

(2016) 05 AHC CK 0117

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 273 of 2014

M/s Chandok Textiles Enterprises Pvt. Ltd.

APPELLANT

Vs

State of U.P. & 2 Others

RESPONDENT

Date of Decision : 18-05-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 6 ADJ 799 : (2016) 5 AllWC 5424 : (2016) 93 UPTC 333

Hon'ble Judges : Tarun Agarwala and Vinod Kumar Misra, JJ.

Bench : Division Bench

Advocate : Rahul Agrawal and Bharat Ji Agarwal, Advocates, for the Appellant;
C.S.C., B.K. Pandey and Vipin Kumar Pandey, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—In this group of writ petitions, the petitioners are challenging the assessment order in so far as it imposes VAT on the dyes, chemicals etc. used by it in the dyeing, colouring and printing of cloth for various traders. For facility, the facts narrated in Writ Petition No. 273 of 2014, M/s Chandok Textiles Enterprises Pvt. Ltd. v. State of U.P. and others are being taken into consideration.

2. The petitioner is a Private Limited Company and is engaged in the process of dyeing, colouring and printing of cloth on job-work basis for various traders within and outside the State of U.P. The controversy regarding the taxability of dyes and chemicals used in colouring, bleaching, dyeing, printing of cloth was engaging the attention of the tax authorities for quite some time. The assessing authority was levying the tax on the dyes and chemicals by treating them to be a deemed sale. According to the traders, there was no deemed sale as there was no transfer of property in the goods and that the dyes and chemicals used were only consumables and were not transferred. It was contended that the dyes and chemicals lose their identity when it was used in the processing of cloth and were, therefore, consumables on which no tax was leviable. In this regard, the

Commissioner, Commercial Tax issued a circular dated 26.12.2002 directing all Additional Commissioners that dyes and chemicals, which are being used in the processing of cloths and which do not lose their identity even after use would be exigible to tax under Section 3-F of the U.P. Trade Tax Act. Based on this circular, a large number of assessing authorities initiated the assessment proceedings against various dealers including the petitioners.

3. In this regard, representations were made by some traders as well as by the Northern India Textile Processors Association, in which the petitioners are members before the State Government for an authoritative decision in the matter. The Principal Secretary (Tax & Registration), State of U.P. eventually decided the controversy by an order dated 07.10.2005 holding that there was no deemed sale of dyes and chemicals by the traders. A specific finding was given that dyes and chemicals, which are used for washing, printing and colouring of cloth are consumables and, therefore, there was no liability of tax on the goods, which was consumed and was not passed on to the ultimate purchaser.

4. In spite of an authoritative pronouncement by the State Government, the assessing authorities ignored the decision of the State Government and continued to impose tax on various traders treating the use of dyes and chemicals on the processing of cloth as a deemed sale.

5. The matter eventually was challenged in various writ petitions. The leading writ petition was Writ Petition No. 1683 of 2007, M/s Superfine Processors Pvt. Ltd. v. State of U.P. and others, which was ultimately decided by the writ Court by a judgment dated 10.01.2013. The writ Court held that dyes and chemicals used in the bleaching, colouring and dyeing of cloth are consumed in the process and are not transferred and, therefore, no tax could be imposed. For facility, the operative portion of the order of the writ Court is quoted hereunder:

"From a perusal of the aforesaid finding it is amply clear that the State Government had also decided the representation made by the Northern India Textile Processors Association and had come to the conclusion that dyes and chemical used in the bleaching, colouring and dyeing etc. on gray cloth are consumed in the process and not transferred. In our considered opinion, the said finding is binding upon the assessing authorities as the representation made by the Northern India Textile Processors Association was also decided by the said order. The stand taken by the respondents that the State Government had not decided any other representation except the two preferred by M/s Ganga Processors and M/s Style Dyers is not correct.

In view of the foregoing discussions, we are of the considered opinion that the respondent no.3 was not justified in imposing tax on the dyes and chemicals used in the process of dyeing, colouring, printing, bleaching, washing etc. of gray cloth by the petitioner and the impugned orders in all the writ petitions are liable to be set aside."

6. In the case of the petitioner, the assessing authority for the assessment year

2004-05 had directed the petitioner to pay tax on the dyes and chemicals used by it. The petitioner challenged the assessment order by filing Writ Petition No. 718 of 2011, Chandok Textiles Enterprises Pvt. Ltd. v. State of U.P. and others. The said writ petition was decided in a bunch of writ petitions. The leading writ petition being Writ Petition No. 1020 of 2009, M/s Style Dyers v. State of U.P. and others, was decided on 15.01.2013. The writ Court following the decision of Superfine Processors (Supra) allowed the writ petitions and quashed the assessment order. The writ Court held that the order of the State Government dated 07.10.2005 was binding upon the assessing authorities and further held that no tax on use of colours, dyes, chemicals, etc. used in bleaching, dyeing, processing and printing of gray cloths could be imposed.

7. In spite of an authoritative decision in the case of the petitioner, the assessing authority continued to impose tax on dyes and chemicals when there was no change in the processing of the cloth for the assessment year 2010-11. The assessing authority by an order dated 20.03.2014 for the assessment year 2010-11 under U.P. as well as Central again imposed tax on dyes and chemicals treating it to be a deemed sale. Petitioner, being aggrieved by the aforesaid two orders, has filed the present writ petition. Similar prayer and contention has been made by the other petitioners.

8. We have heard Sri Rahul Agrawal, the learned counsel for the petitioners and Sri Vipin Kumar Pandey and Sri C.B. Tripathi for the State.

9. The stand taken by the respondents is the same, which they had taken before the State Government, namely, that the dyes and chemicals used in the processing of cloth do not lose their identity and, therefore, they are not consumables and in fact is a deemed sale. The Department has justified its action in contending that in view of the decision of various High Courts treating dyes and chemicals as a deemed sale, the Department was justified in distinguishing the decision of this High Court.

10. Sri C.B. Tripathi, the learned Special Counsel for the State has further relied upon a decision of a learned Single Judge of this Court in Commissioner, Trade Tax, U.P. Lucknow v. M/s Aristo Printers Pvt. Ltd., 2010 NTN 355, in which it was held that the printing work is a works contract and is exigible to tax. The learned Special Counsel for the State has further submitted that since additional excise duty was payable on cotton fabric, the State Government had issued a notification dated 14.12.57 exempting cotton fabric from imposition of sales tax on which additional excise duty had been paid. It was contended that after the enactment of Taxation Laws (Amendment) Act 2007 (Act No. 16 of 2007) by Parliament with effect from 1.4.2007, Section 4 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 and also the IIInd Schedule to the said Act have been omitted. The learned Special Counsel, therefore, contended that since additional excise duty was no longer payable, tax is now payable on cotton fabric under the VAT Act.

11. Having heard the learned counsel for the parties, we are of the opinion that the impugned assessment orders are contrary to the decision of the State Government dated 07.10.2005. The State Government gave a categorical finding that dyes and chemicals, which are consumed in the process of dyeing, colouring, bleaching do not get transferred to the persons, who have given the material for carrying out dyeing, printing etc. Such finding given by the State Government in the processing of the cloth is binding on the assessing authority especially in the absence of any averment in the assessment order that the processing done by the petitioner is different. In the case of Commissioner of Central Excise, Bolpur v. M/s Ratan Melting & Wire Industries, (2008) 38 NTN DX 206, the Supreme Court held that circulars and instructions issued by the Board are binding on the authorities. The Supreme Court held :

"Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the Court to direct that the circular should be given effect to and not the view expressed in a decision of this court or the High Court. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the Court. It is for the Court to declare what the particular provision of statute says and it is not for the Executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law."

12. In the case of the petitioner, this Court in its decision dated 15.01.2013 also held that the order of the State Government dated 07.10.2005 was binding upon the assessing authorities. We are, therefore, of the considered opinion that it was no longer open to the assessing authorities to take a different stand as given by the State Government, which has also been affirmed by this Court. The finding given by the State Government in its order dated 07.10.2005 and by the Division Bench of this Court dated 10.01.2013 in the case of Superfine Processors (Supra) and in the case of the petitioner dated 15.01.2013 involving identical facts and identical processing of the cloth are binding upon the assessing authority. The assessing authority could not have deviated from the binding precedents nor could it impose tax on dyes and chemicals by treating it as a deemed sale. We are of the opinion that judicial discipline should be enforced and the assessing authorities should not deviate from the decision of the State Government, which has been affirmed by this Court. The decision cited by the respondents in the case of M/s Aristo Printers (Supra) of a learned Single Judge is distinguishable. In that case, a specific finding has been given that the assessee of that case did not contend that the chemicals used by him in the process of the cloth were consumables and that it had not passed on to the customers. In view of that finding, the learned Single Judge held that the ink and chemicals used in the process had passed on to the customers and consequently, were exigible to tax. In the instant case, a specific case has been stated by the

petitioners, namely, that the dyes and chemicals are consumed in the process of cloth and are not transferred to the customers, which finding still stands and the same has not been reversed by the assessing authority. The contention that tax on cotton fabric is now payable on account of the exemption being withdrawn has no relevance to the issue involved in the writ petition. The issue is one of the imposition of tax in the processing of dyeing, colouring, bleaching on the cloth. The State Government has clearly given a decision that dyes and chemicals used in the processing of the cloth lose their identity and are, therefore, consumables and is not a deemed sale, which finding is binding upon the assessing authority. The payment of additional excise duty is wholly irrelevant to the transactions made under the VAT Act. The charge under the VAT Act is on the turnover of sale and not on the manufacture. A transaction may or may not be a manufacture but it has to come within the definition of sale as provided under the Vat Act. If the transaction does not satisfy the definition of sale, the question of subjecting it to tax under Vat Act does not arise. Consequently, omission of additional excise duty as contended by the learned Special Counsel for the State has no relevance to the issue.

13. In the light of the aforesaid, we are of the opinion that the impugned orders passed by the assessing authority imposing tax on dyes and chemicals used in the dyeing, colouring and printing of cloth is patently misconceived and are quashed. The writ petitions are allowed.