(2007) 01 AHC CK 0101

In the Allahabad High Court

The Commissioner, Trade Tax APPELLANT

Vs

Moti Lal Duli Chand Pvt. Ltd. RESPONDENT

Date of Decision : 10-01-2007

Acts Referred:

Citation : (2009) 21 VST 191

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—These three revisions u/s 11 of U.P. Trade Tax Act (hereinafter referred to as "Act") are directed against the order of Tribunal dated 16th April, 2004 relating to the assessment years 1999-2000 (Central), 2000-01 both under the U.P. Trade Tax Act and Central Sales Tax Act.

2. In all the three revisions, following questions have been raised:

(i) Whether on the facts and in the circumstances of the case, the trade tax tribunal was legally justified to allow the appeal filed by the dealer ?

(ii) Whether on the facts and in the circumstances of the case, the trade tax tribunal was legally justified to hold that narrow woven fabrics and braded cords fall under the category Of textile and as such are exempt from payment of tax ?

(iii) Whether on the facts and in the circumstances of the case, the trade tax tribunal was legally justified to hold that braded cord and narrow woven fabrics fall under the category of ''tape, niwar''...?

3. From the perusal of the order of the Tribunal it appears that the questions which arises from the order of the Tribunal is whether Tribunal is justified in holding that- braded cord and narrow woven fabrics are not covered under the Entry "tape, laces and niwar" and are liable to be exempted as cotton fabrics. Tribunal held that narrow woven fabrics and braded cord were not liable to tax being cotton fabrics and exempted under the notification of textile. Thus,

question involved is whether Tribunal is justified in exempting the turn over of narrow woven fabrics and braded cord treating them as cotton fabric under the Entry 53(a) of notification No. ST-II-3714/X-6(1)/85-U.P. Act 15/48-Order-85, dated 05.06.1985. Assessing authority had levied the tax on the narrow woven fabrics and braded cord under the Entry "Tape, niwars and laces including cord or string or line used for tying purposes or for drying clothes" under the Notification No. ST 7036/X-938 (2)-72-U.P.Act-15-48-Order-84, dated 29.09.1984. The claim of the dealer was that the narrow woven fabrics and braded cord were not used for tying purposes or for drying clothes but they were used in a military garments. In the case of Fibre Links, Kanpur v. CST reported in 91 STC 125 SCTrade Tax Tribunal, Kanpur held that narrow woven fabrics and braded cord are exempted from tax being fabrics. The revision filed against the said order has been dismissed by this Court and the said order has become final. Tribunal further held that the Government vide its G.O. No. K.N.-2-4604/11-03-9(31)/03 dated 25.11.2003 has accepted the decision of the Tribunal finally. Additional Commissioner, Trade Tax (Legal) vide its letter dated 27.11.2003 informed the aforesaid decision of Government to the Additional Commissioner, Kanpur. Tribunal further held that in the case of dealer itself for the assessment years 1985-86, 1992-93 and 1998-99 assessing authority exempted the turn over of narrow woven fabrics and braded cord and for the assessment years 1984-85 and 87-88, the turn over of narrow woven fabrics and braded cord have been exempted from tax in appeal.

4. Heard learned Counsel for the parties.

5. Learned Standing Counsel submitted that the order of the Tribunal is erroneous, inasmuch as the narrow woven fabrics and braded cord were liable to tax under the Entry "Tape, niwars and laces including cord or string or line used for tying purposes or for drying clothes". Learned Counsel for the dealer relied upon the order of the Tribunal and submitted that the circular issued by the State Government is binding upon the revenue authorities and they can not be allowed to argue against the circular.

6. Having regard to the facts and circumstances of the case, in my view order of the Tribunal is liable to be upheld.

7. So far as facts mentioned in the order of the Tribunal is concerned, learned Standing Counsel is not able to controvert the findings recorded by the Tribunal. The fact remains that in the case of Fibre Links, Kanpur v. CST (Supra), Division Bench of the Tribunal held that the narrow woven fabrics and braded cord are exempted from tax being cotton fabrics. The revision against the order of the Tribunal has been dismissed by this Court and the view of the Tribunal has been accepted by the State Government. Additional Commissioner, Trade Tax (Legal) is its circular dated 27.11.2003 has informed to the Additional Commissioner, Kanpur about the decision of the state Government with regard to taxabitity of narrow woven fabrics and braded cord. The contents of the letter are re-produced hereinbelow:

izs"kd]

dfe''uj O;kikj dj] mRrj izns''kA

lsok esa]

,Mh''kuy dfe''uj xzsM&1] O;kikj dj] dkuiqj tksu] dkuiqjA

fnukad% y[ku?% uoEcj 27] 2003] egksn;]

d`i;k uSjk owosu&QSfczDl rFkk czsMsM dkMZ dh djns;rk ds lEcU/k esa vius v} Z''kkldh; i= la[;% 4040@ fnukad 14 Qjojh] 2003 dk lanHkZ xzg.k djsa] ftlds }kjk mDr oLrqvksa dh djns;rk ds lEcU/k esa foospuk vk[;k izsf"kr dh gSA ftlesa loZJh Qkbcj fyaDl] dkuiqj ds o"kZ 89&90 ds okn esa ek? O;kikj dj vf/kdj.k ds fu.kZ; esa ;g m)fjr fd;k x;k gS fd czsMsM ^^dkMZ flEiyhfIVj** ugha gS vkSj dsoy ogh dkMZ dj;ksX; gS] tks cka/kus ;k diM+k lq[kkus ds fy, mi;ksx esa vkrs gksA mDr fu.kZ; ds fo:) ek? mPp U;k;ky; esa fjohtu nk;j fd;s x;s Fks ysfdu mldh lquokbZ ds igys gh dj fu/kkZjd vf/kdkjh us mijksDr lEcU/k esa O;kikjh dks vfUre dj fu/kkZj.k vkns''k esa djeqDr ?kksf"kr dj fn;k Fkk rFkk bl rjg ds vU; lHkh O;kikfj;ksa ds lHkh o"kksZ ds ekeys esa O;kikfj;ksa dks djeqDr ?kksf"kr fd;k tkrk jgk] ftlds dkj.k ek? mPp U;k;ky; us mijksDr fjohtUl dks mijksDr dkj.kksa ls fu"Qy ekurs gq;s [kkfjt dj fn;k FkkA ,slh fLFkfr esa mDr oLrqvksa dh dj ns;rk dh fLFkfr Li"V djus dk vuqjks/k fd;k x;k FkkA

mijksDr ds lEcU/k esa vki }kjk izsf"kr vk[;k ds ifjizs{; esa izdj.k ''kklu dks lanfHkZr fd;k x;k FkkA ''kklu Lrj ij izeq[k lfpo] dj ,oa fucU/ku dh v/;{krk esa fnukad 30&4&2003 dks lEiUu fof/k lfefr dh cSBd esa ;g fu.kZ; fy;k x;k Fkk fd bl rjg ds ekeyksa esa iwoZ o"kksZa ds lEcU/k esa ,sls O;kikfj;ksa ds fo:) /kkjk 21&? 2? dh uksfVl u tkjh dh tk;s rFkk dfri; lwpuk,a miyC/k djkus dh vis{kk dh x;h Fkh] ftls ''kklu dks miyC/k djk nh x;h FkhA

uWjks owosu QSfczDl ,oa czsMsM dkMZ ij O;kikj dj dh ns;rk ds lEcU/k esa lE;d~ fopkjksijkUr ''kklu }kjk vius i= la[;k&d?fu?&2&4604@X;kjg 03&9&?31? @ 03 fnukad 25-11-2003 ls lwfpr fd;k gS fd pWafd ek? vf/kdj.k ds fu.kZ; ds fo:) fjohtu ek? mPp U;k;ky; }kjk vLohdkj fd;k x;k gSA vr% vf/kdj.k dk fu.kZ; vfUre gks pqdk gSA blfy, orZeku esa bl ij dksbZ dj ns; ugha gSA

d`i;k ''kklu ds mijksDr funsZ''kksa ls vius v/khuLFk dj fu/kkZjd vf/kdkfj;ksa dks funsZ''kuqlkj dk;Zokgh djus dk funZs''k nsus dk d"V djsaA

Hkonh;] g?@& ?lksrh johUnz pUnz? ,Mh''kuy dfe''uj ?fof/k? O;kikj dj] eq[;ky;] mRrj izns''kA

8. In the aforesaid letter it has been categorically stated that the Government vide GO. No. K.N. -2-4604/11-03-9(31)/03 dated 25.11.2003 has informed that since the revision against the decision of the Tribunal has been rejected, hence the decision of the Tribunal become final and there is no liability of tax on the narrow woven fabrics and braded cord. It is settled principle of law that the opinion of the Government and the circulars are binding upon the revenue authorities.

9. In the case of Commissioner of Sales Tax, A.P. v. Indra industries reported in 2000 UPTC 472 AC held as follows

A circular by tax authorities is not binding on the courts. It is not binding on the assessee. However, the interpretation that is thereby placed by the taxing authority on the law is binding on that taxing authority. In other words the taxing authority cannot be heard to advance an argument that is contrary to that interpretation.

10. In the case of Simplex Castings Ltd. Vs. Commr. of Cus., Vishakhapatnam, Apex Court held that it is not open to the Customs Department to prefer appeal before CEGAT contrary to what was laid down in the circular.

11. In the case of Paper Products Ltd. v. Collector of Central Excise reported in (1997) 7 SCC 84, Apex Court held as follows:

This question is no more res integra in view of the various judgments of this Court This Court in a catena of decision has held that the Circulars issued u/s 37-B of the said Act are binding on the Department and the Department cannot be permitted to take a stand contrary to the instructions Issued by the Board. These judgments have also held that the position may be different with regard to an assessee who can contest the validity or legality of such instructions but so far as the department is concerned, such right is not available. See Collector of Central Excise v. Usha Martin Industries. In the case of Ranadey Micronutrients v. Collector of Central Excise, this Court held that the whole objective of such circulars is to adopt a uniform practice and to inform the trade as to how a particular product will be treated for the purposes of excise duty. The Court also held that it does not lie in the mouth of the revenue to repudiate a Circular issued by the Board on the basis that it is inconsistent with a statutory provision. Consistency and discipline are, according to this Court, of for greater importance than the winning or losing of Court proceedings. In the case of Collector of Central Excise v. Jayant Dalai (P) Ltd. This Court has held that it is not open to the revenue to advance an argument or even file an appeal against the correctness of the binding nature of the Circulars by the Board. Similarly is the view taken by this Court in the case of Collector of Central Excise v. Kores (India) Ltd.

12. Similar view has been taken by the Apex Court in a recent decision in the case of SACI Allied Products Ltd., U.P. Vs. Commissioner of Central Excise, Meerut, , Union of India and Another Vs. Azadi Bachao Andolan and Another,

13. In this view of the matter, order of the Tribunal is upheld.

14. In the result, all the three revisions fail and are accordingly, dismissed.

