(2010) 04 AHC CK 0055

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 453 of 2004

Modi Industries Limited APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 27-04-2010

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 21, 21(2), 3AB, 4

Citation : (2010) 34 VST 289

Hon'ble Judges : Rajes Kumar, J;Pankaj Mithal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—By means of the present writ petition, the petitioner seeks the following reliefs:

(i) To issue a suitable writ, order or direction in the nature of certiorari, quashing the reassessment proceedings u/s 21 of the U. P. Trade Tax Act for the assessment years 1997-98 to 1999-2000 in pursuance of notices dated March 15, 2004 (annexure 4 to the writ petition).

(ii) To issue a writ order or direction in the nature of certiorari quashing the circular dated September 30, 2003 directing for the imposition of tax on poly pouches in which the country liquor was packed and sold (annexure 6 to the writ petition).

(iii) To issue a writ, order or direction in the nature of mandamus or prohibition restraining/prohibiting respondent No. 2 from taking any proceedings for imposition of tax on poly pouches for the assessment years 1997-98 to 1999-2000 under the U. P. Trade Tax Act.

(iv) To issue any other suitable writ, order or direction as this honourable court may deem fit and proper in the circumstances of the case in favour of the petitioner and against the respondents.

(v) To award the costs of the petition to the petitioner throughout.

2. The brief facts of the case are that the petitioner is a public limited company incorporated under the Indian Companies Act, 1956. In one of the units, named Modi Distillery, it manufactures country liquor as well as Indian-made foreign liquor. The country liquor is exempted from tax under the notification issued in exercise of power u/s 4 of the U. P. Trade Tax Act (hereinafter referred to as, "the Act"). The petitioner had sold the country liquor in a packed form. In the bills, the value of the country liquor and the packing materials has been separately charged. In the original assessment orders, for the assessment years 1997-98 to 1999-2000, the assessing authority had not levied the tax on the value of the packing materials. The notices dated March 15, 2004 were issued u/s 21 of the Act for the assessment years 1997-98 to 1999-2000 under the U. P. Trade Tax Act with a view to levy the tax on the value of the packing materials on the ground that the value of the country liquor and value of the packing materials have been separately charged.

3. Heard Sri Bharat Ji Agrawal, learned senior advocate, assisted by Sri Piyush Agrawal, learned Counsel for the petitioner and Sri S. P. Kesarwani, learned Additional Chief Standing Counsel.

4. He submitted that vide circular dated April 28, 2000 it has been clarified by the Government that even if the prices of country liquor and packing materials were separately charged, the value of packing material was not liable to tax. He submitted that the subsequent circular dated September 30, 2003 issued by the Commissioner of Trade Tax, U. P., Lucknow in which it has been opined that in case the separate sales are made for the country liquor and poly pouches, etc., the benefit of Section 3AB is not available; and the benefit of Section 3AB is only available in a case where composite price for the goods and the packing materials have been charged, is manifestly erroneous.

5. Sri S. P. Kesarwani, learned Additional Chief Standing Counsel, submitted that the issue involved in the present writ petition came up for consideration before the Division Bench of this Court in Writ Petition No. 317 of 2004 (Majhola Distillery & Chemical Works, Majhola, District Pilibhit v. State of U. P. [2010] 34 VST 292 (All) [App]) decided on October 4, 2007 wherein after considering the various decisions of the apex court and the aims and objects of introducing Section 3AB of the Act, it has been held that Section 3AB of the Act applies only in a case where a composite price for the goods and packing materials has been charged and it does not apply to a case where the prices of the goods and the packing materials have been separately charged. On the similar facts in the case of sale of country liquor where the prices of country liquor and the packing materials have been separately charged, it has been held that the provision of Section 3AB does not apply and the packing materials are liable to tax. He submitted that SLP filed against the said order has been dismissed by the apex court.

6. Sri Bharat Ji Agrawal, learned Counsel for the petitioner submitted that the Division Bench decision of this Court in the case of Majhola Distillery & Chemical Works, Majhola, District Pilibhit v. State of U. P. [2010] 34 VST 292 (All) [App] requires reconsideration.

7. We have heard learned Counsel for the parties and perused the records and given our anxious consideration to the rival submissions.

8. The question on the merits, namely, where the prices for the country liquor and packing materials are separately charged whether the provision of Section 3AB applies or not is squarely covered by the Division Bench decision of this Court in the case of Majhola Distillery & Chemical Works, Majhola, District Pilibhit v. State of U. P. [2010] 34 VST 292 (All) [App] wherein it has been held that where the prices of the goods and the packing materials are separately charged, Section 3AB does not apply and accordingly it has been held that if the prices for the country liquor and the packing materials are separately charged, the value of the packing materials would not be exempted u/s 3AB of the Act. The Division Bench of this Court has considered in detail the decisions of the apex court in the case of Premier Breweries Vs. State of Kerala, The Associated Cement Companies Ltd. Vs. Government of Andhra Pradesh and Another, Raj Steel and Others Vs. State of A.P. and Another, and Co-operative Company Ltd. Vs. Commissioner of Trade Tax, U.P., and aims and objects of introducing Section 3AB of the Act. The Division Bench decision of this Court is a well considered decision. The SLP against the said order has also been dismissed by the apex court. In this view of the matter, we do not see any reason to reconsider the issue and we respectfully agree with the view taken by the Division Bench. Accordingly, we are of the view that the view expressed in circular dated September 30, 2003 is legally correct and in accordance with the provisions of the Act.

9. No other point has been raised.

10. In the result, the writ petition fails and is dismissed.

Appendix

[The decision of the Division Bench of the Allahabad High Court consisting of Prakash Krishna and Bharati Sapru JJ. in Majhola Distillery & Chemical Works v. State of Uttar Pradesh (Civil Misc. Writ Petition No. 317 of 2004 decided on October 4, 2007) is printed below:]

11. The petitioner, a unit of Co-operative Sugar Factory Federation, Lucknow is licensee for manufacture of liquor/country spirit at Majhola Distillery, District Pilibhit and is registered as a dealer under the U. P. Trade Tax Act, 1948.

12. The provisions of the U. P. Excise Act and Rules are applicable on the manufacturing and selling of country liquor. The petitioner is a licensee u/s 407 of the U. P. Excise Rules and is supplying/selling country liquor at the rate fixed and approved by the State Government from time to time. Country liquor is being sold in duly packed bottles or poly pouches. The assessments for the

assessment years 1997-98 to 2000-01 under the U. P. Trade Tax Act as well under the Central Sales Tax Act, after scrutiny and verification of account books were completed by the assessing authority. The turnover of country liquor being an exempted item was exempted. No trade tax was levied on the packing material of the country liquor, i.e., on poly pouches. Thereafter notices u/s 21(2) of the U. P. Trade Tax Act, 1948 of dated 23rd of February, 2004 for the assessment years 1997-98 to 2000-01 were issued by the Deputy Commissioner (Assessment), Trade Tax, Pilibhit filed as annexure 8 to the petition to tax poly pouches (packing material) for reassessment on the ground that the country liquor has been sold in poly pouches on a fixed rate. The petitioner has added the price of the poly pouches/packing material in the price of the liquor and directly realised its price from purchasers. This has been termed as "capsuling charges" in the account books. The Department has sought to levy trade tax on the sale of the said packing material, i.e., poly pouches charges as "capsuling charges" by issuing reassessment notices impugned in the present petition.

13. A counter-affidavit on behalf of the respondents has been filed by Shri Vijai Kumar, Deputy Commissioner (Assessment), Trade Tax. It is accepted that the country liquor is an exempted item under the U. P. Trade Tax Act. The country liquor has been sold on the price fixed through Excise Department and payments have also been received through Excise Department but the price of the packing material has been fixed separately and has been realised separately for which the petitioner is liable to pay trade tax in view of Section 3AB of the Act. It has been further stated that the petitioner was liable to pay trade tax on the sale of packing material but the same was not considered by the assessing authority for the assessment years involved herein with the result the turnover of the packing material has escaped the assessment. Reference to a circular dated 28th of April, 2000 amending the earlier circular dated 12th of August, 1999 was also made and it has been stated that the earlier circulars were not in conformity with the provisions of Section 3AB of the Act. Emphasis in the counter-affidavit is that since the sale of packing material has been made separately as the price of the same has been fixed and realised separately, the petitioner is liable to pay tax on the sale of packing material u/s 3AB of the Act. Plea of non-maintainability of writ petition has been set up in para 17 of the counter-affidavit on the ground that the petitioner has a right to file his reply to the impugned notices and as such the present writ petition is not maintainable.

14. Heard learned Counsel for the parties and perused the record.

15. It is not in dispute that the petitioner has charged price on packing material separately, as admitted by Shri Bharat Ji Agrawal, the learned senior counsel for the petitioner. He submits that since no factual controversy is presently involved, the petitioner should not be relegated to file his objections before the authority concerned. In view of Section 3AB and the fact that sale of country liquor is exempted from tax and the country liquor was sold in pouches, price of which was charged separately, the packing material will not be exigible to the trade tax,

submits the learned senior counsel for the petitioner.

16. In response Shri U. K. Pandey, learned standing counsel for the respondents, submits that on a correct reading of Section 3AB, the petitioner has sold poly pouches (packing material) which is exigible to trade tax and therefore the impugned notices are valid.

17. It is evident from the pleadings of the parties as well as of the stand taken by them that the petitioner has separately charged the packing material in the bills. The question of determination of liability of the petitioner with respect to the sale of packing material, i.e., poly pouches which contain country liquor, an exempted item, is the question involved in the present writ petition. For the sake of convenience Section 3AB of the U. P. Trade Tax Act, 1948 is reproduced below:

3AB. Rate of tax on packing material sold with goods. - Notwith standing anything to the contrary in this Act, where goods are sold or purchased together with packing materials, the sale or purchase of the packing material shall:

(a) be liable to tax at the rate applicable to the sale or purchase of the goods sold or purchased together with such packing material;

(b) not be liable to any tax, if the sale or purchase of such goods is exempt from tax at the hands of the dealer.

18. It is also not in dispute that the said provision was in operation during all the material time. The said section opens with an obstante clause and has an overriding effect over other provisions of the Act. Its Clause (a) is not relevant for the present purpose. The present Section 3AB was newly inserted with effect from 1st of August, 1990 by U. P. Act No. 28 of 1991.

19. The learned senior counsel for the petitioner submits that in view of the decision of the apex court in Premier Breweries Vs. State of Kerala, a case under the Kerala General Sales Tax Act, 1963 clinches the issue finally. Section 5(6) of the Kerala General Sales Tax Act which was under consideration therein is similarly worded as that of Section 3AB of the U. P. Trade Tax Act. In Kerala General Sales Tax Act there was a specific entry in the First Schedule under which the sales tax has to be levied at the rate of 8 per cent on the containers. The case of the dealer therein was that the cardboard cartons will have to be taxed at the rate of eight per cent and not at the rate of 50 per cent the rate as applicable to the sale of liquor. The dealer had charged its customers separately for liquor and cartons. In this fact-situation, the apex court has examined the question of taxability of cardboard cartons. It has also taken into consideration Section 5(6) of the Kerala General Sales Tax Act which is reproduced below for the sake of convenience:

5(6). Where the sales or purchases of goods, contained in any containers or packed in packing materials is exempt from tax, then the sale or purchase of such containers or packing materials shall also be exempt from tax.

20. Interpreting the above provision along with the other provisions of that Act the apex court has held that the underlying idea behind these Rules is that the packed goods are to be taxed as composite units. In calculating the turnover of the goods, the turnover of containers will have to be included. The appropriate rate of tax will be the rate payable on the goods. The relevant portion from the judgement is reproduced below (at page 602 of 108 STC):

7. The underlying idea behind these rules is that packed goods are to be taxed as composite units. In calculating the turnover of the goods, the turnover of the containers will have to be included. The appropriate rate of tax will be the rate payable on the goods. It will not make any difference, if the containers are shown to have been sold and charged separately. The logical corollary to this principle is that when the goods are exempted from tax, no tax is leviable on the containers. This will be the position even when the goods and the containers are sold and charged separately.

21. It has been further observed that the mere fact that the containers and goods were sold separately or charged separately will not make any difference in the matter of computation of turnover of goods and determination of tax or the rate of tax and the point at which the tax will be levied u/s 5(5) of the Kerala Act vide para 19 of the report (para 21 in STC).

22. Ultimately, it has been held as follows (at page 607 of 108 STC):

The law is quite clear that when the goods contained in containers or packed in packing materials are sold the containers and the packing materials will have to be taxed at the same rate at which the goods are liable to be taxed. It will not make any difference if the price payable for the containers or packing materials are shown separately in the bills raised by the seller.

23. The learned standing counsel, however, submits that on a plain reading of Section 3AB, it is evident that it has no application in the present case for the simple reason that the petitioner has charged the price of poly pouches separately. There are two contracts of sale-one for sale of country liquor and another for sale of poly pouch, submits the learned standing counsel. Much emphasis was laid on the words "sold or purchased together with packing material". He submits that since there are two separate contracts, the Section 3AB is inapplicable.

24. The dictionary meaning of word "together" and "together with" are as follows:

As per "Words and Phrases" volume 41 the meaning of words "Together" and "Together with" is:

"Together" means "in company"; "into or in union with each other as whole or parts, so as to be combined or joined with each other; conjointly; in the same place or at the same spot with each other locally, as in company; at the same moment of time; simultaneously; contemporaneously; mutually; reciprocally."

"Together with" is defined as "in union with; in company or mixture with; along with".

As per Collins Cobuild Advanced Learner''s English Dictionary the meaning of words "together" and "together with" is reproduced below:

...

If two things happen or are done together, they happen or are done at the same time.

...

You use together when you are adding two or more amounts or things to each other in order to consider a total amount or effect.

...

You use together with to mention someone or something else that is also involved in an action or situation.

25. The New Lexicon Webster''s Dictionary of the English Language:

"Together" (...) adv. in or into contact or union, the pages are stuck together...in or into the same place, group, etc., put them all together so that you can find them again,...at the same time, the two things happened together...with each other...in succession, it rained for days together...in a body, all the workers together...into agreement, try to bring the two firms together...by combined action, together they pushed the stalled car.

"Together with" including with in addition, the house together with its grounds.

26. The New Shorter Oxford English Dictionary the New Authority on the English Language:

"Together"

A adv. 1 Into one gathering, company, or body; (of two persons, things, separate parts, etc.), into association, proximity, contact, or union. OE, 2 In company, as a body, (of two persons, things, separate parts, etc.), in union, conjunction, association, or contact. OE. b In notional combination; collectively. LI8. 3 With coherence or combination of parts or elements belonging to a single body or thing; so as to form a connected, united, or coherent whole. ME. 4 At the same time, simultaneously, ME. 5 Without interruption, continuously, consecutively. ME. 6 In concert; with unit of action; unitedly. ME. 7 One with another; mutually, reciprocally; to one another (freq. in belong together). ME.

"Together with" along with; in combination with; as well as; at the same time as. B prep. Along with, with the addition of, with. rare. MI6-MI7. C adj. composed, well-organized, self-assured; free of emotional difficulties or inhibitions. colloq. M20.

27. New Yorker a young lady..has got to be a very together person to survive. Blitz Lively, together..people only need apply.

28. It is apt to notice at this stage the circular No. Vidhi-1 (1) L-2(1999-2000) 118/trade tax dated 12th of April, 2000 wherein the Commissioner of Trade Tax after obtaining the opinion from the Law Department has opined that no tax is payable on the packing material, i.e., pouches and bottles of country liquor when the country liquor is exempted from tax. If the price of packing material (pouch) is charged separately, the pouch shall be taxed at the same rate at which the contents of the pouch are taxable. But if the contents of pouch are exempted from trade tax, then, the packing material will also be exempted from trade tax. A copy of the said circular has been filed as annexure 6 to the writ petition. The said interpretation placed by the Commissioner of Trade tax with the consultation of the Law Department can be treated as contemporaneous exposition of law. It shows how Section 3AB was understood by the Department with regard to the question of taxability of pouches containing the country liquor, an exempted item. The aforesaid circular was subsequently reviewed and revised by the circular dated 30th of September, 2003 filed as annexure 7 to the writ petition. The earlier circular dated August 12, 1999 and 28th of April, 2000 were consequently amended and it has been provided that if the country liquor and the poly pouches are sold separately, in that situation, benefit of Section 3AB shall not be available.

29. The charge of price of pouch by the petitioner separately is of significance in view of Section 3AB and the fact that one of the ingredient of the sale or purchase is "consideration", i.e., price.

30. In the case of Premier Breweries Vs. State of Kerala, the Supreme Court has considered and distinguished its earlier decision in Raj Steel and Others Vs. State of A.P. and Another, This was a case under the Andhra Pradesh General Sales Tax Act. Interpretation of Section 6C which reads as follows was involved therein:

6C. Levy of tax on packing material.-Notwithstanding anything in Sections 5 and 6A, where the goods packed in any materials are sold or purchased, the materials in which the goods are so packed shall be deemed to have been sold or purchased along with the goods and the tax shall be leviable on such sale or purchase of the materials at the rate of tax, if any, as applicable to the sale or, as the case may be, purchase of goods themselves.

31. In this case, the apex court has held that a transaction of sale may consists of (1) sale of the product and separate sale of the container housing the product with respective sale considerations for the product and the container separately; (2) or it may consists of sale of product and sale of container but both sales being conceived of as integrated component of a single sale transaction; or (3) it may consists of sale of product with transfer of container without any sale consideration therefrom.

32. The question in every case will be a question of fact as to what are nature of

ingredients of sale. It is not right in law to pick on one ingredient only to the exclusion of the others and deduce from it the character of the transaction. Whether a transaction for sale of packing material is an independent transaction will depend upon several factors, some of them being:

1. The packing material is a commodity having its own identity and is separately classified in the Schedule;

2. There is no change, chemical or physical, in the packing either at the time of packing or at the time of using the content;

3. The packing is capable of being reused after the contents have been consumed;

4. The packing is used for convenience of transport and the quantity of the goods as such is not dependent on packing;

5. The mere fact that the consideration for the packing is merged with the consideration for the product would not make the sale of packing an integrated part of the sale of the product.

33. It was held that Section 6 of the Andhra Pradesh General Sales Tax Act merely clarifies and explains that the components which have entered into determining the price of the goods cannot be treated separately from the goods themselves, and that no account was in fact taken of the packing material when the transaction took place. It negatives the contention that a rate applicable to the packing material in the Schedule should be applied to the sale of such packing material in case u/s 6C, when, in fact, there was no such sale of packing material and it is only by legal fiction and for a limited purpose, that such sale can be contemplated.

34. The validity of the aforesaid Section 6C of the Andhra Pradesh General Sales Tax Act was challenged in The Associated Cement Companies Ltd. Vs. Government of Andhra Pradesh and Another, In this case the apex court has noted the decision given in the case of Premier Breweries Vs. State of Kerala, as also in Raj Steel and Others Vs. State of A.P. and Another, and held that the decision of Raj Steel and Others Vs. State of A.P. and Another, was rightly distinguished in Premier Breweries Vs. State of Kerala, Thus, it follows that Section 6C of the Andhra Pradesh General Sales Tax Act and the corresponding provision in the Kerala General Sales Tax Act are different. Now, coming to the facts of the present case we are of the opinion that Section 3AB of the Act is nearer to Section 6C of the Andhra Pradesh General Sales Tax Act as it talks about the deemed sale of packing material along with the goods contained therein as also that tax shall be leviable on such sale or purchase of the material at the rate of tax, if any, applicable to the sale, or, as the case may be, the purchase of the goods themselves. Section 5(5) and 5(6) of the Kerala General Sales Tax Act, 1963 are differently worded. Section 5(6) of the Kerala General Sales Tax Act, 1963 provides only this much that the packing material shall be

charged to tax at the same rate at which its contents are charged, notwithstanding the fact that the packing material has been charged separately. Keeping in mind the distinction as pointed out by the apex court in the case of Premier Breweries Vs. State of Kerala, and Raj Steel and Others Vs. State of A.P. and Another, as followed by the apex court in the case of The Associated Cement Companies Ltd. Vs. Government of Andhra Pradesh and Another, it may be noticed immediately that in Section 3AB of the Act there is no such clause which provides that the packing material even if charged separately will be liable to be taxed at the same rate as its contents or at the rate applicable to the goods housed therein. The reason is not too far to seek. Section 3AB has been inserted to deal with the situations 2 and 3 as envisaged by the apex court in the case of Raj Sheel [1989] 74 STC 379: AIR 1989 SC 1996. So far as the question where packing material is also sold along with the goods, as the case hereunder is, there would be no difficulty in taxing the packing material as per the relevant notification. The difficulty arises only when the packing material is sold along with the goods and then it is to be necessarily found out as to whether there was an implied contract to sell the packing material. To meet such situation and to cut short the enquiry as to whether there was an implied contract to sell the packing material or not, Section 3AB has been enacted.

35. A question now arises with regard to the interpretation of Section 3AB of the Trade Tax Act. The said section was inserted in the statute book by U. P. Act No. 28 of 1991. It came into force with effect from 1st of August, 1990. To understand the real import of the said section, it is desirable to notice the law immediately before insertion of the aforesaid section. Fortunately enough, the Supreme Court recently in Co-operative Company Ltd. v. Commissioner of Trade Tax, U. P. [2007] 7 VST 174 : [2007] 4 SCC 480 has examined the law with regard to the taxability of packing material as it existed before the insertion of Section 3AB in the Act. This was also a case of country liquor. The question of taxability of bottles wherein the country liquor was sold was involved therein. In this case the Supreme Court held that inclusion of bottle as separate item in the notification dated 17th of April, 1991 is not relevant as the appellant is not a dealer of bottles. However, the apex court has held that the taxability of packing material such as bottle in such case will depend upon the fact as to whether there was a contract express or implied to sell the bottle. It did not approve the view that in a case where the goods are sold in packed form, there is implied contract for sale of packing material. It held that as a fact it has to be found as to whether there has been an implied contract for sale of bottle and any amount has separately been charged therefor. Each case is required to be determined on the consideration of relevant materials placed on the record by the parties. In para 29 of the Report the following 2010] Majhola Distillery & Chem. Works v. State (All) [App] 301 observations of the apex court with reference to Section 3AB are relevant for the present purposes (at pages 190 and 191 of VST):

29. We, however, are not impressed with the arguments of Mr. Radhakrishnan that Section 3AB of the Act introduced in the statute by reason of the U. P. Trade

Tax (Amendment) Act, 1991 is clarificatory in nature. The said amendment came into force with effect from April 25, 1990. The assessment year, as noticed hereinbefore, is April 1, 1989 to March 31, 1990. The Act having been brought into force from a particular date, no retrospective operation thereof can be contemplated prior thereto. The said provision furthermore contains a substantive provision which is itself a pointer to the fact that for the earlier period packing materials would not be exempted merely because main commodity is exempted from tax, but albeit subject to the condition that there was an agreement to sell in respect thereof. The amendment sought to deal with a matter which created some problem in implementation of the Act.

36. Keeping the above enunciation of law which existed prior to insertion of Section 3AB has been inserted with a view to done away to find out as to whether there has been implied contract or not to sell the packing material along with the goods contained therein. To provide a uniform policy, it has been provided that where the packing material has been sold together with its contents, the packing material would be exigible to tax at the same rate as the contents.

37. The dictionary meaning of words "together with" also supports the above view. One of the meanings of word "together" is adding two or more amounts or things to each other in order to consider a total amount or effect. A transaction of sale which consists of sale of the products and a separate sale of the container housing the product with respective sale considerations for the products and the container separately. Item No. 1 as pointed out by the honourable R. S. Pathak, C. J. in Raj Steel and Others Vs. State of A.P. and Another, Section 3AB of the Act will have no role to play in such cases, the product or the goods and the packing material will be exigible to trade tax as per rate applicable to them.

38. Having clarified the legal position, reverting to the facts of the case, it may be noted that in the present case the charge of packing material separately by the assessee is the admitted fact-situation. Along with the "short written note" supplied by the petitioner''s counsel, a copy of the petitioner''s licence in form CL1 has been enclosed. Para 8 thereof casts obligation on the contractor to supply sprit in pilfer proof, bottles of standard size. It is not in dispute that under the U. P. Excise Rules, the petitioner has charged the cost of poly pouches from the customers. On the facts of the present case, thus, there are two contracts- (1) with regard to the sale of liquor and the another, (2) with regard to the sale of poly pouches for which the petitioner has charged separately.

39. In view of the above discussion, we are not impressed by the argument of the learned senior counsel for the petitioner that in view of Section 3AB, there is no liability of the petitioner to pay trade tax on the sale of poly pouches, the packing material which has been charged separately by the petitioner from the purchasers.

40. Before parting with the case it may noted that at the very outset it was

pointed to the learned senior counsel for the petitioner that it would be appropriate to direct the petitioner to participate in the reassessment proceedings and it shall be open to it to raise all such pleas available to him before the authority concerned. But Shri Bharat Ji Agrawal, the learned senior counsel for the petitioner, very clearly stated that the petitioner is not raising any factual controversy and the court may proceed to hear and decide the case on merits treating the averments contained in the reassessment notice as correct.

41. No other point was pressed.

42. In view of the above discussion, we do not find any merit in the writ petition. The writ petition is dismissed.