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(2005) 12 AHC CK 0084

In the Allahabad High Court

Case No : Trade Tax Revision No''s. 157 and 158 of 1994

The Commissioner, Sales Tax — APPELLANT

Vs

S/S Modi Industries Ltd. — RESPONDENT

Date of Decision : 16-12-2005

Acts Referred:

Central Sales Tax Act, 1956 — Section 2
Uttar Pradesh Trade Tax Act, 1948 — Section 11, 11(8)

Citation : (2005) 12 AHC CK 0084

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : Surya Prakash, B.K. Pandey and S.C, for the Appellant; Bharat Ji Agrawal, for the Respondent

Judgement

Rajes Kumar, J.—These two revisions u/s 11 of U.P. Trade Tax Act (hereinafter referred to as "Act") are directed against the orders of Tribunal dated 27.08.1993 both relating to the assessment year 1982-83 under the U.P. Trade Tax Act as well as under the Central Sales Tax Act respectively.

2. Dealer/Opp. Party (hereinafter referred to as ''Dealer'') have various Units engaged in the business of manufacture and sale of Vanaspati Ghee, Torches and liquor etc. In the present revisions, dispute relates to Vanaspati Unit.

3. Heard learned Counsel for the parties.

4. Learned Standing Counsel submitted that the Cinder Ash was not a coal and was liable to tax as an unclassified item while it had been treated as coal and held taxable @ 4%. In support of his contention, he relied upon the decision of this Court in the case of Commissioner of Sales Tax v. S/S British India Corporation Ltd., Kanpur reported in UPTC 2004 page 898. He submitted that the dealer had charged tax towards Dharmada and Dharmada was the part of the turnover. He further submitted that Vanaspati Ghee had been sold in Tinned Containers. Ghee could not be sold without Container, therefore, value of

Container was to be assessed alongwith the turnover of Ghee on the same rate at which, Vanaspati Ghee was liable to tax. He submitted that Tribunal has erred in levying tax on the Tinned Containers @ 4% applicable to the Tinned Containers.

5. So far as, the Central Sales Tax is concerned, learned Standing Counsel submitted that the amount of freight, which had been charged by the dealer from the customers, was the part of the turnover and liable to tax accordingly.

6. Learned Counsel for the dealer submitted that Dharmada was not the part of the turnover. He relied upon the decision of this Court in the case of Commissioner of Sales Tax v. Jagroop Ram Bhagwati Prasad, reported in UPTC 1980 1043. He submitted that Tinned Container is an independent commercial commodity and there was a separate Notification for Tinned Container under which, it was liable to tax @ 4%. He submitted that in the bill, value of Tinned Container had been charged separately which shows that there was a separate agreement for Tinned Container between the dealer and customers. In support of his contention, he relied upon the decision of Apex Court in the case of Jamuna Flour & Oil Mills v. State of Bihar 1987 UPTC 861, and the decision of this Court in the case of Commissioner of Trade Tax v. Raghubar (India) Ltd., Aligarh reported in UPTC 2005 758.

7. So far as, revision relating to Central Sales Tax is concerned, he submitted that the freight had been charged separately in the bill, therefore, in view of definition of Section 2(h) it is not part of the turnover.

8. I have perused the order of Tribunal and the authorities below. Cinder Ash had been held not a coal and held liable to tax as an unclassified item in the case of Commissioner of Sales Tax v. S/S British India Corporation Ltd., Kanpur (supra). Respectfully following the aforesaid decision, it is held that Cinder Ash is not a coal and is liable to tax as an unclassified item. In the cases of Commissioner of Sales Tax, U.P. Lucknow v. Jagroop Ram Bhagwati Prasad, Jaunpur reported in UPTC 1980 1043 and Bhikari Das Gur Dealer v. Commissioner of Sales Tax reported in UPTC 1985 page 389 it has been held by this Court that Dharmada is not the part of the turnover. Order of Tribunal in this regard is up held.

9. Admittedly, in the bill, value of Tinned Container was charged separately which means that there was a separate stipulation for Tinned Container. Tinned Container is an independent commercial commodity and under the entry "Container made of Tin. Iron & Steel" of Notification No. ST-II-5785/X-10 (1)-80-U.P. Act XV/48-Order-81 dated 7.9.1981, it is liable to tax @ 4%. In the case of Jamuna Flour & Oil Mills v. State of Bihar (supra), it has been held by the Apex Court that if there is a separate contract expressed or implied for Container, the packing material is liable to tax @ applicable to it. Similar view has been taken by this Court in the case of Commissioner of Trade Tax v. Raghubar (India) Ltd., Aligarh (supra), following the decision of Apex Court in the case of Jamuna Flour & Oil Mills v. State of Bihar (supra). In this view of the matter, order of Tribunal

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levying the tax on the Tinned Container @ 4% is up held.

10. So far as. Central Sales Tax relating to the assessment year in question is concerned, dealer had charged the amount of freight separately in the bill. Section 2(h) of the Central Sales Tax Act says that if the freight is charged separately, it would not be a part of the turnover. In this view of the matter, the view of the Tribunal is up held.

11. In the result, revision No. 157 of 1994 is allowed in part. Tribunal is directed to pass appropriate order u/s 11(8) of the Act and the Revision No. 158 of 1994 is dismissed.

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