
(2010) 07 UK CK 0076

In the Uttarakhand High Court

Case No : Commercial Tax Revision No. 34 of 2010

Sagar Sons

APPELLANT

Vs

Commissioner, Commercial Tax

RESPONDENT

Date of Decision : 01-07-2010

Acts Referred:

Uttarakhand Value Added Tax Act, 2005 — Section 57

Citation : (2010) 35 VST 76

Hon'ble Judges : J.S. Khehar, C.J.;Sudhanshu Dhulia, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, J.—The present commercial tax revision has been filed against the order of the Commercial Tax Tribunal, Uttarakhand, Dehradun dated May 29, 2010 whereby the appeal of the revisionist has been dismissed and the order of the Additional Commissioner, Commercial Tax, Dehradun dated August 27, 2009, has been upheld.

2. The revisionist is a proprietor concern, namely, M/s. Sarva Shri Sagar Sons which is registered under the Uttarakhand Value Added Tax Act as well as the Central Sales Tax Act, 1956. The revisionist is in the business of trading in a product known as "whip topping". According to the revisionist, "whip topping" is primarily a vegetable oil which is mixed with sugar and water and emulsified in semi-solid form which is then used as an icing in bakery products, such as, cakes and pastries. The revisionist purchases this product known as "whip topping" from Delhi and consequently makes sale of this product in the territory of Uttarakhand. Prior to the imposition of the Uttarakhand Value Added Tax Act, the revisionist was paying four per cent tax on the sale of "whip topping". However, since the imposition of the Uttarakhand Value Added Tax Act (hereinafter referred to as, "the Act"), the revisionist was provisionally assessed for the first time in January, 2009. The assessing authority was of the view that the product "whip topping" shall be taxed at the rate of 12.5 per cent, as it is an "unclassified

product".

3. Aggrieved by the order of the assessing authority, the revisionist moved an application u/s 57 of the Act before the Additional Commissioner, Commercial Tax, Uttarakhand, Dehradun, for determining the rate of tax on "whip topping" which was sold by the revisionist in Uttarakhand. The sole contention of the applicant/revisionist before the Additional Commissioner, Commercial Tax, Uttarakhand, Dehradun was that the "whip topping" is a semi liquid form of the vegetable oil and is used as decoration of cakes and pastries and cannot be consumed directly and therefore it is an "industrial input" which is used in manufacturing/ decoration of cake and pastries. Apart from this, the revisionist also contended that prior to imposition of the Act, the revisionist was paying tax at the rate of four per cent and, therefore, the present tax rate of 12.5 per cent is not justified. All the same, the Additional Commissioner, Commercial Tax, Uttarakhand, Dehradun was of the view that since "whip topping" is not classified under the Act, so it has to be taxed at the rate of 12.5 per cent, i.e., under the unclassified category. The Additional Commissioner, Commercial Tax was also of the opinion that in another matter relating to Raj Agencies the tax of 12.5 per cent on the product known as "whip topping" has been held to be correct and, therefore, the Additional Commissioner, Commercial Tax, Uttarakhand, passed an order dated August 27, 2009 holding that the revisionist has to pay tax at the rate of 12.5 per cent.

4. Aggrieved by the order dated August 27, 2009 passed by the Additional Commissioner, Commercial Tax, Uttarakhand, Dehradun the Assessee/revisionist preferred an appeal before the Commercial Tax Tribunal, Uttarakhand, Dehradun, on the same grounds that "whip topping" is manufactured from the basic products such as edible oil, water and emulsified agents and, therefore, it has to be taken as a product under the heading of "edible oil" which is taxed at the rate of four per cent. The Tribunal, however, rejected the appeal of the revisionist on the ground that since the ingredients of "whip topping" are water, edible vegetable fat, hydrogenated edible oil, emulsifier, it cannot be called only an edible oil nor can be categorised as such. Moreover, this item is not classified under any heading of the Act and the Schedule given therein and, therefore, it has to be taxed as an unclassified item, for which a tax at the rate of 12.5 per cent is liable to be charged. The further contention of the Assessee/revisionist that the product "whip topping" has to be treated as an "industrial product" was also not accepted by the Tribunal, as there is no such category under the Act.

5. Heard learned Counsel for the revisionist as well as the learned Counsel for the State. In the considered opinion of this Court, the contentions of the revisionist are wholly misplaced. Although it is by now settled that in case an entry can be reasonably placed in a "classified category", then it should not be relegated to the orphanage clause of an unclassified category and should be taxed as per the classified category given in the Schedule of the taxing statute, but the reverse being equally true is that in case there cannot be a reasonable

classification of a product or in other words, it cannot be reasonably placed anywhere as a classified item, then it must be placed in the unclassified category. In the present case, the product "whip topping" cannot be classified as a vegetable oil or any other item as contended by the revisionist, so as to put "whip topping" under the category of tax at the rate of four per cent. The learned Counsel for the revisionist could not convince this Court that the product "whipping top" can be placed anywhere in the Schedule in order to be taxed at the rate of four per cent. Admittedly, "whipping top" is not an item mentioned exclusively as such in the Schedule. Therefore, it being an unclassified item has to be charged tax at the rate of 12.5 per cent. Moreover, fiscal matter has to be strictly interpreted, if the Legislature of the State in its wisdom has decided that the "whip topping" has to be treated as unclassified item, then it has to be treated as such. The court cannot impose either its opinion or wisdom on this aspect.

6. Based on the aforesaid proposition, this Court is of the considered view that the orders passed by the Additional Commissioner, Commercial Tax, Uttarakhand, Dehradun dated August 27, 2009 as well as the Commercial Tax Tribunal, Uttarakhand, Dehradun are perfectly justified. The applicant/ revisionist is liable to pay duties on "whip topping" at the rate of 12.5 per cent. There is no force in the present commercial tax revision and the same is liable to be dismissed and is hereby dismissed.

7. No order as to costs.