(2005) 10 AHC CK 0045

In the Allahabad High Court

Case No : Trade Tax Revision No''s. 1055 and 1070 of 1998

The Commissioner, Trade Tax — APPELLANT

Vs

S/S Deva Metal Powder Pvt. Ltd. — RESPONDENT

Date of Decision : 20-10-2005

Acts Referred:

Central Sales Tax Act, 1956 — Section 9
Uttar Pradesh Trade Tax Act, 1948 — Section 11, 22, 7(3)

Citation : (2005) 10 AHC CK 0045

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : R.D. Gupta and S.C, for the Appellant; S.B.L. Srivastava, for the Respondent

Final Decision : Allowed

Judgement

Rajes Kumar, J.—These two revisions u/s 11 of U.P. Trade Tax Act (hereinafter referred to as "Act") are directed against the order of Tribunal dated 19.03.1998 for the assessment year 1989-90 both under the U.P. Trade Tax Act and Central Sales Tax Act.

2. Dealer/opposite party (hereinafter referred to as "Dealer") was engaged in the business of manufacture and sale of aluminium powder. In the original assessment orders passed u/s 7(3) of the U.P. Trade Tax Act and u/s 9 of Central Sales Tax Act aluminium powder have been treated as metal and accordingly held liable to tax @ 2,2%. Assessing authority initiated the proceeding u/s 22 of the Act on the ground that in the case of Hindustan Aluminium Corporation Ltd. v. The State of U.P. and Anr. reported in 1981 UPTC 1249, Apex Court has considered the entry of "All kinds of minerals, ores, metals and alloys including sheets and circles" and held that under this entry only the primary metal is covered, It has been held that sheet and circle of aluminium would not be covered under the entry of "metal". Assessing authority accordingly, rectified the assessment orders u/s 22 of the Act and levied the tax treating the aluminium

powder as an unclassified item. First appeal filed by the dealer have been allowed and the orders passed u/s 22 of the Act have been set aside. Commissioner of Trade Tax filed appeal before the Tribunal, which have been rejected and the order of the first appellate authority have been upheld.

3. Heard learned Counsel for the parties.

4. Learned Standing Counsel submitted that the aluminium powder is manufactured from the aluminium ingots and it is not the metal in primary form and therefore, it is not covered under the entry of "All kinds of minerals, ores metals and alloys including sheets and circles". He submitted that the Apex Court in the case of Hindustan Aluminium Corporation Ltd. v. The State of U.P. and Anr. (supra), has held that only the metal in primary form is covered under the entry of metal. Therefore, there was an apparent mistake in the assessment orders, which has been, rightly rectified by the assessing authority. He submitted that the decision referred by the Tribunal CST v. Devi Deyal Aluminium Ind. Pvt. Ltd. reported in 1992 UPTC 1145 has been over ruled by the Apex Court. He further submitted that mistake can be rectified u/s 22 of the Act, being a mistake apparent on the face of record on the basis of decision of Apex Court and high Court. In support of his contention he relied upon the decision in the case of Karam Chand Thapar & Bros. Ltd. v. State of U.P. and Anr. reported in 1976 UPTC 671, Ram Singh and Sons Engineering Works v. state of U.P. reported in 1977 UPTC 74 and in the case of Hotel Clarks Shiraz v. CST reported in 1992 UPTC 986. Learned Counsel for the dealer submitted that the aluminium powder in the form of powder remains aluminium in its primary form. He further submitted that in any case this issue is debatable as to whether aluminium powder is metal in primary form or not and, therefore, provisions of Section 22 of the Act does not apply.

5. Having heard learned Counsel for the parties and perused the order of Tribunal and the authorities below. Tribunal in the impugned order has referred that in page 3 para 2 of the assessment order it ,is mentioned that the dealer has manufactured aluminium powder. If the aluminium powder has been manufactured and is a manufactured product by no stretch of imagination, it can be metal in primary form Even otherwise aluminium powder can not be said to be metal. Apex Court in the case of Hindustan Aluminium Corporation Ltd. v. The State of U.P. and Anr. (supra) held that aluminium in primary form is covered under the entry of metal Apex Court held that aluminium sheet and circle are not metal in primary.

6. Following the aforesaid decision of the Apex Court in the case of Hindustan Aluminium Corporation Ltd. v. The State of U.P. and Anr. (supra) Apex Court over ruled the decision of this Court in the case of CST v. Devi Deyal Aluminium Ind. Pvt. Ltd. (supra) in SLP (c) 3188 of 1995 decided on 24.08.1997.

7. In my view, aluminium powder can not be said to be metal in primary form, in as much as it is manufactured product. Therefore, it can not be treated as metal

under the entry "All kinds of minerals, ores, metals and alloys including sheets and circles" including in any other entry of any other notification issued under the Act of the notification No. 6075 dated 01.10.198. It is settled principal of law that on the basis of the decision of the High Court and the Apex Court order can be rectified u/s 22 of the Act being mistake apparent on the face of record. Reliance is placed on the decision of Karam Chand Thapar & Bros. Ltd. v. State of U.P. and Anr reported in 1976 UPTC 671 Ram Singh and Sons Engineering Works v. state of U.P. reported in 1977 UPTC 74 and in the case of Hotel Clarks Shiraz v. CST reported in 1992 UPTC 986.

8. For the reasons stated above, order of the Tribunal is liable to be set aside.

9. In the result, both the revisions are allowed. Order of the Tribunal is set aside.