(2007) 10 AHC CK 0155

In the Allahabad High Court

The Commissioner, Trade Tax — APPELLANT

Vs

Laxmi Leather Cloth Industries — RESPONDENT

Date of Decision : 09-10-2007

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2008) 13 VST 139

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajes Kumar, J.—These four revisions u/s 11 of the U.P. Trade Tax Act (hereinafter referred to as the "Act") are directed against the order of the Tribunal dated 16.07.2002 relating to the assessment years 1989-90 and 90-91 both under the U.P. Trade Tax Act as well as Central Sales Tax Act.

2. In all the four revisions common question relating to the taxability of PVC sheets is involved. According to the claim of the opposite party/dealer (hereinafter referred to as "Dealer") PVC sheets is a textile and accordingly exempted under the notification of the textile. It is claimed that in the PVC sheets, the base material is cotton fabric on which PVC rexine etc. have been coated. The case of the revenue is that PVC fabric is specifically excluded from textile under the notification No. ST-II-3714/X-6 (1)/85-U.P. Act 15/48-Order-85, dated 5.6.1985 and, therefore, it is not exempted. Assessing authority levied the tax as an unclassified item. First appellate authority accepted the plea of the dealer and allowed the exemption. Commissioner of Trade Tax filed appeals before the Tribunal. Tribunal dismissed all the appeals and confirmed the order of the first appellate authority. Though, the Tribunal held that under the notification No. ST-II-3714/X-6 (1)/85-U.P. Act 15/48-Order-85, dated 5.6.1985, PVC fabric is specifically excluded from textile and therefore, is not exempted, still allowed the exemption on the ground that in the subsequent years, the assessing authority himself exempted the cotton coated fabric, i.e. PVC fabric.

Heard Sri B.K. Pandey, learned Standing Counsel and Sri R.R. Agrawal, learned Counsel for the opposite party.

3. Learned Standing Counsel submitted that each year is an independent year for the purpose of the assessment and therefore, merely because in the subsequent years, the assessing authority by mistake had allowed the exemption on the PVC fabric manufactured by the dealer, the claim of exemption can not be allowed during the years under consideration, if PVC fabric is not exempted under the notification. He submitted that though the Tribunal has held that PVC fabric is specifically excluded from textile in the notification No. ST-11-3714/X-6 (1)/85-U.P. Act 15/48-Order-85, dated 5.6.1985 and is not exempted, still has illegally allowed the exemption merely on the ground that in the subsequent years, the assessing authority had himself allowed the exemption. He submitted that the view of the Tribunal is patently erroneous and is liable to be set aside. He submitted that PVC fabric, since, specifically excluded from textile, it can not be treated as textile under the notification No. ST-II-3714/X-6 (1)/85-U.P. Act 15/48-Order-85, dated 5.6.1985. He submitted that it is open to the Legislature to exclude any item from any goods by fiction. He submitted that in the various cases this Court and other High Courts have treated PVC fabric as cotton fabric and textile and, therefore, it appears that in the notification No. ST-II-3714/X-6 (1)/85-U.P. Act 15/48-Order-85, dated 5.6.1985 PVC fabric has been specifically excluded from textile. This shows the intent of the Legislature to exclude PVC fabric from the textile.

4. In support of his contention he relied upon the decision of this Court in the case of Gaurav Trades, Gorakhpur v. Commissioner of Trade Tax, U.P. Lucknow reported in 2007 NTN (Vol. 34), 298.

5. Learned Counsel for the dealer submitted that in the case of dealer itself this Court has held that cotton coated fabric is exempted from tax, which is reported in 2006 29 NTN 407, Commissioner, Sales Tax, U.P., Lucknow v. S/S Laxmi Leather Cloth Industries Pvt. Ltd., Noida. He further submitted that in the case of CTT v. S/S Geeta Traders reported in 2004 UPTC 707, this Court has held cotton coated fabric as textile. He further relied upon the various decisions in support of the claim that PVC fabric being cotton coated fabric is exempted from tax under notification No. ST-II-3714/X-6 (1)/85-U.P. Act 15/48-Order-85, dated 5.6.1985 being textile.

6. Having heard learned Counsel for the parties, I have perused the order of Tribunal and the authorities below.

Two relevant notifications, ST-II-3714/X-6(1)/85-U.P. Act 15/48-Order-85, dated 5.6.1985 and notification No. ST-II-303/X-89-7 (5)-88-U.P. Act-XV/48-Order-89, dated 1.2.1989 reads as follows:

Notification No. ST-II-3714

Published in U.P. Gazette, dated 5.6.1985.

In exercise of the powers under Clause (a) of Section 4 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. I of 1904), the Governor is pleased to make, with effect from June 6, 1985, the following amendments in Government notification No. ST-2-7038/X-7 (23)-83-U.P. Act XV/48-Order-85, dated January 31, 1985:

AMENDMENTS

In the Schedule to the aforesaid notification,-

(1) for the existing entries in column 2 against serial numbers 7, 10, 43 and 53, the following entries shall respectively be substituted, namely:

53. Textiles of the following varieties manufactured on powerloom, excluding durries, carpets, druggets, hosiery goods, readymade garments, Hessian or jute cloth and cotton, rayon or nylon tyre cord fabrics, tyre cord or tyre cord warp sheets, PVC/HDPE fabrics and cotton beltings, but including the goods specified in the Annexure hereunder:

(a) cotton fabrics of all varieties;

(b) rayon or artificial silk fabrics, including stapie fibre fabrics of all varieties.

(c) Woolen fabrics of all varieties.

(d) Fabrics made of a mixture of any two or more of the above fibres, viz cotton, rayon, artificial silk, stapie fibre or wool;

(e) Canvas cloth, tarpaulins and water proof cloth.

Notification No. ST-II-303

Published in U.P. Gazette, dated 1.2.1989

In exercise of the powers under Clause (a) of Section 4 of the U.P. 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 February 1, 1989, the following amendment in Government Notification No. ST-II-7038/X-7 (23)-83-U.P. Act-XV-48-Order-85. dated January 31, 1985, as amended from time to time.

AMENDMENT

In the Schedule to the aforesaid notification, in the entry in Column 2 against S. No. 53, for Clause (d), the following clause shall be substituted, namely,

(d) fabrics made of a mixture of any two or more of the above fibres, viz, cotton, rayon, artificial silk, staple fibre or wool, or of a mixture of any one or more of the above fibres with puresilk fibre in which pure silk fibre does not predominate by weight over any other single fibre.

7. In the case of Bharat Sanchar Nigam Limited and Anr. v. Union of India and Ors. reported in 2006 26 NTN 307, Apex court held that each year is an independent year for the purpose of assessment. Thus, merely because in the subsequent year, the assessing authority had exempted the manufactured PVC fabric (cotton coated fabric) in the case of the dealer itself, Tribunal is not justified in allowing the exemption. Though the Tribunal held that PVC fabric has been specifically excluded from textile and, therefore, it can not be exempted as textile.

8. In the case of dealer itself, Commissioner, Sales Tax, U.P., Lucknow v. S/S Laxmi Leather Cloth Industries Pvt. Ltd., Noida reported in 2006 29 NTN 407, the leather cloth manufactured by the dealer has been held textile in view of the notification No. ST-II-8058/X-l l(V)-78-U.P. Act-XV-48-Order, dated 29.11.1980 relying upon the various decisions of the Apex Court and this Court. There is no doubt that leather cloth, which is PVC fabric is treated as textile. The aforesaid case is for the assessment year 1982-83 and prior to the notification No. ST-II-3714/X-6 (1)/85-U.P. Act 15/48-Order-85, dated 5.6.1985. Therefore, this case is not applicable to the present case.

In the present case, the question for consideration is whether after exclusion of PVC fabric" from textile, PVC fabric is still exempted from tax being textile under the notification No. ST-II-3714/X-6 (1)/85-U.P. Act 15/48-Order-85, dated 5.6.1985 and notification No. ST-II-303/X-89-7 (5)-88-U.P. Act-XV/48-Order-89, dated 1.2.1989.

9. In my opinion, after exclusion of PVC fabric from textile under the notification No. ST-II-3714/X-6 (1)/85-U.P. Act 15/48-Order-85, dated 5.6.1985 PVC fabric is not exempted.

It is settled principle of interpretation that the statute should be read in its ordinary, nature and grammatical sense. The Apex Court in the case of Hiralal Rattanlal Vs. State of U.P. and Another etc. etc., held as follows:

In construing a statutory provision that first and foremost rule of construction is the literary construction. All that the Courts has to see at the every outset is what does the provision say. If the provision is unambiguous and if from the provision the legislative intent is clear, the Court need not call into aid and other rules of construction are called into aid only when the legislative intent is not clear.

The principle of strict interpretation of taxing statutes was being enunciated by Rowaltt, J. in his classic Statement vide Cape Brady Syndicate v. I.R.C. (1921) 1 KB 64 held as follows:

In a taxing statute one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. Once can only look fairly at the language used.

10. In the case of State of Kerala Vs. M/s. Vattukalam Chemicals Industries, Apex Court held that the primary object is to tax and exemption notification is to be construed strictly.

In the case of Swadeshi Polytex Ltd. v. I.T.O. reported in 1980 UPTC 1984, the Division Bench of his Court held as follows:

It is well established that where the language of a section is plain and unambiguous, it is not open to Courts to read into it limitation, which are not there based on a priority reasoning as to the probable intention of the legislature. Such intention can be gathered from the words actually used in the legislature and what is unexpressed has the same value as to what in unintended.

11. It appears that since PVC fabric has been held as textile by the Apex Court and by the various High Courts, the Legislature with the intent to deny the exemption on the PVC fabric has excluded the PVC fabric from textile. Otherwise there could be no other purpose excluding the PVC fabric from textile, if the intent would be to continue the exemption on the PVC fabric as textile. It is settled principle of law that it is always open to the Legislature to exclude or include any item from any goods by fiction.

12. In the case of Gaurav Trades, Gorakhpur v. Commissioner of Trade Tax (Supra) the question was whether HDPE woven fabric being excluded from textile is exempted from tax as textile. This Court held that after the exclusion from textile, it is not exempted from tax.

Since the PVC fabric has been specifically excluded from textile, it can not be exempted as textile by any stretch of imagination by giving any interpretation.

13. Now coming to the alternative remedy of learned Counsel for the dealer. Learned Counsel for the opposite party submitted that PVC fabric being cotton coated fabric is covered u/s 14 of the Central Act (hereinafter referred to as "Central Act") and, therefore, liable to tax @ 4% and not as an unclassified item. Perusal of the order of the Tribunal reveals that this aspect of the matter has not been considered by the Tribunal. Therefore, Tribunal is directed to consider this aspect of the matter.

In the result, all the revisions are allowed. Order of the Tribunal is set aside. It is held that PVC fabric (cotton coated fabric)/leather cloth manufactured by the dealer is not exempted as textile under the notification No. ST-II-3714/X-6 (1)/85-U.P. Act 15/48-Order-85, dated 5.6.1985. However, whether it is liable to tax as an unclassified item or as declared commodity being covered u/s 14 of the Central Act, the matter is remanded back to the Tribunal to adjudicate this question.