(2010) 01 AHC CK 0256

In the Allahabad High Court

Xerox Modicorp Limited APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 11-01-2010

Acts Referred:

Citation : (2010) 01 AHC CK 0256

Hon'ble Judges : S.C. Chaurasia, J;Devi Prasad Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The petitioner, a public limited company incorporated under the Indian Companies Act, 1956 involved in production of zerox machine/photocopiers, voltage stablisers and fax machines, has approached this Court challenging the circulars by which the items produced by the petitioner have been classified as duplicating machine calling to pay higher tax.

2. While assailing the orders in question, learned Counsel for the petitioner has invited attention of this Court to the judgment and order dated 2.12.2002, decided by a Division Bench of this Court in Writ Petition No. 2339 (M/B) of 2002 Canon India Private Limited v. State of U.P. and Ors. where the Division Bench held that the items produced by the petitioner company are electronic goods. The Division Bench while allowing the writ petition has relied upon the earlier judgment of Hon''ble Supreme Court reported in 2001 (1) UPTC 246 BPL Ltd. v. State of Andhra Pradesh. The operative portion in Canon India Private Limited (supra) is reproduced as under:

In our opinion this writ petition deserves to be allowed in view of the decision of the Supreme Court in BPL Limited v. State of A.P (supra). In that case the Supreme Court was called upon to answer the question as to whether fully automated washing machine could be regarded as electronic goods so as to attract the lower rate of sales tax. In paragraph 12 and 13 of that decision the Supreme Court while referring to the Dictionary has observed that even washing machine can be regarded as being one which runs on centrifugal force but the operation or the running of these machines is completely controlled by the micro process technology involved in the said machines. The entire functioning of the washing machine is automatic Data is fed into the machine and thereupon it is the micro processors which control and direct the carrying out of the various functions of the machines which results in the clothes being washed in the desired manner.

In our opinion the decision of the Supreme Court in B.P.L. Ltd. v. State of A.P. case (supra) squarely covers the present case. The petitioners fully automated photocopier machines also run on electron principles and its functions are controlled exclusively and directly by microprocessor and microchips, hence it has been classified as electronic and not as duplicating machines.

We have already held that the decision of the Gujrat High Court has no application in Uttar Pradesh as here the Entries are different. Moreover, assuming there is any conflict in the decision of the Supreme Court and the Gujrat High Court the view of the Supreme Court has to prevail. As regards the decision in Everest Copiers v. State of Tamil Nadu 1996 (103) STC 60 the only question there was whether the contract of making a copy of the documents on payment by a customer was a works contract or a sale. Hence that decision has no application here. Moreover, the history of the Notifications of the State Government referred to above clearly indicate that electronic goods have throughout been treated as a commodity distinct from commodities contained in the Entry pertaining to office machine, which includes duplication machine. For the first time by Notification dated 27.6.2002 photocopier machines have been specifically included in the Entry of duplicating machine. This indicates that prior to 27.6.2002 the State Government never considered photocopier machine to be duplicating machine.

As regard the plea of alternative remedy raised by learned standing counsel the learned Counsel for the petitioner has referred to various decisions e.g. Filterco and Another Vs. Commissioner of Sales Tax, Madhya Pradesh and Another, Oudh Sugar Mills Ltd. v. State of U.P. and Ors. STC 1995 (97) 386; Hindustan Aluminum Corporation Ltd. v. State of U.P. 1978 (41) STC 147 etc. In Union of India (UOI) and Another Vs. State of Haryana and Another, and State of U.P. and Ors. v. Indian Hume Pipe Co. Limited 1977 SC 355, it was held that where the controversy is likely to be of a recurring nature and it does not involve disputed questions of fact but only questions of law then it should be decided by the High Court instead of dismissing the writ petition on the ground of an alternative remedy.

In our opinion since the facts are covered by the decision of the Supreme Court in BPL Limited case (supra) this writ petition has to be allowed. The impugned directive dated 18.3.2002 Annexure-1 to the writ petition, circular dated 21.3.2002 Annexure -2 to the writ petition, order dated 23.3.2002 Annexure 3 and the order dated 18.7.2002 Annexure-16 to the writ petition are quashed.

The respondents are directed to treat the petitioners photocopiers as electronic goods under the Central Sales Tax and U.P. Trade Tax Act and assess them accordingly. Any amount deposited by the petitioner under the interim order of this Court shall be refunded to it within a month from today.

3. In view of above, present writ petition is also allowed, The impugned orders dated 18.3.2002, 21.3.2002 and the orders dated 30.3.2002 (Annexures 1, 3, 4 and 5 respectively) are quashed in terms of the judgment and order dated 2.12.2002, passed by the Division Bench of this Court in the case of Canon India Private Limited (supra). Any amount deposited by the petitioner shall be refunded forthwith.

