(1998) 12 AHC CK 0079

In the Allahabad High Court

Case No : C.M. Application No. 64311 of 1998 in C.M.W.P. No. 679 (Tax) of 1992

Vam Organic Chemicals Ltd. APPELLANT

Vs

State of U.P. and others RESPONDENT

Date of Decision : 10-12-1998

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1998) 4 AWC 600 : (1998) AWC 600

Hon'ble Judges : S.L. Saraf, J;M. Katju, J

Bench : Division Bench

Advocate : Rajesh Kumar Agarwal, for the Appellant; Addl. A.G., for the Respondent

Final Decision : Allowed

Judgement

M. Katju, J.—Heard learned counsel for the parties.

2. This is an application praying for refund of a certain amount being the amount of purchase tax deposited by the petitioner under protest for the period 1986-87 to 1992-93. This petition had earlier been heard and decided by a Division Bench of this Court consisting of Hon''ble Om Prakash and Hon''ble S. L. Saraf, JJ. Since then Hon''ble Om Prakash J., has been transferred as Chief Justice of Kerala, hence this application has been transferred to this Court on nomination by Hon''ble Chief Justice.

3. The decision of the Division Bench is in Vam Organic Chemicals Ltd. and another v. State of U. P. and others 1997 UPTC 624, The controversy is regarding paragraph 18 of the aforesaid judgment which reads :

"So far as the refund of the amount of Rs. 1,02.34,845.52 paise is concerned, the petitioner company may make a proper application for the refund thereof to respondent No. 2 who will consider the same in the light of the observations made hereinabove."

4. The petitioner made an application for refund in the light of the above observation of the Division Bench and the said application has been rejected by order dated 5.3.1998, hence this application.

5. The short question in this case is whether the principle of unjust enrichment laid down by the Supreme Court in Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others, , can be extended to a case where what is sold is not the original commodity but a different commodity for which the original commodity is used as raw material. In the present case, the petitioner has alleged, and it is not disputed, that the petitioner captively consumed the industrial alcohol for manufacturing certain chemicals, and hence what was sold by the petitioner was not alcohol but chemicals, which is a totally different commodity. The question, therefore. Is whether the petitioner is entitled to refund?

6. Learned Additional Advocate-General has relied upon a Division Bench decision of this Court in the case of Somaiya Organics (India) Ltd. and another v. State of U. P. and another. Writ Petition No. 487 of 1997, decided on 24th August, 1990. He has laid emphasis on the following observation :

"Be that as it may. even if we assume, for the sake of argument that the said Distillery is owned by the Somalya Organics and that, therefore, no sale can be envisaged between two factories owned by the same legal person, even so we are not inclined to direct refund of the purchase tax collected from the petitioner in exercise of our discretionary Jurisdiction under Article 226 of the Constitution, Inasmuch as we presume that the burden of the said tax has been passed by the petitioner to the consumers. No statement is made by the petitioner that the amount of purchase tax was not included in the sale price of the product of the petitioner or that it was not collected from purchasers/ consumers."

This observation does go to support the contention of the learned Additional Advocate-General that the applicant must make a categorical assertion that the amount of purchase tax is not included in the price of goods sold by the petitioner.

7. Learned Additional Advocate-General also relied on the observation of the Supreme Court in the case of Mafatlal Industries Ltd. (supra) in paragraph 110 (iii).

8. However, learned counsel for the applicant has relied on paragraph 9 of the decision of the Supreme Court in the case of Bhadrachalam Paperboards Ltd. and Another Vs. The Government of Andhra Pradesh and Others, . In that decision, the Supreme Court observed :

"We find that the High Court was not right in so presuming in the light of the case put forward by the Government pleader as extracted above.

The appellants have reimbursed a tax liability which was on the Forest Department and the appellants have consumed the goods for manufacturing paperboards, etc. Therefore, the question of appellants passing on the liability to the consumer on the facts of this case would not arise. Consequently, the appellants are entitled for refund of the tax collected from them, not for the entire period but for the period commencing three years prior to the date of filing of the writ petition."

In our opinion, in view of the clear observation of the Supreme Court in paragraph 9 of the decision of Bhadrachalam Paperboards Ltd. and another (supra), we are of the opinion that the observation to the contrary in the decision of the Allahabad High Court in Somaiya Organics (India) and another is not good law.

9. In our opinion, paragraph 9 of the decision of the Supreme Court (quoted above) really clinches the case. The whole controversy is whether if what is sold is not the original goods but some other goods which was manufactured from the original goods, then whether the principle of unjust enrichment is applicable. In other words, whether the principle of. unjust enrichment can be extended to a case where what is sold is not the original goods but some other goods manufactured is from the original goods. Learned Additional Advocate-General contended that paragraph 9 is to be read with paragraph 5, and hence the contention of the learned counsel of the applicant is not correct. We are not in agreement with the contention of the learned Additional Advocate-General. In Bhadrachalam case (supra), the original goods were bamboo and hardwood, which were consumed by the appellant for manufacturing paperboards. In that context, the Supreme Court observed that there is no question of appellant passing on the tax liability to the consumer. This goes to indicate that the Supreme Court was of the view that the principle of unjust enrichment is not applicable to a case, where the goods have not been sold as such and are instead captively consumed for manufacturing some other goods, and what is sold is the new product. This is precisely the situation here, and hence the decisions in Bhadrachalam''s case (supra) squarely applies to the present case.

10. In the circumstances, this application is allowed. The refund as prayed for shall be granted, and the respondents are directed to refund the amount to the applicant within three months from the date of production of a certified copy of this order before the authority concerned.

11. Learned Additional Advocate-General has prayed for leave to approach the Supreme Court. In our opinion, this is not a fit case where leave should be granted because the point has already been decided by the Supreme Court in the case of Bhodrachalam Paperboards (supra). The prayer for leave is therefore rejected.

