(2005) 02 AHC CK 0159

In the Allahabad High Court

Case No : Trade Tax Revision No. 1290 of 1995

The Commissioner, Trade Tax — APPELLANT

Vs

Cross Breeding Project — RESPONDENT

Date of Decision : 22-02-2005

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11, 2C, 4

Citation : (2007) 8 VST 61

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : S.C, for the Appellant; Bharat Ji Agrawal and Piyush Agrawal, for the Respondent

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—Present revision u/s 11 of U.P. Trade Tax Act (hereinafter referred to as "Act") is directed against the order of Tribunal dated 15.06.1995 relating to the assessment year 1989-90.

2. Dispute relates to the taxability of ''Frozen Semen". Semen is extracted from bull and are kept in a container having liquid nitrogen to avoid its decay. Such semen are called as Frozen semen and are required for insemination of the cows.

3. Dealer/opposite party (hereinafter referred to as "Dealer") is a unit of Pradeshik Cooperative Dairy Federation, Government of U.P. and used to supply the frozen semen. Assessing authority levied the tax on the turn over of frozen semen treating it as an unclassified item. Dealer filed appeal, which was rejected. Second appeal filed by the dealer has been allowed and the turn over Frozen semen has been held non-taxable. Tribunal held that Frozen semen as dairy product. It has been also held that the process of extraction of semen and its preservation in a liquid nitrogen, no manufacturing is involved and, therefore, dealer was not the manufacturer and held not liable to tax.

4. Heard learned counsel for the parties.

5. Three questions are involved in the present revision for consideration :

1) Whether frozen semen is dairy product and being a dairy product exempted from tax under the Proviso of Section 2-(C) of the Act ?

2) Frozen semen is not notified and can it be taxed as an unclassified item in the hand of the dealer treating dealer as manufacturer ?

3) It has also been raised during the course of hearing that Frozen semen being live stock is exempted from tax under the notification No. ST-H-7038/X-7(23)/83-U.P. Act XV/48-Order-85, dated 31.01.1985, issued u/s 4 of the Act ?

6. Learned Standing Counsel submitted that Frozen semen can not be said to be a dairy product. He submitted that milk products are commonly known as dairy product. He further submitted that the extraction of semen from bull and its preservation in a liquid nitrogen to avoid its decay amounts to manufacturing as defined u/s 2 (e-1) of the Act and, therefore, dealer is liable to tax being manufacturer. In support of his contention he relied upon the decision of the Apex Court in the case of Ashirwad Ispat Udyog and Others Vs. State Level Committee and Others, , in the case of Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. Coco Fibres, reported in 1992 Sup (1) SCC 290 and in the case of Indian Poultry and Others Vs. Sales Tax Officer, Rajnandgaon and Others, Learned counsel for the dealer submitted that dairy product is not confined to milk products, He submitted that any product, which is obtained from animal by the person is daily product. He submitted that since semen is obtained from bull, it is a dairy product. He further submitted that by no stretch of imagination the process of extraction of semen from bull and its preservation in liquid nitrogen to avoid its decay amounts to manufacture. He submitted that the semen which was in the original form remains the same at the time of its sale and no manufacturing activity is being carried out. In support of his contention he relied upon the decision of the Apex Court in the case of Delhi Cold Storage Pvt. Ltd. Vs. Commissioner of Income Tax, New Delhi, , in the case of CST v. Shilphy International, reported in 1983 STI 43. He further submitted that semen also falls under entry of live stock and, therefore, exemption under the Notification No. ST-7038 dated 31.01.1985 issued u/s 4 of the Act.

7. I have perused the order of Tribunal.

8. I do not find any error in the order of Tribunal Proviso to Section 2 (c) reads as follows:

"Provided that a person who sells agricultural or horticultural produce grown by himself or grown on any land in which he has an interest, whether as an owner, usufructuary mortgagee, tenant, or otherwise, or who sell poultry or dairy products from fowls or animals kept by him shall not, in respect of such goods be treated as a dealer."

9. Dairy product has not been defined in the Act. Therefore, dictionary meaning

is to be considered.

10. "Dairy" has been defined by various dictionery as follows:

According to Greshan Comprehensive English Dictionary, "dairy" means the place where milk is kept and made into butter and cream. Chambers'' New English Dictionary "dairy" means the place where milk is kept and butter and cheese are made.

11. The word "product" has been defined as follows:

According to Blacks''s Law Dictionary, "product" means something produced by physical labour or intellectual effort or something produced naturally or as result of natural process or by generation or growth. According to Webster''s Comprehensive Dictionary, the word ''product'' means ''anything produced or obtained as a result of some operation or work."

12. I do not agree that the frozen semen falls under dairy product for two reasons firstly; semen is extracted from the bull through syringes is not obtained as a result of any processing. Secondly, it is obtained at place where bull is kept and not at a place where milk is kept and milk product like butter, Cheese etc. are made. To this extent, view of the Tribunal can not be sustained.

13. However, I am of the view that extraction of semen and its preservation in liquid nitrogen to avoid its decay does not amount to manufacturing. Semen remains the same at the time of its sale. Mere preservation does not amounts to manufacturing. In the preservation neither any processing is involved nor anything is does to the semen. Semen remains as such. The process of preservation does not amounts to manufacturing. In the case of Delhi Cold Storage Pvt. Ltd. Vs. Commissioner of Income Tax, New Delhi, , preservation of the various items in a cold storage has been held not amounting to processing or manufacturing by the Apex Court. The decision cited by the learned Standing Counsel are not applicable and are distinguishable. In all the cases, some process was involved and something has been done to the goods causing some change while in the present case nothing has been done to the semen, it remains the same. Therefore, decisions cited by Learned Standing Counsel are not applicable to the present case.

14. In my view, semen is also covered under the Notification No. ST-7038 dated 31.01.1985 which exempts live stock. Semen is a live cells with nucleus, which on fertilization with ova produces animal. Therefore, being a live stock also it is not liable to tax under the aforesaid notification.

15. In the result, revision fails and is accordingly, dismissed.