(2013) 04 AHC CK 0249

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition (Tax) No. 860 of 2008

Monishwar Dham Gramodyog Sansthan APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 12-04-2013

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 4(b)

Citation : (2013) 4 ADJ 516

Hon'ble Judges : Ram Surat Ram (Maurya), J;Prakash Krishna, J

Bench : Division Bench

Advocate : Alok Kumar Yadav, for the Appellant;

Final Decision : Allowed

Judgement

Ram Surat Ram (Maurya), J.—Heard counsel for the parties. The writ petition has been filed for quashing the circular dated 31.3.2007 issued by Commissioner, Trade Tax, U.P. (respondent-2), order dated 30.8.2007/5.9.2007 passed by Additional Commissioner (respondent-3) granting sanction for reassessment for the assessment year 2003-04, order dated 20.11.2007 passed by Additional Commissioner (respondent-3) rejecting the recall application and the order dated 29.2.2008 passed by Deputy Commissioner (respondent-4) making reassessment for the assessment year 2003-04.

2. It has been stated that the petitioner was a society, registered with U.P. Khadi Gram Udyog Board, Lucknow and engaged in business approved by Khadi Gram Udyog Board. It is registered also under the provisions of U.P. Trade Tax Act as well as Central Sales Tax Act. State of U.P., in exercise of powers under Section-4(b) of the Act, issued Notification No. 7037 dated 31.1.1985 granting exemption from sales tax liability on the sale of various goods mentioned in the list, by the units of Khadi Gram Udyog Board. Clause 10 of Entry No. 3 of this Government Order provides i.e. "hulling, cutting/trimming, processing, packaging and marketing of cereals and pulses, spices, condiments and masalas". This notification has been amended by Notification No. 709 dated 27.2.1997 and

Entry No. 3 has been amended as i.e. "processing, packaging and marketing of cereals, pulses, masalas and chhonks". The petitioner has been claiming exemptions from sales tax under the aforesaid Government Orders on the sale of rice. The petitioner was assessed for the Assessment Year 2003-04, and the Assessing Officer has granted exemption on purchase and sale of paddy and rice. Subsequently, by the Government Order dated 3.9.2004, clause-38 of Entry No. 3 has been amended as i.e. "manufacture of rice and it''s other by-products from paddy" are excluded from this Entry. On the basis of the aforesaid Government Order, the Trade Tax Commissioner U.P. issued Circular No. 2320 dated 31.3.2007, clarifying that manufacture of rice from paddy does not amounts to processing of paddy as such no exemption is granted on the sale of rice under the aforesaid Government Order.

3. Thereafter, respondent-2 sanctioned for reassessment u/s 21(2) of the Act for the Assessment Year 2003-04, mentioning therein that as per Notification No. 2792 dated 30.9.2004, the rice manufactured out of paddy from the unit of the petitioner was not liable for exemption from the trade tax, as such, the exemption granted to the petitioner amounted to escaped assessment. On the basis of the sanction granted by respondent-2, re-assessment has been done by respondent-3. The order granting sanction for re-assessment and reassessment order have been challenged by the petitioner on the ground that reassessment proceeding has been started on the basis of Notification dated 30.9.2004, which will apply prospectively and not retrospectively. Accordingly, reassessment for the Assessment Year 2003-04 is illegal.

4. The respondents have filed counter-affidavit, in which it has been stated that the word ''processing'' has been used in Clause 38 of Entry-3. The manufacture of rice from paddy is not processing of paddy. Accordingly, the petitioner was not entitled for exemption from trade tax on the sale of rice. The Government Order dated 30.9.2004 merely clarified the previous notifications and applied retrospectively. As the petitioner was wrongly granted exemption on the sale of rice in Assessment Year 2003-04 as such there was escaped assessment and reassessment proceedings has been rightly initiated.

5. We have considered the arguments of the counsel for the parties. The controversy involved in this writ petition has already been decided by a Division Bench of this Court in W.P. No. 575 of 2003 (M/s. Him Gramodyog Sansthan v. Additional Commissioner and others) decided on 19.12.2006, wherein this Court has held that units of Khadi Gram Udyog Board were entitled for exemption of trade tax on the sale of rice under the Government Order dated 31.1.1985 and Government Order dated 27.2.1997. Accordingly, the exemption from trade tax liability on the sale of rice claimed on the basis of Government Order dated 27.2.1997, was rightly given.

6. Learned Special Counsel for the State of U.P. however submitted that the Apex Court in Ganesh Trading Co., Karnal Vs. State of Haryana and Another, , and in Satnam Overseas (Export) through its Partner Vs. State of Haryana and Another

etc. etc., , has held that manufacture of rice from paddy is not processing but manufacture. Accordingly, exemption has been wrongly granted to the petitioner on the sale of rice as exemption was provided only on processing and not on manufacture under the Government Order dated 31.1.1985 as amended by Government Order dated 27.2.1997. This position has been clarified by the Government Order dated 30.9.2004, which being clarificatory in nature applied retrospectively.

7. The arguments raised by the Special Counsel is misconceived. Under the Government Order dated 31.1.1985, the exemption from trade tax liability has been granted on the sale of the products by the Units of the Khadi Gram Udyog Board. Specifying the products, in clause-38 of Entry-3, the words "hulling, cutting/trimming, processing, packaging and marketing of cereals" have been used and not "processing of paddy". The hulling of the cereal is nothing but hulling of the paddy for manufacture of rice. In Notification No. 709 dated 27.2.1997 the words "processing, packaging and marketing of cereals, pulses, masalas and chhonks" have been used. Thus it was processing of the cereals and not processing of paddy. The word cereal means paddy, rice and all other food grains. Thus the exemption granted to the petitioner on the sale of rice was fully covered in the word ''cereals''. By the subsequent Government Order dated 30.9.2004, "rice and it''s by-product manufactured from paddy" has been specifically excluded from clause-38 of Entry-3. An exclusion clause can not be treated as a clarificatory clause, or clarification of existing clause. The exclusion of specific goods clearly proves that the excluded goods were included in this clause prior to that date of exclusion. The notification dated 30.9.2004, which carries exclusion of some goods will apply prospectively and not with retrospective effect. The reassessment u/s 21 (2) on the basis of notification dated 30.9.2004, which was not applicable for the Assessment Year 2003-04, was illegal. In the result, the writ petition succeeds and is allowed. The order dated 30.8.2007/5.9.2007 passed by Additional Commissioner (respondent-3) granting sanction for reassessment for the assessment year 2003-04, order dated 20.11.2007 passed by Additional Commissioner (respondent-3) rejecting the recall application and the order dated 29.2.2008 passed by Deputy Commissioner (respondent-4) making reassessment for the assessment year 2003-04, are quashed.

