
(2005) 03 AHC CK 0118

In the Allahabad High Court

Case No : Trade Tax Revision No"s. 1287, 1288 and 189 of 1996 and 144 of 1997

The Commissioner Trade Tax

APPELLANT

Vs

S/S Mittar Sen Industries

RESPONDENT

Date of Decision : 16-03-2005

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 2(1)
Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2005) 03 AHC CK 0118

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : S.C, for the Appellant;

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—These four revisions u/s 11 of U.P. Trade Tax Act (hereinafter referred to as "Act") are directed against the order of Tribunal dated 31.07.1996 relating to the assessment years 1981-82, 1982-83 and 1983-84 and order dated 19.7.1996 for the assessment year 1985-86 under the U.P. Trade Tax Act respectively.

2. Dealer/Opp. Party (hereinafter referred to as "Dealer") was involved in converting the Aluminum Rod into Aluminum Wire of lower gauge. Aluminum rod was tax paid in U.P.. There was no dispute in this regard. Question involved in the present revision is whether the Aluminum Wire which was drawn from Aluminum Rod, on which, tax was paid, is liable to tax again. Tribunal following the decision of this Court in the case of International Electrodes, Hapur, Ghaziabad v. Commissioner of Sales Tax, reported in 1989 UPTC page 1041, held that Wire drawn out of wire rod on which, tax has already been paid, is not liable to tax again. This court relied upon the Circular issued by the Commissioner of Trade Tax dated 21.12.1981.

3. Heard Counsel for the parties.

4. Learned Counsel for the dealer submitted that the issue involved is squarely covered by the decision of this Court in the case of CST v. Decent Industries, Aligarh reported in 2005 NTN Vol. 26 page 202. He further relied upon the decision of Apex Court in the case of Collector of Central Excise Vs. Technoweld Industries, in which, it has been held that obtaining of Wire of thinner gauge from wire rod by cold draw process, does not amount to manufacture of a new product and where the wire rod so used was duty paid wire of thinner gauge, held not excisable. Commissioner of Trade Tax in its Circular no. 110/81 dated 21.12.1981 has also clarified that if tax had been paid on higher gauge of wire then no tax would be payable on the lower gauge of wire obtained by drawing process. In the case of Commissioner of Sales Tax v. Indra Industries reported in 2000 UPTC 472 Apex Court held that the Circular is binding upon the revenue authority.

5. Learned Standing Counsel submitted that the wire and wire rod are the two different commodities and even tax had been paid on Aluminum rod, dealer is liable to tax on the turnover of Aluminum wire.

6. There is no dispute that the Aluminum rod out of which, Aluminum wire was obtained by the process of drawing was tax paid.

7. In the case of CST v. Iron Rods Drawing Factory, 2004 25 NTN 752 dealer was involved in the manufacture of iron rods of given diameter from tax paid iron rods. This Court held that the process does not amount to manufacture.

8. In the case of Divisional Deputy Commissioner of Sales Tax and Anr. v. Bherhaghat Mineral Industries, report in 120 STC 205 Hon"ble Supreme held that crushing Dolomite Lumps into Chips and Powder, is not a process of manufacture and it does not bring about a new commercial commodity.

9. In the case of Commissioner of Sales Tax, U.P. v. Lal kaun Stone Crusher Pvt. Ltd., reported in 2000 NTN 16 474: 2000 UPTC 463 (SC), 118 STC 287 Hon"ble Supreme Court held that crushing of Stone boulders into stone chips and dust for the purpose of sale may remain commercially the same goods and could not be taxed again. Hon"ble Supreme Court has considered the definition of Section 2 (e-1) of U. P. Sales Tax Act. Hon"ble Supreme Court and held as follows:-

"The purposes of sales tax is to levy tax on sale of goods of each variety and not the sale of the substance of out of which they may have been made. As soon as separate commercial commodities emerge or come into existence they become separately taxable goods for purposes of sales tax. Where commercial goods, without change of their identity as such goods, are merely subjected to some processing or finishing, they may remain commercially the same goods which can not be taxed again, in a series of sales, so long as they retain their identity as goods of a particular type. We are, fortified in this view by the decision in State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, what is to be seen in the present case is whether stone Gitti, Chips etc. continue to be identifiable with the stone boulders, which have been bought by the dealer.

In the present case, however, stone, as such, and Gitti and articles of stones and all of similar nature though by size they maybe different. Even if Gitti, Kankar, Stone ballast, etc, may all be looked upon as separation commercial character from stone boulders offered for sale in the market, yet it cannot be presumed that Entry 40 of the notification is intended to describe the same as not stone at all. In fact the term "stone" is wide enough to include the various forms such as gitti, kankar, stone-ballast. In that view of the matter, we think that the view taken by the majority of the Tribunal and affirmed by the High Court stands to reason. We are, therefore, not inclined to interfere with the same."

10. In the case of State of Maharashtra v. Laxmi Stores, reported in 2002 UPTC 453 (SC) : 2002 S.T.I. (45): S.T.I 97 (SC), Hon"ble Supreme Court has held that crushing of big size Stone Boulders into a small size, known as Gitti does not amount to manufacturing within the definition of Section 2(17) of Bombay Sales Tax Act. Apex Court held as follows :

"The contention of the assessee that converting boulders into "gitti " does not involve any manufacturing process within the meaning of the Act, was accepted by the Tribunal. From the order, the aforementioned question was referred to the High Court at Bombay. Following the judgments of Deputy Commissioner of Sales Tax v. Pio Food Packers 1981 U.P.T.C. 667 (SC): 46 S.T.C. 63: Chowgule and Co. Pvt. Ltd. and Anr. v. Union of India and Ors. 1981 U.P.T.C. 702 (SC): 47 S.T.C. 124 and Sterling Foods v. State of Karnataka and Ors. 1986 U.P.T.C. 1236 (SC) : 63 S.T.C.239 the High Court held that the conversion of boulders into "gitti" did not amount to "manufacture". It is this view of the High Court that is assailed in this appeal by the Revenue."

11. In the case of Collector of Central Excise v. Technoweld Industries (supra) arising from the Central Excise Act, Apex Court held that obtaining of wire of thinner gauge from wire rod by cold drawing process, held does not amount to manufacture of a new product and where the wire rod so used was duty paid the wire of thinner gauge, held not excisable.

12. In the case of CST v. Decent Industries, Aligarh (supra), this Court held that Sariya of lower gauge obtained by the process of drawing of higher gauge of Sariya and on which, tax has already been paid, not liable to tax again.

13. In the case of International Electrodes, Hapur, Ghaziabad v. Commissioner of Sales Tax, reported in 1989 UPTC page 1041, this Court held that the wire drawn out of wire rod on which, tax has also been paid, is not liable to tax again.

14. Commissioner of Trade Tax in its circular No. 110/81 dated 21.12.1981 has also clarified that if the tax had been paid on higher gauge of wire then no tax would be payable on the lower gauge of wire obtained by drawing process. In the case of Commissioner of Sales Tax v. Indra Industries reported in 2000 UPTC 472 , Apex Court held that the Circular is binding upon the revenue authority.

15. In view of above discussion. I do not find any error in the order of Tribunal.

16. In the result, all the above four revisions, fail and are accordingly dismissed.