(2005) 09 AHC CK 0199

In the Allahabad High Court

Case No : Trade Tax Revision No. 762 of 1997

The Commissioner, Trade Tax — APPELLANT

Vs

S/s Agarwal Oil Refinery Corporation — RESPONDENT

Date of Decision : 13-09-2005

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 11, 3AAA

Citation : (2005) 09 AHC CK 0199

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : B.K. Pandey and S.C, for the Appellant; S.R. Gupta and Praveen Kumar, for the Respondent

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 21st April, 1997 relating to the assessment year 1990-91.

2. The following question has been raised in the present revision.

"Whether Tribunal was legally justified in rejecting the appeal of the department and holding that used mobile oil does not comes under the category "old discarded unserviceable ... goods" and not taxable at the point of sale to consumers?"

3. Heard Sri B.K. Pandey, learned standing counsel and Sri S. R. Gupta, Senior Advocate assisted by Sri Praveen Kumar appearing on behalf of the dealer opposite party.

4. Learned Standing Counsel submitted that the dealer opposite party (hereinafter referred to as "the dealer") has purchased used oil from unregistered dealer and also from the Railways and such used oil was considered as burnt oil. The assessing authority levied the tax u/s 3AAAA of the Act being

covered under the entry old discarded and unserviceable...which is taxable at the point of sale to consumers. He submitted that the first appellate authority and the Tribunal has illegally deleted the tax levied on the purchases of used oil u/s 3-AAAA of the Act. In support of his contention, he relied upon the decision of this Court in the case of Commissioner of Sales Tax v. S/S Industrial Lubricants reported in STI 1984 Allahabad High Court, 270.

5. Learned counsel for the dealer submitted that the used oil did not lost its characteristic of oil. It contained some impurity but has all characteristic of oil. He submitted that the assessing authority has not recorded any finding that the used oil, which has been purchased, lost the characteristic of oil and ceases to be the oil. He submitted that since the used oil had a character of oil is covered under the entry of "oils of all kinds" or in any case, taxable at the point of manufacturer or importer as an unclassified goods and the provision of Section 3-AAAA of the Act does not apply. In support of his contention, he relied upon the decision of this Court in the case of Commissioner of Sales Tax v. Roopji & Sons, Arvindpuri, Meerut reported in STI 2003 Allahabad High Court 390. He further submitted that the decision in the case of Commissioner of Sales Tax v. S/S Industrial Lubricants (supra) is not applicable to the present case. He submitted that in that case the item for consideration was that the mobil oil which has already been used and which has out-lived its utility as mobile oil. In that case, it has been held that such mobil oil which has out-lived its utility as mobil oil does not retain the character of mobil oil, but it becomes old discarded or unserviceable. He also relied upon the Division Bench decision of the Bombay High Court in the case of Commissioner of Sales Tax v. Oil Processors Private Limited, reported in 108 STC 44 for the purpose that the lubricating oil after removal of impurities remains the lubricating oil. Reliance has been placed to show that the lubricating oil, which was used and subsequently processed, was also a lubricating oil which has been held as lubricating oil after processing.

6. I have perused the order of the Tribunal and the authorities below. I do not find any error in the order of the Tribunal.

7. In the assessment order, the assessing authority has accepted the purchases of used oil from unregistered dealer and from the Railway. No finding has been recorded that the purchased used oil lost the characteristic of oil. Used oil has been referred in the bracket as burnt oil, but no reason has been given why it has been referred as burnt oil/ First appellate authority found that the dealer purchased used oil and by the process of refining made fresh mobil oil. This shows that the oil which was purchased was used oil has a characteristic of oil out of which only impurity has been removed by the process of refining and it remains oil.

8. It is useful to refer the Notification No. ST-II-5785/X-10(1)-80-U.P. Act XV-48-Order-81 Dated 7.9.1981.

"Old, discarded, unserviceable or obsolete machinery, stores or vehicles including waste products except cinder, coal ash and such items as are included in any other notification issued under the Act (a), 8 % Sale to consumer."

The aforesaid notification came up for consideration before Hon''ble Supreme Court in the case of Rainbow Steel Ltd Meerut v. CST reported in 1981 UPTC 400. The Apex Court held as follows.

"When the expression "Old" is by itself vague, imprecise and ambiguous being too general, the principle of Noscitur of socies will have to be applied i.e. all the associated words will taken colour from each other the meaning of the more general adjective viz "Old" have restricted to a sense analogous to the list general adjective '' discarded unserviceable or obsolete."

"or to fall within the expression that old machinery occurring in the entry, the machinery must be old machinery in the sense that it has become non functional or non usable."

9. Thus, if the used oil possess the characteristic of oil and is usable as an oil, it cannot be treated covered under the entry of "old discarded or unserviceable...". In the case of CST v. Roopji & Sons, Arvindpuri, Meerut reported in STI 2003 Allahabad High Court 390, used oil has been held as covered under the entry of " All Kinds of oil..." and not covered under the entry of "old, discarded, unserviceable...". This Court held as follows:

"So far as used oil is concerned it is not the case of the revenue that the used oil lost its characteristic of oil. Used oil only contains some impurity, but has all characteristic of oil and remains as oil. Entry of ''All kinds of oil..'' is a wider entry and includes all kinds of oil including used oil. Accordingly, Tribunal had rightly held barrel made of iron liable to tax under the entry of containers made of iron at the rate of 4% and used oil under the entry ''Oils of all kind... at the rate of 4%".

10. In the case of CST v. Oil Processors Private Limited (supra), the question for consideration was whether the processing/conversion of used lubricating oil into usable lubricating oil by the process of refining amounts to manufacturing. The Division Bench of the Bombay High Court held that what has been obtained by the process of refining is lubricating oil from the used oil and the process does not amount to manufacturing. This decision is referred for limited purposes that the used lubricating oil and the refining lubricating oil both have been treated as lubricating oil which shows that the used lubricating oil had a characteristic of oil.

11. In the case of Commissioner of Sales Tax v. S/S Industrial Lubricants (supra) relied upon by the learned Standing Counsel, the item for consideration was that mobil oil which has already been used and which has outlived its utility as mobile oil. In that case, it has been held that such mobil oil which has out-lived its utility as mobil oil does not retain the character of mobil oil, but it becomes old discarded or unserviceable. Thus, the case is distinguishable on the facts and is not applicable in the present case.

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

13. In the result, revision has no merit and is, accordingly, dismissed.

