(2007) 03 AHC CK 0287

In the Allahabad High Court

Prag Ice Oil Mills APPELLANT

Vs

Commissioner, Trade Tax RESPONDENT

Date of Decision : 16-03-2007

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

Citation : (2008) 15 VST 153

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajes Kumar, J.—These three revisions u/s 11 of the U.P. Trade Tax Act, 1948 (hereinafter referred to as "the Act") are directed against the order of Tribunal dated August 1, 2000 relating to the assessment years 1974-1975, 1975-1976 and 1976-1977.

2. The applicant was carrying on the business of manufacture and sale of edible oil. It is claimed that the edible oil was sold in tin containers. Tin containers were purchased within the State of U.P. I

n the bill, value of the oil and value of the tin containers had been separately shown and the tax liability had been admitted only on the turnover of edible oil and no tax liability had been admitted on the turnover of tin containers on the ground that the tin containers were purchased within the State of U.P. while passing the original assessment orders, the assessing authority accepted the claim and had levied the tax only on the value of the oil. The assessing authority thereafter passed the order u/s 21 of the Act and levied the tax on the value of tin containers on the ground that it was part of the turnover of oil relying upon the decision of this Court in the case of CST v. Tika Ram and Sons (P) Ltd. reported in [1980] STD 426. Order of the assessing authority has been upheld in first appeals and by the Tribunal in second appeals.

3. Heard learned Counsel for the parties.

4. The learned Counsel for the applicant submitted that the issue involved in the present revision is squarely covered by the decision of this Court in the case of the assessee itself: Commissioner of Trade Tax v. Prag Ice and Oil Mills, Aligarh reported in [2008] 15 VST 155 (All) : [2006] 4 VLJ 7 and the decision of this Court in the case of Commissioner of Trade Tax, U.P., Lucknow v. Maluk Chand Cotton and Oil Mill Aligarh reported in [2005] 26 NTN 477 Commissioner of Trade Tax v. Raghubar (India) Ltd., Rasalganj, Aligarh reported in [2005] UPTC 758.

5. I find substance in the argument of the learned Counsel for the applicant. There is no dispute that separate price for tin containers were charged in the bills. This shows that there was a separate stipulation for the tin containers. Tin containers is an independent commercial commodity and under the entry "containers made of tin, iron or steel" under Notification No. ST-II-5785/ X-19(1)-80-U.P. Act XV/48-Order-81, dated September 7, 1981 is liable to tax at four per cent at the point of manufacturer or importer.

6. In the case of Jamana Flour and Oil Mill (P) Ltd. Vs. State of Bihar, , it has been held by the apex court that if there is separate contract implied or express for the containers/packing material they are liable to tax at the rate applicable to it. Similar view has been taken by this Court in the case of Commissioner of Trade Tax v. Raghubar (India) Ltd., Rasalganj, Aligarh reported in [2005] UPTC 758 following the aforesaid decision of the apex court in the case of Jamana Flour and Oil Mill (P) Ltd. Vs. State of Bihar,

7. In the case of the assessee itself, Commissioner of Trade Tax, U. P., Lucknow v. Prag Ice and Oil Mills, Aligarh reported in [2008] 15 VST 155 (All) [App] : [2006] 4 VLJ 7 this Court held as follows:

Issue No. (a) qua the taxability of tin container is concerned the same is no more res integra inasmuch as this Court in the case of Commissioner of Trade Tax v. Maluk Chand Cotton and Oil Mill, Aligarh reported in [2005] 26 NTN 477 has specifically held that the tin containers were separately liable to tax and since the purchase has been made by the assessee within the State of U.P., there is no liability of any tax being assessed in respect thereto. In view of the aforesaid the order passed by the Trade Tax Tribunal in respect of the above issue is affirmed.

8. Since the tin containers were purchased within the State of U.P. and were liable to tax at the point of manufacture or import and the applicant being neither manufacturer nor importer, turnover of tin containers is not liable to tax.

9. In the result, all the revisions are allowed. Order of the Tribunal is set aside.