(2005) 10 AHC CK 0081

In the Allahabad High Court

Case No : Trade Tax Revision No''s. 105, 107, 114, 133 and 134 of 1997

The Commissioner, Trade Tax — APPELLANT

Vs

Mitter Sen Industries — RESPONDENT

Date of Decision : 28-10-2005

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

Citation : (2005) 10 AHC CK 0081

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : S.C., for the Appellant;

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—These five revisions u/s 11 of U.P. Trade Tax Act (hereinafter referred to as "Act") are directed against the order of Tribunal dated 18.06.1997 for the assessment years 1984-85 (UP.). 1985-86 (Central), 84-85 (Central), 86-87 (Central) and 86-87 (U.P.).

2. In all the revisions common question has been raised, whether the aluminium wire manufactured/drawned from the tax paid aluminium rod is liable to tax. However, this question only arises in Trade Tax Revision No. 105 of 1997 and 134 of 1997 relating to the assessment years 1984-85 (U.P.) and 86-87 (U.P.). This question does not arises in other revisions which relates to the assessment under the Central Sales Tax Act.

3. In Revision No. 105, 107 and 114 of 1997 a common question involved is "whether the Tribunal was legally justified in imposing the tax on Boric Acid as medicines instead of chemical ?"

4. In Revision No. 114 of 1997 following question has been raised:

"Whether under the facts and circumstances of the case, Trade Tax Tribunal, Meerut was legally justified to exempt the turn over equal to the amount of Excise and freight?"

5. In Revision Nos. 105, 107, 133 and 134 of 1997 the following question has been raised:

"Whether under the facts and circumstances of the case Trade Tax Tribunal, Meerut was legally justified to impose the tax at the concessional rate even though the C Form was not present before the Tribunal?

6. Heard learned counsel for the parties.

7. Learned Standing Counsel submitted that the question No. 1 is covered by the decision of this court in the case of dealer itself in the case of CTT v. S/S Mitter Sen Industries, Meerut, reported in 2005 NTN 27 327 relating to the assessment years 1982-83, 83-84 and 85-86 in which it has been held that aluminium wire manufactured out of the U.P. tax paid aluminium rod is not liable to tax. The question is accordingly decided in favour of the dealer. Learned Standing Counsel submitted that Boric Acid is an acid and, therefore, it is chemical and Tribunal has erred in treating it as medicine. Perusal of the order of Tribunal shows? that no reason has been given why Boric Acid has been treated as medicine. Learned counsel for the dealer/opposite party (hereinafter referred to as "Dealer") is also not able to show that how the Boric Acid is medicine. Boric Acid is an acid, which is chemical. Order of the Tribunal in this regard, is erroneous and liable to be set aside.

8. So far as the view of the Tribunal that the excise duty is not part of the turn over on the ground that the excise duty was not payable by the purchaser and it was payable by the Central Government under the scheme. Learned counsel for the dealer submitted that the issue involved is covered by the decision of this Court in the case of The Indian Aluminium Cables Ltd., Ghaziabad v. CST, reported in 1994 UPTC 610 in which it has been held by this Court that the amount of excise duty reimbursed by the Central Government under the scheme sponsored by it is not the part of turn over in as much as it is not payable by purchaser. Learned Standing Counsel also agrees that the issue involved is covered by the aforesaid decision. Respectfully following the aforesaid decision, order of the Tribunal is upheld on this issue.

9. With regard to the freight, Tribunal has observed that amount of freight has been seperately charged in the bill. Since it was separately charged in the bill in view of the definition of the "sale prise" u/s 2(h) of Central Sales Tax Act it is not liable to be included. Order of the Tribunal in this regard is also upheld.

10. So far as the question raised in Revision Nos. 105, 107 and 114 of 1997 is concerned, whether the Tribunal was legally justified to impose the tax at the concessional rate even though the C form was not presented before the Tribunal ? I do not see any question arises from the order of Tribunal. Perusal of the order of Tribunal shows that no claim of concessional rate of tax has been

allowed in the absence of Form-C, Learned Standing Counsel is not able to point out any such case where the benefit of concessional rate of tax has been given in the absence of Form-C. It has been admitted by learned Standing Counsel that this question has been wrongly enframed in Revision No. 105 and 134 of 1997. In these case this question does not arise.

11. In the result, revision Nos. 105, 107 and 114 of 1997 are allowed in part. Order of the Tribunal is set aside and modified to the extent that the Boric Acid is liable to tax as chemical. Tribunal is directed to pass appropriate order u/s 11(8) of the Act.

12. Revision Nos. 133 and 134 of 1997 are dismissed.