(2006) 03 AHC CK 0187

In the Allahabad High Court

Case No : Trade Tax Revision No''s. 93, 94 and 95 of 2006

Satish Industries APPELLANT

Vs

The Commissioner Trade Tax RESPONDENT

Date of Decision : 22-03-2006

Acts Referred:

Uttar Pradesh General Clauses Act, 1904 — Section 21
Uttar Pradesh Trade Tax Act, 1948 — Section 11, 22, 3A(1), 41(8)

Citation : (2006) 03 AHC CK 0187

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : Kunwar Saksena, for the Appellant;

Final Decision : Allowed

Judgement

Rajes Kumar, J.—Present three revisions u/s 11 of U.P. Trade Tax Act (hereinafter referred to as "Act") are directed against the order of Tribunal dated 7th November, 2005 relating to the assessment years. 1993-94. 1994-95 and 1995-96.

2. In all the aforesaid three assessment years, the applicant had disclosed the turnover of self-manufactured copper circles, which have been assessed to tax by the assessing authority at the rate of 2.5 percent. Assessing authority initiated the proceedings u/s 22 of the Act on the ground that the copper circle was liable to tax at the rate of 4 percent plus one percent surcharge under notification No. ST-II-191/X1-6 (9)-83-U.P. Act-XV/48-Order-90, dated 1.2.1990 and inadvertently, the tax on the manufactured copper circle was assessed to tax at the rate of 2.5 percent. In this regard, notices were issued to the applicant, but no reply was filed and. accordingly, assessing authority passed the orders u/s 22 of the Act and levied the tax at the rate of five percent on the turnover of self-manufactured copper circles. The orders of the assessing authority passed u/s 22 of the Act have been upheld in first appeals. Applicant filed second appeals before the Tribunal. Before the Tribunal, applicant appears to have pleaded that

the item which was manufactured by mixing of copper scrap and Zinc scrap was copper Zinc based alloy sheets and circles and they were sold to the manufacturer of brassware and. therefore, the turnover was liable to tax at the rate of 2.5 percent under the Notification No. ST-II-1225/XI-9 (94)/91-U.P. Act 15/48-Order-92. dated 31.3.1992. at the rate of 2.5 percent. Tribunal appears to have entertained the submissions of the learned Counsel for the applicant and proceeded to examine the applicability of the actual rate of tax on the commodity and while examining the submissions of the learned Counsel for the applicant. Tribunal has gone to the extent by saying that the item manufactured by the applicant was not sold to the manufacturer of the brassware and they were liable to tax as an unclassified item. Tribunal held that the initiation of the proceeding u/s 22 of the Act was justified and remanded back the case to the first appellate authority to levy the tax on the turnover of copper brass sheets and circles and determine the rate of tax on the turnover of copper and brass circle in the light of the Notification No. ST-II-191/XI-6 (9)-83-U.P. Act-XV/48-Order-90. dated 1.2.1990 and in the light of the decisions of the Apex Court and the High Court in the case of Hindustan Aluminium Corporation Ltd. v. State of Uttar Pradesh and Anr. reported in 1981 UPTC 1249 and the decision of this Court in the case of Commissioner of Sales Tax v. S/S Vijay Aluminium Works, Kanpur reported in 1999 UPTC 1089.

3. Heard learned Counsel for the parties.

4. Learned Counsel for the applicant submitted that the Tribunal has illegally held that in view of the decision of the Apex Court in the case of Hindustan Aluminium Corporation Ltd. v. State of Uttar Pradesh and Anr. reported in 1981 UPTC 1249 and the decision of this Court in the case of Commissioner of Sales Tax v. S/S Vijay Aluminium Works, Kanpur (supra) copper brass sheets and circles are liable to tax as an unclassified item. He further submitted that the Tribunal has erred in observing that there was no material to prove that the circles were sold to the brassware manufacturer and also in up holding the validity of the initiation of the proceeding u/s 22 of the Act. He submitted that the perusal of the assessment order shows that the applicant has manufactured circles by mixing copper scrap and Zinc scrap which was commonly called as copper Zinc based alloy sheets and circles and were sold to the brassware manufacturer and. therefore, such sheets and circles were liable to tax under the Notification No. ST-II-1225/XI-9 (94)/91-U.P. Act 15/48-Order-92. dated 31.3.1992 at the rate of two percent. He further submitted that whether the sheets and circles manufactured and sold by the applicant was liable to tax at the rate of two percent or at a higher rate was a debatable issue and thus, the provisions of Section 22 of the Act was not applicable.

5. Learned Standing Counsel submitted that the applicant has manufactured and sold copper circles which is clear from the assessment orders. He submitted that applicant all along admitted that it had manufactured copper circles and turnover of copper circles was disclosed during the assessment proceedings and no where

it was pleaded that the copper circles manufactured was brass circles or copper Zinc based alloy circles. He also submitted that the applicant has nowhere pleaded that the circles were sold to the manufacturer of brassware and rightly so because the item was not brass circles but copper circles. Thus, submission of the learned Counsel for the applicant that the applicant has in fact manufactured copper Zince based alloy sheets and circles which is commonly called brass circles and sold to the brassware manufacturer cannot be entertained at the subsequent stage. He submitted that short question involved in the present case was whether copper circles was rightly assessed to tax at the rate of 2.5 percent or it was liable/ to tax under the Notification No. ST-II-191/XI-6 (9)-83-U.P. Act-XV/48-Order-90. dated 1.2.1990 at the rate of 4 percent. He submitted that there is no dispute that copper circles is not covered under the entry of Notification No. ST-II-1225/XI-9 (94)/91-U.P. Act 15/48-Order-92. dated 31.3.1992 and is clearly covered under the Notification No. ST-II-191/XI-6 (9)-83-U.P. Act-XV/48-Order-90. dated 1.2.1990 and liable to tax at the rate of 4 percent. He submitted that the Tribunal became confused and has illegally held that the copper circles is liable to tax as an unclassified item on the basis of the decision of the Apex Court in the case of Hindustan Aluminium Corporation Ltd. v. State of Uttar Pradesh and Anr. (supra), which is not applicable in the present case, in view of the specific notification No. ST-II-191-XI-6 (9)-83-U.P. Act-XV/48-Order-90, dated 1.2.1990 relating to the sheets and circles of metals and alloys and provide rate of tax at the rate of 4 percent, while it had been wrongly assessed to tax by mistake at the rate of 2.5 percent. Thus, the order passed u/s 22 of the Act by the assessing authority was justified and liable to be sustained.

6. Having heard the learned Counsel for the parties, I find substance in the argument of the learned Standing Counsel.

7. Perusal of the original assessment orders passed u/s 41(8) of the Act show that the applicant had admitted that it was manufacturing copper circles. The applicant had disclosed the turnover of self manufactured copper circles. In the original assessment orders passed under Rule 41(8) on the basis of the applicant''s own admission, turnover of self manufactured copper circles was assessed to tax. Thus, the submission of the applicant that the applicant in fact manufactured Copper Zinc alloys circles by mixing copper Zinc, scrap, which is commonly known, as brass circles cannot be accepted. Tribunal has also illegally at various places used the name of the goods as copper/brass circles, while the goods manufactured and sold by the applicant''s own admission was copper circles. The issue involved was whether the copper circles was liable to tax at the rate of 2.5 percent under Notification No. ST-II-1225/XI-9 (94)/91-U.P. Act 15/48-Order-92. dated 31.3.1992 or at the rate of 4 percent under the Notification No. ST-II-191/XI-6 (9)-83-U.P. Act-XY/48-Order-90, dated 1.2.1990. It is useful to refer both the Notifications.

Notification No. ST-II-191/XI-6 (9)-83-U.P. Act-XV/48-Order-90, dated 1.2.1990

Published in U.P. Gazette, dated 1.2.1990.

In exercise of the powers under Sub-section (1) of Section 3-A of the Uttar Pradesh Sales Tax Act, 1948 (U.P. Act No. XV of 1948), read with Section 21 of the Uttar Pradesh General Clauses Act, 1904 (U.P. Act No. 1 of 1904), the Governer is pleased to order that the sales of sheets and circles of all metals or alloy except of aluminium, iron and steel, brass and stainless steel made on or after February 1, 1990, in Uttar Pradesh by the manufacturer or importer shall be liable to tax at the rate of four percent.

Notification No. ST-II-1225/XI-9 (94)/91-U.P. Act 15/48-Order-92, dated 31.3.1992.

Published in U.P. Gazette, dated 31.3.1992.

In exercise of the powers under the proviso to Clause (e) of Sub-section (1) of Section 3-A of the Uttar Pradesh Sales Tax Act, 1948 (U.P. Act No. XV of 1948), read with Section 21 of the Uttar Pradesh General Clauses Act, 1904 (U.P. Act No. 1 of 1904), the Governor is pleased to make, with effect from April 1, 1992, the following amendment in Government Notification No. ST-II-5785/X-10 (1)/80-U.P. Act-15-48-Order-81, dated September 7, 1981, as amended from time to time:

AMENDMENT

In the list to the aforesaid notification,-

(1) in entry at S. No. 7, in column 4 for the words and figure "4 percent" the words and figure "1.5 percent", shall be substituted.

(2) In entry at S. No. 27, in column 4 for the words and figure "6 percent", the words and figures "3.75 percent shall be substituted.

(3) In entry at S. No. 29, for the words appearing in column 2 the following words shall be substituted, namely:

medicines and pharmaceutical preparations, other than those except under any other notification issued under the U.P. Sales Tax Act, but including insecticides and pesticides.

(4) in entry at S. No. 32, in column 4 for the words and figure "6 percent" the words and figure "4 percent" shall be substituted, and

(5) in entry at S.No. 48, for the words appearing in column 2, the following words shall be substituted, namely:

Sweetmeats, namkins, cooked food, rewari, gajak, biscuits, bread, cakes, pastries, bun, rusks and sugar products, except any of the aforesaid goods which are exempt under any other notifications issued under Uttar Pradesh Sales Tax Act.

(6) for the entries at S. Nos. 3(b), 31 and 51 (b), the following entries shall be substituted, namely:

3(b) (i) Aluminium Ore, metal and scraps M or I 4 percent (ii) All other ores, metals, scraps and M or 1 2 percent alloys including sheets and circles used in the manufacture of brass- wares except those included in any other entry or any other notification issued under the U.P. Sales Tax Act.

8. The Notification No. ST-II-1225/XI-9 (94)/91-U.P. Act 15/48-Order-92. dated 31.3.1992 is applicable to sheets and circles used in the manufacture of brassware. Applicant has nowhere pleaded that the circles manufactured by it was used in the manufacture of brassware. There is no material on record in this regard. Thus. Notification No. ST-II-1225/XI-9 (94)/91-U.P. Act 15/48-Order-92. dated 31.3.1992 is patently not applicable to the copper circles. The Notification No. ST-II-191/XI-6 (9)-83-U.P. Act-XV/48-Order-90, dated 1.2.1990 is applicable to the sheets and circles of ail metals or alloys except of aluminium, iron and steel, brass and stainless steel. Circles manufactured by the applicant admittedly, was not the brass sheets and being the copper sheets it is covered under the entry of sheets and circles of all metals or alloy and thus, liable to tax at the rate of 4 percent. In the circumstances, the mistake in levying the tax at the rate of 2.5 percent on the turnover of copper circles was apparent and has been rightly rectified by the assessing authority by passing the order u/s 22 of the Act. Tribunal has illegally at various places observed that the goods manufactured by the applicant was copper/brass circles. Tribunal has also illegally observed that the such circles is liable to tax as an unclassified item in view of the decision of the Apex Court in the case of Hindustan Aluminium Corporation Ltd. v. State of Uttar Pradesh and Anr. reported in 1981 UPTC 1249 and the decision of this Court in the case of Commissioner of Sales Tax v. S/S Vijay Aluminium Works, Kanpur (supra). In my view, the specific Notification No. ST-II-191/XI-6 (9)-83-U.P. Act-XV/48-Order-90, dated 1.2.1990 relating to the sheets and circles of all metals or alloy was applicable and thus, manufactured goods cannot be treated as an unclassified item. The commodity can be treated as an unclassified item only when it is not classified under any of the notification. In this view of the matter, order of the Tribunal is patently erroneous and liable to be set aside and the order passed u/s 22 of the Act are liable to be sustained.

9. In the result, revision is allowed in pz Order of the Tribunal is set aside and the order passed by the assessing authority u/s 22 of the Act is sustained.