**(2006) 02 AHC CK 0057**

**In the Allahabad High Court**

**Case No :** Trade Tax Revision No. (439) of 1999

The Commissioner, Trade Tax — APPELLANT

Vs

Noorie Manure Mill — RESPONDENT

**Date of Decision :** 07-02-2006

**Acts Referred:**

Central Sales Tax Act, 1956 — Section 8(2A)
Uttar Pradesh General Clauses Act, 1904 — Section 21
Uttar Pradesh Sales Tax Act, 1948 — Section 3A, 4
Uttar Pradesh Trade Tax Act, 1948 — Section 11

**Citation :** (2006) 02 AHC CK 0057

**Hon'ble Judges :** Rajes Kumar, J

**Bench :** Single Bench

**Advocate :** B.K. Pandey and S.C, for the Appellant; Piyush Agarwal, for the Respondent

**Final Decision :** Allowed

## Judgement

Rajes Kumar, J.—Present revision u/s 11 of the U.P. Trade Tax Act (hereinafter referred to as the "Act") is directed against the order of the Tribunal dated 30th November, 1998 relating to the assessment year, 1992-93 under the Central Sales Tax Act.

2. The short question involved in the present revision relates to the taxability of the "Crushed Horns and Hoofs". The dealer-opposite party (hereinafter referred to as "dealer") claimed that it is not liable to tax on the turnover of Crushed Horns and Hoofs under the Central Sales Tax Act being exempted under the U.P. Trade Tax Act, while it has been taxed by the assessing authority treating it as crushed bones taxable under the notification No. 6583 dated 30th September, 1982. The claim of the dealer was rejected on the ground that it was not exempted from tax being covered under crushed bones. First appeal filed by the dealer was allowed. It was claimed before the appellate authority that crushed horns and hoofs were exempted from tax under the U.P. Trade Tax Act under the Notification No. 6569 dated 12.9.1986. First appellate authority accepted the

claim of the dealer and granted exemption on the central sales in view of Section 8(2-A) of the Central Sales Tax Act. Commissioner of Trade Tax filed appeal before the Tribunal. Tribunal by the impugned order, rejected the appeal of the Commissioner of Trade Tax. Tribunal held that under the notification No. 6569 dated 12.9.1986 "Horns. Comb and all other articles made from Horns" are exempted from tax u/s 4 of the U.P. Trade Tax Act. Tribunal further held that Horns and Hoofs are also not liable to tax under the entry "Bones including horns and hoofs but not including crushed bones". Tribunal held that from the aforesaid entry only crushed bone has been excluded and not "Crushed Horns and Hoofs". Tribunal also observed that Horns and Hoofs are used as fertilizer and not used for any other purpose and fertilizer is exempted from tax.

3. Heard learned Counsel for the parties.

4. I learned Standing Counsel submitted that under entry 6 of Notification No. 7038 dated 31.1.1985 Horns and Hoofs are included in Bones and, therefore, crushed Horns and Hoofs are also excluded being crushed bones and are taxable under notification No. 6583 dated 30.9.1982. He further submitted that the crushed bones is not covered under the entry "Horns, comb and all other articles made from horns" of notification No. 6569 dated 29.9.1986 because crushed bone is not an article made from Horns. He also submitted that the Horns and Hoofs are known as bones in common parlance and commercial sense and by way of clarification they have been included in bones, though they are always treated as Bones. He submitted that in the case of Hindustan Bone Mills v. CST reported in 2005 UPTC 886 this Court held that crushed bone is not fertilizer.

5. Learned counsel for the dealer submitted that from the entry "Bones including Horns and Hoofs" of notification No. 7038 dated 31.1.1985 issued u/s 4 of the Act only crushed bones has been excluded and not crushed Horns and Hoofs. He submitted that if the intent of legislature would be to exclude crushed horns and hoofs the same would have been specifically excluded, but since they have not been excluded from the bones, they are exempted under the aforesaid notification.

6. It is relevant to refer the relevant notification to adjudicate the issue.

Notification No. ST-II-7038/X-7 (23)/83-U.P. Act XV/48-Order-85, dated 31.1.1985.

7. 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. 1 of 1904) and in supersession of all previous notifications issued under aforesaid Clause (a) of Section 4, the Governor is pleased to exempt, with effect from February 1, 1985, the goods mentioned in column 2 of Schedule hereunder from payment of tax under the said Act of 1948, subject to the conditions, if any, specified in column 3 thereof:

6.Bones including horns and hoofs, but not including crushed bones.

 

Notification No. ST-II-6583/X-6(25-A)/76-U.P. Act 15/48-Order-82, dated 30.9.1982.

8. In exercise of the powers under the proviso to Clause (e) of Sub-section (1) of Section 3-A of the Uttar Pradesh Sales Tax Act. 1948 (U.P Act No b.XV of 1948), read with Section 21 of the U.P. General Clauses Act. 1904 (U.P. Act No. 1 of 1904), the Governor is pleased to make, with effect from October 1, 1982, the following amendment in Government Notification No. ST-2-5785/X-10 (1)-80-U.P. Act 15/48-Order-81, dated September 7, 1981:

AMENDMENT

For the-entries against serial No. 8 of the list of the aforesaid notification, the following entries shall be substituted, namely:

8. Crushed bones M or I 6 percent.

Notification No. ST-II-6569/X-6 (8)/85-U.P. Act-15/48-Order-86, dated 12.9.1986.

In exercise of the powers u/s 4 of the Uttar Pradesh Saless 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 Mp/1 of 1904), the Governor is pleased to make, with effect from September 15, 1986, the following amendments in Notification No. ST-U-7038/X-7(23)-U.P. Act-XV-48-Order-85, dated January 31, 1985:-

AMENDMENT

In the Schedule to the aforesaid notification for the entry at serial No. 32, the following entries shall be substituted.

32. Horn combs and all other articles made from horn.

Under the entry 32 "Horn combs and all other articles made from horn" only horn combs and articles made from horn is covered Crushed Horns cannot be said to be article made from Horn and therefore, it is not covered under the aforesaid entry. Under the Notification No. ST-II-7038/X-7(23)-U.P. Act-XV-48-Order-85, dated January 31, 1985, Bones including Horn and Hoof is exempted but crushed bones has been excluded and made taxable. When horns and hoofs are included in the bones then in the exclusion part also crushed bone include crushed Horn and Hoof. In common parlance also Horns and Hoofs are considered as Bones. Thus inclusion of Horns and Hoofs in Bones in the notification appears to be clarificatory only. Since crushed bone is excluded from the entry "Bone including Horn and Hoof", in my view the crushed horns and hoofs being crushed bones are also deemed to be excluded. Tribunal has also committed an error in treating crushed Horns and Hoofs as fertilizer. In the case of Hindustan Bone Mills Pvt. Ltd. v. Commissioner of Trade Tax reported in 2005 UPTC 886 this Court held that crushed bone is not a fertilizer. In this view of the matter, the order of the Tribunal is liable to be set aside and the appeal filed by the Commissioner of Trade Tax before the Tribunal is liable to be allowed

 

In the result, revision is allowed. Order of the Tribunal and the first appellate authority are set aside. Appeal No. 7 of 1997 filed by the Commissioner of Trade Tax before the Tribunal stands allowed and the order of the assessing authority is restored.

 