
(2004) 08 AHC CK 0331
In the Allahabad High Court
Case No : Trade Tax Revision No. 1082 of 1995

The Commissioner, Trade Tax

APPELLANT

Vs

S/S Krishna Khandsari Udyog

RESPONDENT

Date of Decision : 31-08-2004

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11, 3A, 3D, 4B

Citation : (2004) 08 AHC CK 0331

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : S.C, for the Appellant;

Final Decision : Allowed

Judgement

Rajes Kumar, J.—This revision u/s 11 of U.P. Trade Tax Act (hereinafter referred to as "Act") is directed against the order of Tribunal dated 24.01.1995 relating to the assessment year 1987-88.

2. Dealer/opp. party was the manufacturer of molasses and rab salawat and was holding a recognition certificate u/s 4-B of the Act and was eligible to make the purchases of raw material on concessional rate of tax. It is alleged that the opposite party purchased rab sayar on payment of concessional rate of tax and manufactured molasses and rab salawat out of it. It is claimed that rab sayar and rab salawat both are rab, thus, since the tax had already been paid on rab sayar. turn over of rab salawat was not liable to tax. Assessing authority had not accepted the plea of the dealer and levied the tax on the turn over of rab salawat. First appellate authority accepted the claim of the dealer and exempted the turn over of rab salawat. Tribunal in the appeal, filed by the Commissioner, Trade Tax confirmed the order of first appellate authority and rejected the appeal filed by the Commissioner Trade Tax. Being aggrieved, present revision has been filed. Tribunal held that in view of the Explanation 1(b) of Section 3-D both rab sayar and rab salawat are one and. the same goods and since tax on rab sayar had already been levied, tax on the turn over of rab salawat could not be levied.

3. Heard learned Counsel for the parties.

4. Explanation I of Section 3-(D) reads as follows :

For the purpose of this Act, the following goods shall be deemed to be different from each other, namely;

(a) khandsari, molasses, including sheerasayar, sheera galawat and sheera salawat;

(b) rab, including rab sayar, rab galawat and rab-salawat;

(c) gur, lauta and raskat;

and accordingly, nothing in this section shall be construed to prevent the imposition, levy or collection of tax u/s 3-A in respect of any one of the said goods merely because tax has been imposed, levied or collected under this section in respect of any other of them, or vice versa.

5. Learned Standing Counsel contended that Explanation 1(b) only says that both rab sayar and rab salawat have included in rab but both are two different commodities, in as much as rab salawat is obtained by the manufacturing process from rab sayar. He submitted that by including rab sayar and rab salawat, the meaning of rab has been extended but it does not mean that both rab sayar and rab salawat have been treated as one and the same commodities. He further submitted that rab salawat is a different commodity than rab sayar. He submitted that there is no dispute that rab salawat and rab sayar are two different commodities, which has also been accepted by the Tribunal but the Tribunal has illegally held that turn over of rab salawat is not liable to tax because the tax has already been paid on rab sayar. both being one commodity, in view of the Explanation 1 of Section 3-D, is erroneous. Learned Counsel for the opposite party submitted that the view of live Tribunal is correct and liable to be affirmed.

6. Question for consideration is whether the explanation has treated both rab sayar and rab galawat as same commodities and if it is so. if the tax has been paid on rab sayar, no further tax is leviable on the turn over of rab salawat. In my view explanation (1) does not say that rab sayar and rab galawat are one and the same commodities. Explanation I(b) only says that goods mentioned in Clause (a) (b) and (c) shall be deemed to be different from each other. Clause (b) only says that rab, including rab sayar and rab salawat. Intent of the explanation was not to treat rab sayar and rab salawat as one and the same commodity and there is nothing to this effect. At the most it can be said that by Clause (b) the meaning of rab has been extended including rab sayar and rab galawat. Explanation (I) only says that commodities mentioned in Clause (a) (b) and (c) are different commodity. In my view reading of Clause (b) of Explanation 1 in a manner, treating rab sayar and rab salawat as the same commodity, is erroneous. In common parlance and in commercial sense both rab sayar and rab salawat are treated as two different commodities. As a matter of fact rab sayar is

raw material for the manufacturing of rab salawat. By the process of manufacturing from rab sayar, molasses and rab salawat are obtained. However, it is open to the Legislature to treat both rab sayar and rab salawat as one and the same commodity by fiction but there is nothing in Explanation I to Section 3-D by which rab sayar and rab salawat have been treated as same commodity. By Explanation I(b) both rab says and rab salawat have been classified under rab to treat all these item as different item mentioned in Clause (a) (b) and Clause (c). In the case of Sonebhadra Fuels v. Commissioner, Trade Tax, U.P. in Trade Tax Revision No. 1261 of 2004 decided on 25.06.2004 the question was if the tax was paid on coal dust whether the turn over of coal briquettes manufactured out of coal dust was liable to be exempted. This Court held that both coal dust and coal briquettes may be treated falling under entry. "All kinds of coal and coke in all its form" but in commercial sense both are two different commodities in substance and in character. Thus it was held that the turn over of coal briquettes was liable to tax.

7. Cases referred by the Tribunal are distinguishable. In the case of CST v. Sadhu Singh Mahendra Singh reported in 1981 STJ, 363 rab galawat and tab have been treated as one commodity in view of Explanation I to Section 3-D, In this case rab sayar and rab salawat was not invoked.

8. In the result, revision is allowed and order of Tribunal is set aside