(2004) 10 AHC CK 0204

In the Allahabad High Court

Case No : Sales Tax Revision No. 521 of 1994

Modi Industries Limited APPELLANT

Vs

Commissioner of Sales Tax RESPONDENT

Date of Decision : 28-10-2004

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 11, 2

Citation : (2004) 10 AHC CK 0204

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : Bharat Ji Agarwal, for the Appellant;

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—The present revision u/s 11 of U.P. Sales Tax Act (hereinafter referred to as Act) is directed against the order of Tribunal dated 12.1.1994 relating to the assessment years 1984-85. The following question has been raised:-

"Whether on the facts and in the circumstances of the case the Tribunal was legally justified in including the distribution charges in the taxable turnover of the applicant?"

2. Applicant was engaged in the business of Vanaspati Ghee, Washing Soap etc. During the year under consideration, applicant had charged a sum of Rs. 1,45,69,532.85 Paise towards the distribution charges in the bill on the sale of Vanaspati Ghee within the State of U. P. from the customers. Claim of the applicant was that the distribution charges were towards freight, insurance charges, forwarding, maintenance of Depot and sale promotion etc. and claimed that the amount being charged separately, it would not be part of the turnover. Assessing Authority had not accepted the plea of the applicant and treated distribution charges as a part of the turnover. First Appellate Authority confirmed the order of Assessing Authority and the Tribunal has rejected the second appeal.

3. Heard Counsel for the parties.

4. Learned Counsel for the applicant submitted that in the assessment year 1982-83 in Sales Tax Revision No. 1967 of 1993 Modi Industries Ltd., Ghaziabad v. Commissioner of Sales Tax, U.P. reported in 1998 U. P. T. C. 1069. this Court held that freight charges on account of loading and unloading should be excluded from the total turnover if such amount has been charged by a separate billing and other charges claimed on account of insurance or maintenance of depot or forwarding charges shall be included while computing the total turnover. He submitted that for the assessment year 1983-84, this Court has remanded back the matter to the Tribunal to decide the appeal afresh. The judgment is reported in 2000 UPTC 149 Modi Industries v. CST. He submitted that freight charges are not the part of the turnover.

5. Learned Standing Counsel submitted that the order of this Court in the assessment year 1982-83 and 1983-84 are not relevant for this year. He submitted that under the Vanaspati Price Control Order, dealer had charged price FOR destination. He submitted that in the bill in 16.5 Kg. of Tin Rs. 4/-, 4 Kg. Tin Rs. 2/- and 2 Kg. Tin Re. 1/- was charged towards the distribution charges on which, trade tax @ 10.5% was also charged. He submitted that the First Appellate Authority had recorded further finding that apart from the distribution charges, freight was separately charged and the distribution charge was not relating to the freight. In any view of the matter, it is not disputed that under the Vanaspati Price Control Order sale price fixed was FOR destination and therefore, distribution charges were part of the turnover and therefore, for this year, there is no need to remand back the matter to the Tribunal.

6. I have perused the order of Tribunal and the authorities below. First Appellate Authority and the Tribunal both found that the distribution charges were charged under the Vanaspati Price Control Order and under the Vanaspati Price Control Order price fixed was FOR destination. In the revision petition, it has not been disputed that the price of Vanaspati was fixed under the Vanaspati Price Control Order and it was FOR destination. It has also not been disputed that in the bill one consolidated amount namely Rs. 4/- on 16.5 Kg. Tin, Rs. 2/- on 4 Kg. Tin and Re. 1/- Tin of 2 Kg. was charged towards the distribution charges. There is nothing to show that the distribution charges related to freight or cost of the delivery. First Appellate Authority recorded the finding that apart from the distribution charges, freight was separately charged and on the amount of distribution charges, trade tax was charged. Finding of First Appellate Authority which are not disputed are as follows:-

"YEH KEEMAT VANASPATI PRICE CONTROL ORDER MEY DISTRIBUTION EXPENSES VASOOL KARNAY KAY SPASHT NIRDESH HONEY KAY KARAN TATHA VANASPATI KI BIKRI F. O. R. DISTRIBUTION PAR KIYE JANAY KAY KARAN AVAM COMPANY DWARA UPROKTA SHASHNANUSARJ KAY ANUPALAN MAY RUPYA. 1,40,69,532.85 CHARGE KIYE GAYE HAI AUR USPAR 10% KE DARSAY BIKRIKAR VASOOL KIYA GAYA HAL MOOL KAR N1RDHARAN ADESH KA PRAVLOKAN KIYA

GAYA. KAR NIRDHARAN ADHIKARI NAY YEH SPASHT KIYA THA KI VANASPATI PRICE CONTROL ORDER WAY SPASHT SHABDO WAY VITRAN VYAY VASOOL KARNAY SJ NIRDESH DIYA GAYA. YEH BHI ADESH DIYE GAYE HAI KI VANASPATI MILON DWARA VANASPATI KI SAMPOORN EXFACTORY MOOLYA KAY STHAN F. O. R. MOOL PAR KIYA JAVE. ATEV UKTA VANASPATI PRICE CONTROL ORDER KAY ANUSAR VITRAN PAR SARVASHREE MODI INDUSTRIES LIMITED MODI PAR VARSH 1984-85 REMAND VAD APPEAL SANKHYA 237/92 VARSH 84-85 PRANTIYA AVAM APPEAL SANKHYA 238/92 VARSH 84-85 KAY MAD MAY KI GAYEE RUPYA. 1,40,69,532.85 DIKHAI GAYEE HAI, BILO SAY SPASHT YEH BHARHAY KI DHANRASHI NAHI HAI BULKI DELIVERY KAY POORVA KI DHANRASHI BILL MAY CHARGE KI BHARHA BILL MAY ALAG SAY CHARGE KIYAGAYA HAI. BIKRIKAR KI DHARA -2 (I) KAY ANUSAR KEWAL BHARHA VA BIKRI KAR KO VIKRAY DHAN MEY SAY GHATAYA JA SAKTA HAI BASHARTEY KI ALAG SAY CHARGE KIYAGAYA HO YADI YEH DHANRASHI AISEE HAI JO DELIVERY SHY POORVA VASOOI. KI GAYEF HAI AUR YEY V1KRAY DHAN KA Hi BHAG HAI "

7. In the assessment year 1982-83, this Court without going into the fact whether the price was controlled under the Vanaspati Price Control Order and the price was FOR destination held that freight charges would not be a part of the turnover if charged scparately and further held that the charges towards insurance, Depot maintenance and sale promotion, shall be part of the turnover In the Sales Tax Revision no, 519 of 1994 dating to the assessment year 1983-84 reported in 2000 UPTC 149, the learned Single Judge on an examination of definition of turnover u/s 2 (i) held as follows -

"''As pointed out above the inclusion and exclusion clause. contained in sub Clause (i) of Explanation II is subject to the conditions and restriction as may be prescribed in this behalf If the control order provides that the Price shall be charged FOR destination then the cost, of the freight or delivery charges shall have to be treated as part of the turnover. It was so held by the Supreme Court in Hindustan Sugar Mills 43 STC 13 (SC) So far as charges of insurance forwarding depot maintenance and sales promotion are concerned the same are to be treated as part of the turnover in view of the decision of the Supreme Court reported in 1988 UPTC 218, Vinod Industries. v. Commissioner of Sales Tax, U.P. and the decision of this Court reported in 1987 UPTC 1028, Shyam Engineering Works, Allahabad v. Commissioner of Sales Tax, which were followed by this Court while deciding sales Tax, which were followed by this court while decinding sales Tax Revision No. 1667 of 1993,1998 UPTC 1069. It may be pointed out here that while deciding Sales Tax Revision No. 1967 of 1993, the impact of the Vanaspaii Control Order was not considered by this Court Therefore, the decision in the said revision shall not have any bearing on the decision of the present case.

8. In my opinion, present revision has no force for the following reasons: -

9. It is not disputed that the price of Vanaspati was fixed under the Vanaspati Price Control Order was FOR destination Amount towards distribution charges were charged as per the instructions in the Vanaspati Price Control Order Rs 4/

was charged towards distribution charges on the Tin of 165 Kg. Rs. 2/- on the i in of 4 Kg. and Re. 1/- on the 2 Kg. fin. No evidence has been placed to show that such amount included freight charges and even if included, it can not be said to have been separately charged.

10. As per the dealer own case, it relates to the expenses towards maintenance of Depot, sale promotion etc which shows that the amount charged towards the distribution charges were relating to pre delivery expenses. However, price fixed under the Vanaspati Price Control Order was FOR destination. Even if amount charged may include cost of freight or delivery, it would be part of the turnover in view of the decision of Apex Court in the case of Hindustan Sugar Mills 43 STC 13 (SC) and Cement Marketing Co. of India Ltd. v. Commissioner of Commercial Taxes India ltd. reported in 1983 UPTC 633 (SC) and in view of decision of this Court in the case of dealer self reported in 2000 UPTC page 149

11. For the reasons stated above, I do not find any error in the order of Tribunal

12. In the result, revision fails and is accordingly dismissed

