(2006) 11 AHC CK 0239

In the Allahabad High Court

The Commissioner, Trade Tax — APPELLANT

Vs

S/S Kishan Brothers — RESPONDENT

Date of Decision : 06-11-2006

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

Citation : (2006) 11 AHC CK 0239

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Judgement

Rajes Kumar, J.—Present five revisions u/s 11 of U.P. Trade Tax Act (hereinafter referred to as "Act") are directed against the orders of Tribunal dated 8th January, 200 land 16th February, 2004 relating to the assessment years, 1991-92, 1992-93 and 193-94, 1994-95 and 1997-98.

2. Since in all the five revisions common questions are involved, the same are being disposed of by the common order.

3. The short question involved in the present revisions relate to the rate of tax on "Badam Thandai Syrup". The assessing authority levied the tax as "Syrup" under the entry "Soda water, lemonade, fruit-juices and other soft beverages and syrups, squashes, jam and jellies" of Notification No. ST-II-5905/X-6''(I)-83-U.P. Act 15/48-Order-83, dated 12.10.1983. Tribunal held it taxable as an unclassified item.

4. Heard learned Counsel for the parties.

5. Learned Standing Counsel submitted that the item in dispute is Badam Thandai Syrup and thus, according to the dealer/opposite party (hereinafter referred to as "dealer") own admission and name of product is Syrup of Badam Thandai and thus, has been rightly assessed to tax as a "Syrup" under the entry "Soda water, lemonade, fruit-juices and other soft beverages and syrups, squashes, jam and jellies" of Notification No. ST-II-5905/X-6 (I)-83-U.P. Act 15/48-Order-83, dated 12.10.1983. Tribunal held it taxable as an unclassified

item.

6. Learned Counsel for the dealer submitted that merely because it is named as "Badam Thandai Syrup", it could not be taxed as syrup. Me submitted that the Tribunal has recorded the finding that it is not used as such, but being in a concentrated form, it is being used after mixing with milk, sugar, water, ice etc. He submitted that it does not fall under the beverages because by itself it is not useable as a drink.

7. In my view. Badam Thandai Syrup being Syrup has been rightly assessed to tax as a "Syrup" under the entry "Soda water, lemonade, fruit-juices and other soft beverages and syrups, squashes, jam and jellies" of Notification No. ST-II-5905/X-6(l)-83-U.P. Act l5/48-Order-83, dated 12.10.1983.

8. Dealer has admitted that it was in a concentrated form and named as a Syrup of Badam Thandai. Syrup is specifically notified under the entry "Soda water, lemonade, fruit-juices and other soft beverages and syrups, squashes, jam and jellies" of Notification No. ST-II-5905/X-6 (l)-83-U.P. Act 15/48-Order-83, dated 12.10.1983. It is doubtful whether it is beverages because by itself it cannot be used as a drink, but it is used as a drink after adding milk, sugar, water, ice etc.

9. In the case of State of Maharashtra v. Brad ma of India Ltd. reported in AIR 2005 SCW 894, Apex Court held that the specific entry would over ride the general entry.

10. In the case of H.P.L. Chemicals Limited Vs. Commissioner of Central Excise, Chandigarh, the Apex Court held that the specific entry is to be preferred over the residuary entry.

11. In the case of Collector of Central Excise, Shillong Vs. Wood Craft Products Ltd., Apex Court held that the residuary can be resorted to only when even a liberal construction of the specific headings is not capable of covering the goods in question.

12. The commodity can be held to be an unclassified in case if by any reason it cannot be classified under any of the item of the notification. The item in dispute is named as "Badam Thandai Syrup". The Tribunal has also recorded the finding that it is in concentrate form and is being used after adding milk, sugar, water, ice etc. Thus, in my opinion, it is classifiable under the "Syrup" under the entry "Soda water, lemonade, fruit-juices and other soft beverages and syrups, squashes, jam and jellies" of Notification No. ST-II-5905/X-6 (1)-83-U.P. Act 15/48-Order-83. dated 12.10.1983.

13. There is another aspect to analyse the matter. Badam thandai syrup is being used as a drink after adding milk, sugar, water, ice etc. When it is being used as a drink it may be covered under soft beverage. The items mentioned in the entry, namely, "Soda water, lemonade, fruit-juices and other soft beverages and syrups" are relatable to the drinks. Badam Thandai Syrup is also relatable to the drinks. Therefore, on the rule of ejusdem generis in my opinion, there is no

manner of doubt that it is covered under the entry "syrup".

14. Learned Standing Counsel and the learned Counsel for the dealer cited several decisions on the soft beverages. In my opinion, these decisions are not relevant because the assessing authority taxed Badam Thandai Syrup as a "Syrup", which is one of the items notified under the entry "Soda water, lemonade, fruit-juices and other soft beverages and syrups, squashes, jam and jellies" of Notification No. ST-II-5905/X-6 (l)-83-U.P. Act 15/48-Order-83, dated 12.10.1983 and thus, there is no need to go into the question whether it is soft beverages.

15. For the reasons stated above, it is held that the Badam Thandai Syrup is liable to tax as "Syrup" under the entry "Soda water, lemonade, fruit-juices and other soft beverages and syrups, squashes, jam and jellies" of Notification No. ST-II-5905/X-6(1)-83-U.P. Act 15/48-Order-83, dated 12.10.1983.

16. In the result, all the five revisions are allowed. The orders of the Tribunal are set aside. Tribunal is directed to pass appropriate orders u/s 11 (8) of the Act.