
(2007) 01 AHC CK 0191
In the Allahabad High Court

The Commissioner, Trade Tax

APPELLANT

Vs

Jain Enterprises

RESPONDENT

Date of Decision : 10-01-2007

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2009) 20 VST 539

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

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 06.10.1998 for the assessment year 1987-88.

2. The short question involved in the present is that whether wood-wool is a product of timber, liable to tax @ 6% or as an unclassified item @ 8%. Assessing authority taxed the turn over of wood-wool @ 8% treating it as unclassified item. Order of the assessing authority has been confirmed in appeal. Tribunal, however, has accepted the plea of the dealer/opposite party (hereinafter referred to as "Dealer") and held wood-wool liable to tax @ 6% as product of timber.

3. Heard learned Counsel for the parties.

4. Relevant notification No. ST-II-5785/X-10(1)-80-U.P. Act XV/48-Order-81, dated 07.09.1981 relating to the product of timber or wood-wool is reproduced herein below:

Notification No. ST-II-5785/X-10(1)-80-U.P. Act XV/48-Order-81, dated 07.09.1981

SI. Description of goods Point of tax Rate of tax No. 39 Products of bamboos, M or 1 6% timber or wood except those included in any other item of this list or notification issued under the Act.

5. Wood wool is obtained as a result of grinding of timber or wood. It is mainly used for packing and also in cooler. Since it is obtained from the timber or wood as a result of some action and operation, it is product of timber or wood liable to tax @ 6% under the aforesaid notification No. ST-II-5785/X-10(1)-80-U.P. Act XV/48-Order-81, dated 07.09.1981.

6. In the case of CST v. S/S Agrawal Wooden Products reported in 1989 UPTC 557, Learned Single Judge of this Court held that small pieces of timber of various sizes between 1/2 " x 2" as a timber product. Learned Single Judge held as follows:

In the present case all that the assessee was doing was to make small pieces of timber of various sizes between 1/2"x 2". The Tribunal on a consideration of the said Notification dated 30.05.1975 has on the facts of this case taken the view that the wooden button in question is a timber product. This necessitates us to consider as to what is the meaning of the word "product" as occurring in the said notification. Admittedly the word "product" has not been defined under the Act or the rules made thereunder. According to the Chamber's Twentieth Century dictionary, it means a thing produced; a result; a work; offspring; a quantity got by multiplying. These meanings suggest a direct connection between the things and its product. The thing must be productive before it can have a product. In other words, something which naturally and directly grows out of another thing can alone be called a product of that other thing. Therefore, a product of timber must relate to the productivity from timber i.e., something produced out of timber. The cut sizes of wooden button in question are, therefore, according to the said dictionary meaning products of timber. There is yet another reason to come to the same conclusion and it is this that the wooden button in question is a thing which is produced by an action, operation or work by cutting the timber into certain specified sizes. Therefore, when wooden button is produced out of wood by some action, operation or work, the commodity in question becomes a timber product. In this view of the matter, in my opinion Tribunal is not in error in taking the view that the commodity in dispute is a timber product.

7. In the case of CST v. Packing Aids, Agra, reported in 180 UPTC 901, dispute was about the taxability of baton and shook. Though this Court has not finally adjudicated the issue but has observed as follows:

If the assessee is only making plunks, that would come in the category of timber because the plunks could be sawn timber or wood and would be covered by Entry 97 aforesaid but if the assessee is further joining the planks with nail, that would have to be treated as timber products.

8. In the case of CST v. B.M. Wood Works: No. 1. reported in 32 SIC, 66 the question involved was whether the boxes made of cheer wood are timber product. Division Bench of this Court held that the word "product" in the notification was intended to be used in its full comprehensive meaning namely, thing produced by any action, operation or work, and not in the narrow and

restricted meaning of something produced by nature or a natural process Sawn timber has been placed specifically in cut of timber under entry 97 but the joining of plank by nails certainly be a timber product by action or operation and would have to be treated as timber product and not a timber.

9. In the case of Collector of Central Excise, Coimbatore v. Protein Products of India Limited. reported in 74 SIC 98 The question for consideration before the Apex Court was whether Ossein prepared by dissolving mineral part of bones with phosphoric acid and gelatine prepared by treating ossein with alkali, falls under the bone product. Apex Court observed as follows

The word "product" is defined in Webster's Comprehensive Dictionary as "anything produced or obtained as a result of some operation or work". The expression "bone products" therefore, merely means anything produced or obtained from bones. Whether such derivation is by a simple physical process or by a chemical reaction would seem to make no difference to the end-product.

10. Thus. in view of the aforesaid principle of law laid down by the Apex Court and by this Court, wood-wool being obtained as a result of grinding of wood or timber in which some action, operation or work are involved is a timber product or wood product and liable to tax @ 6% under the notification No. ST-II-5785/X-10(1)-80-U.P. Act XV/48-Order-81, dated 07.09.1981.

11. For the reasons stated above, order of the Tribunal is accordingly, upheld.

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