confronted to the applicant by the assessing authority in respect of which no explanation was submitted. Thus, the view of the Tribunal that the applicant had sold crushed bone and not bone meal cannot be said to be erroneous, and does not require any interference.

8. I do not find any substance in the argument, that the Tribunal ought to have given opportunity to the applicant to furnish form "C". This question does not arise from the order of the Tribunal. No such plea was raised before the Tribunal. Under the aforesaid provision interest can be charged under the Central Sales Tax Act, 1956.

9. So far as question of liability of interest is concerned, the issue is covered by the decision of this Court in the case of Kajaria Ceramics Limited v. State of U.P. [2009] 20 VST 964 (All) [App] : [2003] UPTC 750, in which the validity of the Finance Act, 2000 by which Section 9(2B) has been inserted with retrospective effect has been upheld. Under the aforesaid provision, interest can be charged under the Central Sales Tax Act, 1956.

10. For the reasons stated above, all the three revisions have no merit.

11. In the result, all the three revisions fail and are accordingly dismissed.

