(1987) 03 AHC CK 0025

In the Allahabad High Court

Case No : Sales Tax Revision No''s. 1006 and 1007 of 1986

Phoolson Agricultural Industries APPELLANT

Vs

Commissioner, Sales Tax RESPONDENT

Date of Decision : 10-03-1987

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 3A

Citation : (1988) 68 STC 32

Hon'ble Judges : R.R. Misra, J

Bench : Single Bench

Advocate : R.C. Sharma, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R.R. Misra, J.—These two revisions filed by the assessee arise out of a consolidated order dated 24th September, 1986 passed by the Sales Tax Tribunal, Bench II, Meerut, in respect of the liability of the assessee to sales tax both under the U. P. Sales Tax Act as well as under the Central Sales Tax Act for the assessment years 1977-78 and 1978-79 in so far as liability under the U. P. Sales Tax Act is concerned and for the assessment year 1976-77 for liability under the Central Sales Tax Act.

2. The assessee during the said years carried on the business of manufacture and sale of "double plated rims" used in vehicles needed for agricultural purposes. The Sales Tax Officer held that the aforesaid "double plated rims" are taxable as unclassified items and not as agricultural implements as claimed by the assessee. Aggrieved against the same, the assessee preferred appeals and the Assistant Commissioner (Judicial) allowed the appeals of the assessee for both the years in respect of the liabilities relating to the U. P. sales tax as well as Central sales tax. The Assistant Commissioner (Judicial) held that the double plated rims are liable to be taxed as agricultural implements and not as unclassified item as held by the Sales Tax Officer. Therefore, the Commissioner of

Sales Tax preferred appeals before the Sales Tax Tribunal, which have been disposed of by the aforesaid consolidated impugned order dated 24th September, 1986. In the Said order the Sales Tax Tribunal after referring to the case of Anil Industries v. Commissioner of Sales Tax 1986 UPTC 552 decided by this Court on 29th March, 1985 has held by implication that "double plated rims" are unclassified items. The Sales Tax Tribunal has under the impugned order inferred that since the said item was held by the High Court in the case of Anil Industries 1986 UPTC 552 to be exempt under the notification dated 14th November, 1980, hence for a period prior to that date it is not exempt and liable to be taxed as unclassified item. The Tribunal, therefore, allowed the appeals filed by the Commissioner of Sales Tax and restored the order of the assessing authority. Thus it is against this order of the Sales Tax Tribunal that the present revisions have been filed by the assessee in this Court.

3. I have heard learned counsel for the parties. The contention raised by the assessee is that the "double plated rims" are liable to be taxed as agricultural implements under the notification issued u/s 3-A of the U. P. Sales Tax Act. This submission made on behalf of the assessee has been stoutly refuted by the learned Standing Counsel appearing for the Commissioner of Sales Tax. He contends that the aforesaid item is liable to be taxed as unclassified item as held by the Sales Tax Officer.

4. Let us now advert to the case of Anil Industries 1986 UPTC 552. The order of the Tribunal in the case of M/s. Anil Industries was taken in revision before the High Court. The dispute before the High Court in this case related to the assessment year 1980-81. In view of the notification dated 14th November, 1980, published in the Gazette on 15th November, 1980, the High Court took the view that this item was exempt from tax u/s 4 of the U. P. Sales Tax Act (hereinafter referred to as "the Act"). It was nowhere stated in that case by the High Court as to what will be the position regarding liability of "double plated rims" for the two years in dispute nor was it decided by the High Court in that case that the said item was to be taxed as unclassified item.

5. It is worthy to note that u/s 4 of the Act a total exemption from payment of tax is granted in respect of such goods which the State Government may exempt under a notification. That is not the position in the case of imposition of sales tax u/s 3-A of the Act inasmuch as under the said Section tax is payable on the turnover in respect of declared goods at such single point and at such rate as the State Government may by a notification declare. It is, however, made clear that the controversy in the present case between the parties in regard to the liability of "double plated rims" is not related to the grant of exemption u/s 4 of the Act but with regard to the taxability of the said item u/s 3-A of the Act.

6. However, the notification issued by the State Government both u/s 4 as well as u/s 3-A of the Act from time to time relate to agricultural implements. The question, therefore, that arises is as to what is the difference between the notification issued by the State Government under the aforesaid two sections.

This will be clear only if the relevant notifications as in force in the two assessment years in dispute are taken into consideration.

7. The first of these notifications to be noted is Notification No. ST-911/X dated 31st March, 1956 which read as under:

Notification No. ST-911/X, dated 31st March, 1956 (Published in the U. P. Gazette Extraordinary, dated 31st March, 1956).

In exercise of the powers conferred by Section 4 of the U. P. Sales Tax Act, 1948, as amended from time to time, and in supersession of all previous notifications granting any exemption under the said section relating to any persons or class of persons, or goods, or class of goods, not being goods specified in List I below, the Governor of Uttar Pradesh is pleased to direct that with effect from April 1,1956, the goods specified in List II hereunder shall alone be exempt from payment of tax.

* * * List II

1. Agricultural implements worked by human or animal power, namely--

Khurpi (hoe), dibbler, spade, hassia (sickle), garden knife, axe, gandasa, chaff-cutter, shears, secateurs, rake, shovel, ploughs and accessories thereof, water lifting leather buckets (pur and mhot) and accessories thereof and rahat and persian wheel and accessories thereof....

8. The details of the aforesaid item No. 1 in Notification dated 31st March, 1956 were, however, substituted by Notification No. ST-3297/X-950(1)-58 dated June 9, 1964: The same is read as under:

In exercise of the powers u/s 4 of the U. P. Sales Tax Act, 1948 (U. P. Act No. XV of 1948) read with Section 21 of the U. P. General Clauses Act, 1904 (U. P. Act No. 1 of 1904), the Governor of Uttar Pradesh is pleased to make the following amendment in Notification No. 911/X, dated March 31, 1956, with effect from the publication of this notification in the official Gazette.

Amendment

For item No. 1 of List II the following shall be substituted:

1. Agricultural implements worked by human or animal power, namely--khurpi, dibbler, spade, hassi a (sickle), garden knife, axe, gandasa, chaff-cutter, shears, secateurs, rake, shovel, ploughs and accessories and attachments thereof, water lifting leather buckets (pur and mhot) and accessories thereof, rahat and persian wheel and accessories thereof, harrows and accessories and attachments thereof, cultivators and accessories and attachments thereof, hoes and accessories and attachments thereof, seed drills and accessories and attachments thereof, threshers and accessories and attachments thereof, shellers and accessories and attachments thereof, winnowing fans and accessories and attachments thereof, paddy weeders and accessories and attachments thereof, garden fork, looper,

bailcha, bill hook (double edge), kudali, fork, garden hatchet, bill hooks (single edge), hay bailer, bund formers, scrapers, levellers or levelling, karahas, yokes, crop yield judging-hoops, bullock-carts and trailers and crow bars including spare parts of these agricultural implements if they are so designed as to be incapable of being used except as spare parts of such implements.

9. The above notification dated 9th June, 1964 was further amended by another Notification No. ST-2562/X-950(1)-58, dated the 1st June, 1967, the same is reproduced below:

In exercise of the powers u/s 4 of the U. P. Sales Tax Act, 1948 (U. P. Act No. XV of 1948), read with Section 21 of the U. P. General Clauses Act, 1904 (U. P. Act No. 1 of 1904), the Governor is pleased to make the following amendment in Notification No. ST-911/X, dated March 31, 1956, with effect from the date of publication of this notification in the Uttar Pradesh Gazette.

Amendment

In item No. 1 of List II of the aforesaid notification (as substituted by Notifications Nos. ST-3297/X-250(1)-58, dated June 9, 1964 and ST-2352/X-950(1)-58, dated August 12, 1966), for the words ''bullock carts'' the words ''carts pulled by bulls, bullocks and buffaloes'' shall be substituted.

10. Now adverting to the notification issued from time to time by the State Government u/s 3-A of the U. P. Sales Tax Act relevant for the two years in dispute to begin with we find Notification No. ST-1365/X-990-1956, dated 1st April, 1960. The same in so far as is material for my purposes reads as follows:

In exercise of the powers conferred by Section 3-A of the Uttar Pradesh Sales Tax Act, 1948 (U. P. Act No. XV of 1948), as amended from time to time, the Governor of Uttar Pradesh is pleased to--

Supersede, with effect from April 1, 1960, all the previous notifications so far as they relate to the goods mentioned in column 2 of the Schedule hereto and the rates of sales tax given in such notifications, and

Declare that, with effect from April 1, 1960 the turnover in respect of the goods mentioned in column 2 of the Schedule hereto shall be liable to tax only at the point of sale specified in column 4 thereof and under the circumstances specified in column 3 thereof.

The Governor is further pleased to declare that as from April 1, 1960, the rate of tax in respect of the turnover of individual goods mentioned in the aforesaid column 2 shall be as mentioned against each goods in column 5 of the Schedule hereto:--

Schedule

Sl. Name of goods Circumstances under Point Rate of No. which to be taxed of tax tax 1 2 3 4

38 Agricultural implements (a) If imported (a) Sale by 2 naye (other than those worked from outside importer. paise per by human or animal Uttar Pradesh. rupee, power)including their (b) If manufactured (b) Sale by do. parts and accessories, in Uttar manufac- other than tyres and Pradesh. turer. tubes.

The entry No. 38 of the Schedule reproduced above was modified with retrospective effect (from 1st April, 1960) by Notification No. ST-6552/ X-900(31)-65, dated 1st September, 1965. The modified entry reads:

Agricultural implements other than those worked by human or animal power and tractor including their parts and accessories other than tyres and tubes.

These notifications were further amended by the following Notification No. ST-II-332/X-1012-1971, dated 15th November, 1971, relevant portions whereof are reproduced below:

Notification No. ST-II-332/X-1012-1971, dated 15th November, 1971. (Published in the U. P. Gazette Extraordinary, dated 15th November, 1971.)

11. In exercise of the powers under Clause (a) of Sub-section (1) of Section 3-A of the U. P. Sales Tax Act, 1948 (U. P. Act No. XV of 1948), read with Section 21 of the U. P. General Clauses Act, 1904 (U. P. Act No. 1 of 1904), and in supersession of all previous notifications in so far as they relate to the goods specified in column II of the Schedule to this notification the Governor is pleased to declare that, with effect from November 15, 1971, the turnover in respect of the goods specified in column II of the said Schedule shall be liable to tax at the point of sale specified in column III. of the said Schedule at the rate specified against each in column IV of the said Schedule:

Schedule

''M'' stands for sale by the manufacturer in Uttar Pradesh.

''I'' stands for sale by the importer in Uttar Pradesh.

Serial Description of goods Point at which Rate of tax No. tax is levied I II III IV

1. Agricultural implements, other M or I 3 per cent. than implements worked by human or animal power, including their parts and accessories other than tyres and tubes.

This last notification dated 15th November, 1971 was further amended as under:

Notification No. ST-II-6203/X-1012-1972, dated 29th September, 1972. (Published in the U. P. Gazette Extraordinary, dated 29th September, 1972.)

In exercise of the powers under Clause (a) of Sub-section (1) of Section 3-A of the U. P. Sales Tax Act, 1948 (U. P. Act No. XV of 1948), read with Section 21 of the U. P. General Clauses Act, 1904 (U. P. Act No. 1 of 1904), the Governor is pleased to make, with effect from October 1, 1972, the following amendments in Government Notification No. ST-II-332/X-1012-1971, dated November, 15, 1971:

Amendments In the Schedule to the aforesaid notification,--

(1) ....

(2) for the existing entries under columns II, III and IV against item 1, the following shall be substituted:

I II III IV

1. Agricultural implements, other M or I 5 per cent than implements worked by human or animal power, including their parts and accessories other than tyres and tubes. ?. ?. ?.

12. Again this was amended by another Notification No. ST-II-10863/ X-6(23)-79--U. P. Act XV/48--Order-79, dated 7th December, 1979 (Published in the U. P. Gazette Extraordinary, dated 7th December, 1979), which is reproduced below:

In exercise of the powers under Sub-section (1) of Section 3-A of the U. P. Sales Tax Act, 1948 (U. P. Act No. XV of 1948), read with Section 21 of the U. P. General Clauses Act, 1904 (U. P. Act No. 1 of 1904), the Governor is pleased to make, with effect from December 7, 1979, the following amendments in Government Notification No. ST-II-332/X-1012-1971, dated November 15, 1971, as amended from time to time:--

Amendments.--In the Schedule to the aforesaid notification,--

(2) after item 96, the following item shall be inserted, namely:--

I II III IV 96-A Trailers of all kinds. M or I 9 per cent.

13. From a perusal of the aforementioned notifications, as reproduced above, the basic difference relevant for our purposes in the present case that emerges is that in respect of the notifications issued u/s 4 of the Act an exhaustive list of agricultural implements has been given, whereas in respect of the notifications issued u/s 3-A of the Act, no such exhaustive list is there and the words used are "agricultural implements" including their parts and accessories, etc. The other noteworthy point of difference is that in the notifications issued u/s 4 of the Act, emphasis is on the grant of exemption to such agricultural implements, a detailed list of which has been set out, as are worked by human or animal power. The various notifications issued u/s 3-A of the Act, where liability is attracted on the basis of single point expressly relate to such agricultural implements, etc., other than those worked by human or animal power, i.e., which are covered by notifications u/s 4 of the Act regarding total exemption of liability to U. P. sales tax.

14. Since in the present revisions I am not concerned with the question as to whether the "double plated rims" is an item which is exempted u/s 4 of the Act in respect of the two years in dispute, I do not propose to deal with the question of exemption of the aforesaid item in judgment. Therefore, it is crystal clear that

the ratio of the aforesaid case of Anil Industries 1986 UPTC 552 concerning total exemption u/s 4 of the Act will not govern the dispute in the present case.

15. Coming now to the notifications issued u/s 3-A of the Act which are relevant for deciding the controversy in the present revisions, it is clear that only those "agricultural implements" are liable to single point tax which are other than worked by human or animal power. So now it becomes pertinent to see as to what are the findings recorded in this regard by the authorities below. In the two years in dispute the Sales Tax Officer has in his orders not given any reason as to why he has levied tax on "double plated rims" as unclassified item. On appeals in these years the Assistant Commissioner (Judicial) has in his order dated 2nd May, 1984 recorded a finding that the double plated rims are used in vehicles worked by power, i.e., other than worked by human or animal power. I, however, also find that the Sales Tax Tribunal has in the case of this very assessee decided the matter regarding taxability of "double plated rims" in its order dated 21st November, 1984 relating to the assessment year 1974-75, a copy of which has been filed by the assessee as annexure No. 2 to the affidavit in the revision application. A perusal of the said order shows that the Tribunal has therein recorded the findings as under:

...It is common,, knowledge that these days use of tractors and power driven agricultural implements is the order of the day and the use of animals is being discarded by good farmers and mechanised farms. Baraut being a rich agricultural region, the inference of the lower authorities in this respect was quite justified.... Regarding the taxability under Central head I agree with the learned counsel that in terms of the Notification No. ST-1512 dated 16th March, 1970 sales of agricultural implements driven by power would be assessed at the rate of 3 per cent....

16. I am also informed at the Bar that the said order dated 21st November, 1984 of the Tribunal was not taken in revision in this Court and has also become final inter se between the parties. Nothing fresh has been brought to my notice in the orders passed by the authorities below in regards to the two years in dispute so as to detract from the aforesaid findings recorded by the Tribunal that the double plated rims are used in vehicles driven by power. Taking into consideration the aforementioned findings of the Tribunal as well as the Assistant Commissioner (Judicial) on the mooted question, the inference that follows, to my mind, is that the "double plated rims" is an item covered by the entry "agricultural implements" as it occurs in the notifications in question which are relevant for the two assessment years in dispute and were issued u/s 3-A of the Act.

17. At this stage it is also pertinent to take note of the argument raised by the Standing Counsel to the effect that there is no material to show exclusive user of double plated rims in the vehicles driven by power and in absence thereof it cannot be held to be an "agricultural implement". That may be so but a Full Bench of this Court in the case of Engineering Traders v. State of U.P. 1973 UPTC 91 in paragraph 11 has held as under:

...In order that an appliance may be an agricultural implement, the real test is not that it should be exclusively used for agricultural purposes but that it should be commonly so used and it should be intimately and directly connected with agricultural operations....

18. Applying this test also and in view of the findings recorded by the Assistant Commissioner (Judicial) in the two years in dispute as well as the Sales Tax Tribunal in its said order dated 21st November, 1984 that the order of the day is that "double plated rims" are used in the vehicles driven by power and used as agricultural implements, I find that this satisfies the test of an "agricultural implement" on the basis of common user also. Accordingly, the above submission made by the Standing Counsel has no force.

19. Thus, in my opinion, in view of the above discussion the inference of facts as well as of law as drawn by the Tribunal were neither justified nor warranted by law. The impugned order passed by the Sales Tax Tribunal suffers from a manifest error of law and is hereby set aside. The view taken by the Tribunal that the said item is liable to be taxed as unclassified item is incorrect in law and it is held that the item "double plated rims" in question is liable to U. P. sales tax in the two years in dispute at single point at the rate of 5 per cent and is covered under the entry "agricultural implement" under the notifications issued u/s 3-A of the U. P. Sales Tax Act.

20. As regards the liability of the assessee under the Central Sales Tax Act, here also, the Central sales tax has been levied for the assessment year 1976-77 in dispute against the assessee on this item as unclassified one on the same reasoning as for the U. P. Sales Tax Act. Notification No. ST-II-8454/X-1(2)-75 dated October 1, 1975 issued in the exercise of powers under Sub-section (5) of Section 8 of the Central Sales Tax Act is relevant for the decision in the case. The said notification is reproduced below:

English translation of Vitta (Bikrikar) Anubhag-2, Notification No. ST-II-8454/X-1(2)-75 dated October 1, 1975, published in the U. P. Gazette, Extraordinary, dated October 2, 1975:

Notification No. ST-II-8454/X-1(2)-75.

Whereas, the State Government is satisfied that it is necessary so to do in the public interest;

Now, therefore, in exercise of the powers, under Sub-section (5) of Section 8 of the Central Sales Tax Act, 1956 (Act No. 74 of 1956), read with Section 21 of the General Clauses Act, 1897 (Act No. X of 1897), the Governor is pleased:--

(1) to rescind, with effect from October 2, 1975, Government notifications mentioned in the margin (here given below), as amended from time to time, and,

(2) to direct that, with effect from the aforesaid date the tax payable under the said Act of 1956 by any dealer registered u/s 7 thereof, having his place of

business in Uttar Pradesh in respect of the sale by him from such place of business of the goods mentioned in column 2 of the List below in the course of inter-State trade or commerce shall be calculated at the rate mentioned against each in column 3 of the said list:--

List Serial Description of goods Rate of tax No. 1 2 3 1. Agricultural implements (other than those 4 per cent." worked by human or animal power) and tractors, including parts and accessories (other than tyres and tubes) of such implements or tractors.

21. Here again we find that the words used are the same as in the notifications issued as mentioned above u/s 3-A of the U. P. Sales Tax Act. Consequently, in my opinion, for the same reasons as mentioned in relation to the liability under the U. P. Sales Tax Act, the impugned order of the Sales Tax Tribunal levying Central sales tax as unclassified item also suffers from a manifest error of law and is hereby set aside. It is held that the item "double plated rims" is liable to be taxed under the Central Sales Tax Act not as unclassified item but under the head "agricultural implements" for the assessment year 1976-77 in dispute.

22. In the result, both the revisions succeed and are allowed with one set of costs. It is held that both for the purposes of liability under the U. P. Sales Tax Act as well as under the Central Sales Tax Act, the item "double plated rims" is not to be taxed as unclassified item but is liable to tax under both the aforesaid Sales Tax Acts as "agricultural implements" as per observations made above.

