
(2007) 04 AHC CK 0043
In the Allahabad High Court

Mahalaxmi Gramodyog Sansthan

APPELLANT

Vs

Commissioner, Trade Tax

RESPONDENT

Date of Decision : 23-04-2007

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11, 3

Citation : (2009) 20 VST 148

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Arun Tandon, J.—Heard learned Counsel for the parties.

2. Revisionist, M/s. Mahalaxmi Gramodyog Sansthan, Behat Road, Saha-ranpur has filed this trade tax revision challenging the order of the Trade Tax Tribunal, Saharanpur Bench, Saharanpur dated January 31, 2006 whereby the second appeal filed by the Trade Tax Department has been allowed and the order of the first appellate authority dated September 21, 2000 has been set aside.

3. The facts giving rise to the present trade tax revision are that the assessee is a society registered with U.P. Khadi Gramodyog Board and is engaged in the business of sale of spices after grinding the whole spices.

4. For the assessment year 1997-98, the total turnover as disclosed from the sale effected by the assessee was Rs. 74,16,997.25. According to the assessee, the said turnover in respect of two categories of goods sold by the assessee. The first category of goods was manufactured after purchasing the whole spices (ungrinded spices), i.e., Khada mashala after payment of tax from dealers situate within the State of Uttar Pradesh. Such sales are not liable to any tax under the State of Uttar Pradesh in view of Section 3 of the U.P. Trade Tax Act, 1948. The second category of sale is qua the grinded spices manufactured after purchase of raw material from dealers situate outside the State of U.P. In respect of such sales liability of payment of tax is admitted.

5. According to the assessee, the total turnover in respect of the first category of goods traded by the assessee would work out to nearly Rs. 27 lacs, while the turnover of the goods sold qua the second category would work out Rs. 47,83,289.94 only.

6. It is further admitted to the parties that under the notification dated February 27, 1997 issued by the State of Uttar Pradesh in exercise of power u/s 4C of the U.P. Trade Tax Act, the assessee being registered with U.P. Khadi Gramodyog Board is exempted from tax up to a turnover of Rs. 50,00,000.

7. For the relevant assessment year the assessing authority in exercise of power under rule 41(8) determined the tax liability of the assessee at Rs. 1,25,000. For arriving at the aforesaid conclusions, the assessing authority vide its order dated February 29, 2000 clubbed the turnover of the assessee in respect of both categories of goods sold for the purposes of determining the turnover relevant under notification dated February 27, 1997. He has held that the assessee was liable for payment of tax on the turnover, which had exceeded Rs. 50,00,000.

8. This order of the assessing authority was subjected to challenge by the assessee by way of appeal u/s 9 of the U.P. Trade Tax Act being Appeal No. 105 of 2000. The Deputy Commissioner (Appeals) Trade Tax, Saharanpur, vide order dated September 21, 2000 allowed the appeal filed by the assessee. The first appellate authority segregated the sales effected in respect of two columns of goods manufactured and recorded that the turnover of the goods manufactured from the raw materials purchased from dealer outside the State of Uttar Pradesh would work out Rs. 48,50,720 only and therefore, having regard to the exemption as granted under notification dated February 27, 1997 total turnover of the assessee was less than Rs. 50,00,000. He, therefore, held that the assessee was exempted from payment of tax.

9. This order of the Deputy Commissioner (Appeals) was challenged by the department by means of second appeal u/s 10 before the Trade Tax Tribunal, Saharanpur. The second appeal was numbered as Second Appeal No. 20 of 2000. The appeal filed by the department has been allowed under judgment and order dated January 31, 2006. The Tribunal under the impugned order has held that entire turnover was liable to be treated as one for the purposes of determining the permissible limit of exemption of Rs. 50,00,000 as provided for under the notification dated February 27, 1997. It has been held in the facts of the present case that the assessee had not maintained separate accounts qua purchase of the raw materials from the dealer outside the State of Uttar Pradesh and the purchase made from the dealer within the State. The levy of tax as per the order of the assessing authority has been reaffirmed. This order of the Tribunal is under challenge in the present Trade Tax Tribunal.

10. Learned Counsel for the assessee with reference to Clause 3 of item No. 3 of notification dated February 27, 1997, submits that under the said clause turnover up to Rs. 50,00,000 has been declared as exempted from payment of tax in the

event the assessee is registered with U.P. Khadi Gramodyog Board. He submits that the calculation of the turnover for the purposes of notification is to be computed with reference to the goods on which the tax is payable by the assessee and shall exclude the goods in respect whereof tax is not payable by the assessee. Even otherwise if two interpretations of the demand are possible, the court may adopt an interpretation, which is in favour of assessee in view of the judgment of the honourable Supreme Court of India in the case of Diwan Bros. Vs. Central Bank of India, Bombay and Others, as well as in the case of The Commissioner of Income Tax, Bombay Vs. The Jalgaon Electricity Supply Co., Ltd., . He therefore, submits that the Tribunal has erred in upsetting the findings recorded by the first appellate authority. The order of the Tribunal is liable to be set aside.

11. Learned Standing Counsel on the other hand contends that the interpretation placed upon the language of Clause 3, item No. 3 of the notification dated February 27, 1997 is based on simple reading of words used, there is no ambiguity so as to admit of two interpretations, therefore, the findings recorded by the Tribunal do not warrant any interference in revisional jurisdiction u/s 11 of the U.P. Trade Tax Act.

12. I have heard learned Counsel for the parties and have gone through the records of the present trade tax revision.

13. The facts as noticed herein above, are not in dispute. The issue up for consideration before this Court is as to whether in terms of Clause 3 of item No. 3 of notification dated February 27, 1997, on simple reading of the words used without adding or subtracting anything thereto, or a reasonable meaning can be arrived at as to whether relevant clause admits of two different interpretations as contended by the counsel for the assessee used. In order to appreciate the aforesaid controversy it would be relevant to reproduce Clause 3 of item No. 3 of the Notification dated February 27 1997, which is being quoted herein below:

_____ Kram Maal/Vyaktiyon/Vyaktiyon Ke Shartheyn, yam koi hon San varge to vtvaran _____

_____ 3. Akhil Ehartiya Khadi aur In sharton par Ki-Gramodyog ayog ya Uttar (1) Chhot keval aishey utpadon par hi Pradesh Khadi tatha uplabdha hogi jo aishi sansthaon dwara Gramodyog Board dwara svayam vinirmit kiye gaye hon. pramanit Uttar Pradesh Ki (2) Chhoot vapash li Ja shakti hai, yadi sansthaon dwara nichey aishi sanstheyn un sharton meyn sey, vinirdisht gramodyog ke Jinkey adhin chhot anumaya hai, kishi utpadon ki bikri par, ka durupayog karen. (3) Kisi kar nirdharan varsh meyn keval ... pachash lakh rupaya vikraydhan (turnover) tak chhoot uplabdh hogi. _____

From Clause 3 of item No. 3 of the aforesaid notification it is apparently clear that it speaks of entire turnover of the assessee registered with U.P. Khadi

Gramodyog Board. The clause makes no difference vis-a-vis the taxable turnover and the turnover on which no tax is payable by the assessee. Since language of the clause on a simple reading leads to only one conclusion, this Court record that the entire turnover has to be considered in respect of fact that part of this turnover the assessee is exempted from payment of tax under other provisions of the Act. The total turnover has to be considered for the purposes of arriving at the turnover limit provided for under Clause 3 of the notification.

14. This court is satisfied that simple reading of the clause admits of no two interpretations as suggested by the counsel for the assessee. The court has to adopt the mean which flows from simple reading of the words used as has been laid down by the honourable Supreme Court of India in the case of Rana Masala Udyog v. Trade Tax Tribunal, Part-4 reported in [1989] UPTC 136 (sic). Accordingly it is held that for the purposes of computation of the total turnover as required under Clause 3 of item No. 3 of the notification dated February 27, 1997, the entire turnover of the assessee has to be taken into account, including the turnover which represents the goods sold in respect whereof the assessee is not liable to pay tax under other provisions of the Trade Tax Act.

15. This court may also record that the first appellate authority in its order had recorded that the assessee has not maintained separate account in respect of the goods purchased from the dealer within the State of Uttar Pradesh as well as from the dealers situate outside the State of Uttar Pradesh. Therefore, it is also not possible to segregated the turnover reflected from the goods manufactured from the raw materials purchased from dealers within the State of Uttar Pradesh vis-a-vis the turnover of the goods sold after purchasing the raw material from the dealer situate outside the State of Uttar Pradesh.

16. In the totality of the circumstances as noticed herein above, no interference is warranted against the judgment and order passed by the Trade Tax Tribunal dated January 31, 2006.

The present trade tax revision is accordingly dismissed.