SUPREME COURT OF INDIA

Agarwal Oil Refinery Corp.

Vs.

The Commnr.of Trade Tax

C.A.No.2363 of 2007

(D.K.Jain and Asok Kumar Ganguly,JJ.,)

10.08.2011

JUDGMENT

Asok Kumar Ganguly,J.,

1. Heard learned counsel for the parties.

2. This appeal is directed against the judgment and order passed by the High Court in Trade Tax Revisions in exercise of its revisional jurisdiction under Section 11 of U.P. Trade Tax Act, 1948(hereinafter referred to as the "Act"). The order of the Tribunal dated 22nd April, 1996 relating to assessment years 1988-89 and 1989-90 was impugned in Revisions before the High Court.

3. The case of the appellant, who was the dealer is that it purchased burnt mobil oil and refined the same mobil oil, but the assessing authority levied tax on the said burnt mobil oil under Section 3-AAAA of the Act treating the said oil as "old discarded unserviceable store".

4. Admittedly, the first appeal, which was filed by the dealer against such assessment, was allowed and then again a further appeal was filed by the Commissioner of Trade Tax against the order of the first appellate authority. The said appeal by the Commissioner was also dismissed. Thereupon, the Commissioner, Trade Tax filed the revision before the High Court and the revisional Court overturned the concurrent finding of the statutory authorities. In doing so, the High Court came to a finding that the present controversy is covered by a decision of the High Court in the case of Commissioner of Sales Tax vs. S/S. Industrial Lubricants reported in 1984 U.P.T.C. 1101.

5. Following the said decision, the High Court held that burnt mobil oil purchased by the dealer, the appellant herein, is covered under the entry of "old, discarded and unserviceable store" being purchased from unregistered dealer and sold in the same condition. According to the High Court they are liable to be taxed as such under Section 3-AAAA of the Act during the years under consideration.

6. Learned counsel for the appellant while assailing the said finding of the High Court, submitted that the case is not covered by the decision rendered by the High Court in the case of S/S. Industrial Lubricants (supra). The only reasoning on the basis of which the High Court in S/S Industrial Lubricants (supra) allowed the revision is that mobil oil after having been used does not retain the character of mobil oil but it becomes "old, discarded and unserviceable store" and that is why the High Court agreed with the revenue that the burnt mobil oil, being old, discarded or unserviceable store, is liable to be taxed under the notifications dated 1.12.1973 and 4.11.1974 @ 3.5% and 4% respectively.

7. Reference in this connection may be made to the provision of Section 11 of the said Act to appreciate the extent of revisional jurisdiction of High Court in dealing with the concurrent finding of fact. Section 11 of the said Act is set out below:

> "11. Revision by High Court in special cases.-(1) Any person aggrieved by an order made under sub-section (4) or sub- section (5) of Section 10, other than an order under sub-section (2) of that section summarily disposing of the appeal, or by an order passed under Section 22 by the Tribunal, may, within ninety days from the date of service of such order, apply to the High Court for revision of such order on the ground that the case involves any question of law.
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> (2) Any person aggrieved by an order made by the Revising Authority or an Additional Revising Authority refusing to state the case under this section, as it stood immediately before April 27, 1978, hereinafter referred to as the said date, may, where the limitation for making an application to the High Court under sub- section (4), as it stood immediately before the said date, has not expired, likewise apply for revision to the High Court within a period of ninety days from the said date.
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> (3) Where an application under sub- section (1) or sub-section (3), as they stood immediately before the said date, was rejected by the Revising Authority or an Additional Revising Authority on the sole ground that the period of one hundred and twenty days for making the reference, as specified in the said sub-section (1), has expired, such applicant may apply for revision of the order made under sub-section (2)of Section 10, to the High Court within sixty days from the said date on the ground that the case involves any question of law.
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> (4) The application for revision under sub-section (1) shall precisely state the question of law involved in the case, and it shall be competent for the High Court to formulate the question of law or to allow any other question of law to be raised.
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> (5) Every application for making a reference to the High Court under sub- section (1) or sub-section (3), as they stood immediately before the said date, pending before the Revising Authority or an Additional Revising Authority on the said date, shall stand transferred to the High Court. Every such application upon being so transferred and every application under sub-section (4), as it stood immediately before the said date,

pending before the High Court on the said date, shall be deemed to be an application for revision under this Section and disposed of accordingly.

(6) Where the High Court has before the said date, required the Revising Authority or an Additional Revising Authority to state the case and refer it to the High Court under sub-section (4), as it stood immediately before the said date, such authority shall, as soon as may be, make reference accordingly. Every reference so made, and every reference made by such authority before the said date in compliance with the requirement of the High Court under sub- section (4), as it stood before the said date, shall be deemed to be an application for revision under this section and disposed of accordingly.

(6-A)Where the Revising Authority or an Additional Revising Authority has, before the said date, allowed an application under sub-section (1) or sub-section (3), as they stood immediately before the said date, and such authority has not made reference before the said date, it shall, as soon as may be, make reference, to the High Court. Every such reference, and every reference already made by such authority before the said date and pending before the High Court on the said date, shall be deemed to be an application for revision under this section and dispose of accordingly.

(7) Where an application under this section is pending, the High Court may, on an application in that behalf, stay recovery of any disputed amount of tax, fee or penalty payable, or refund of any amount due, under the order sought to be revised:

Provided that no order for the stay of recovery of such disputed amount shall remain in force for more than thirty days unless the applicant furnishes adequate security to the satisfaction of the Assessing Authority concerned.

(8) The High Court shall, after hearing the parties to the revision, decide the question of law involved therein, and where as a result of such decision, the amount of tax, fee or penalty is required to be determined afresh, the High Court may send a copy of the decision to the Tribunal for fresh determination of the amount, and the Tribunal shall thereupon pass such orders as are necessary to dispose of the case in conformity with the said decision.

(8-A) All applications for revision or orders passed under Section 10 in appeals arising out of the same cause of action in respect of the same assessment year shall be heard and decided together:

Provided that where any one or more of such applications have been heard and decided earlier, if the High Court, while hearing the remaining applications, considers that the earlier decision may be a legal impediment in giving relief in such remaining application, it may recall such earlier decisions and may thereafter proceed to hear and decide all the applications together.

(9) The provisions of Section 5 of the Limitation Act, 1963, shall, mutatis mutandis, apply to every application, for revision under this section.

Explanation.- For the purpose of this section, the expression "any person" includes the Commissioner and the State Government."

8. It is made clear from the structure of Section 11 that normally the High Court under revision does not interfere with concurrent findings of fact by the lower authority, unless the case involves any question of law.

9. Traditionally in exercise of revisional jurisdiction, High Court does not interfere with concurrent finding of fact, unless the findings recorded by the lower authorities are perverse or based on an apparently erroneous principles which are contrary to law or where the finding of the lower authority was arrived at by a flagrant abuse of the judicial process or it brings about a gross failure of justice. In this case none of these principles are attracted.

10. In this connection, we may refer to the relevant provision of the Act to find out the real controversy in issue. Section 3AAAA of the Act which has come up for consideration in this case is set out hereinbelow:

"Section 3-AAAA- Liability to tax on purchase of goods in certain circumstances- Subject to the provision of Section 3, every dealer who purchases any goods liable to tax under this Act-

(a) from any registered dealer in circumstances in which no tax is payable by such registered dealer, shall be liable to pay tax on the purchase price of such goods at the same rate at which, but for such circumstances, tax would have been payable on the sale of such goods;

(b) from any person other than a registered dealer whether or not tax is payable by such person, shall be liable to pay tax on the purchase price of such goods at the same rate at which tax is payable on the sale of such goods; Provided that no tax shall be leviable on the purchase price of such goods in the circumstances mentioned in clauses (a) and (b), if -

(i) such goods purchased from a registered dealer have already been subjected to tax or may be subjected to tax under this Act;

(ii) tax has already been paid in respect of such goods purchased from any person other than a registered dealer;

(iii) the purchasing dealer resells such goods within the State or in the course of inter-State trade or commerce or exports out of the territory of India, in the same form and condition in which he had purchased them;

(iv) such goods are liable to be exempted under Section 4-A of the Act".

11. The relevant entries which are covered in this controversy as per notification dated 7th September, 1981 and 31st May, 1985 are as under:

"S.No.	Description of goods	Point of Tax	Rate of Tax
x	x	x	x
31.	Oil of all kinds, other than those covered by any other entry of this list or by any other notification issued under the Act	M or I	4 per cent
32.	Old, discarded, unserviceable or obsolete machinery, stores or vehicles including waste products except cinder, coal ash and such items as are included in any other notification issued under the Act.	Sale to consumer	8 per cent

12. In the instant case, the Tribunal as the second appellate forum is the last fact finding authority. From the admitted facts recorded by the Tribunal it appears that the appellant-the dealer manufactures refined mobil oil from the raw material, i.e., the burnt mobil oil which it purchases and then sells a virtually new item in the market. In 1988-89 and 1989- 90 the assessments were made under Rule 41(7) of the U.P. Trade Tax Rules, but the said assessment has been opened and a fresh assessment has been made. Aggrieved by the same, the dealer preferred first appeal before the A.C.(J) who allowed both the appeals by an order dated 26.5.1995 holding therein that the dealer is not liable to pay and quashed the imposition of tax upon dealer for the relevant assessment years. Aggrieved thereby, the revenue preferred a second appeal before the Tribunal. Before the said appellate authority, the revenue urged that the burnt mobil oil which is purchased by the assessee who was the manufacturer of refined oil is taxable at the point of sale to the consumer as it comes under the category of old and discarded material. The Tribunal did not accept the said contention by examining the facts and the records of the case. The Tribunal came to the following finding:

> "...it is undisputed that the burnt mobil oil on which the tax has been imposed, has been purchased by the assessee respondent from unregistered dealer like kabarie and hawkers in retail manner. However, in the like manner the old PVC shoes and

chappals purchased by the dealer who converted into granules and sold them in the market, they have not been treated under the category of 'old discarded and unserviceable stores' as held by the case laws cited by the assessee's counsel Sri S Rais, Advocate. In our opinion, the case of burnt mobil oil is similar to the case of PVC shoes etc. which are purchased by dealer for manufacture of plastic granules etc. by purchasing them from kabaris and hawkers etc. in retail manner."

13. The Tribunal also came to a finding that the refined mobil oil is manufactured by the dealer from burnt mobil oil. The item is taxable at the point of manufacturer and is not liable to be taxed at the point of sale to the consumer under Section 3-AAAA of the Act.

14. We are of the opinion that unless the High Court, as a revisional authority, finds that those factual conclusions by both the appellate authorities are perverse, it cannot overturn the same by relying on a judgment which is factually distinguishable. In the judgment on which the High Court relied, there is no finding by the Tribunal, the last fact-finding authority, on the nature of the goods, which was the subject matter of the disputed transaction. The case on which the High Court relied, namely, in the case of S/S. Industrial Lubricants (supra), is not the case of a dealer who after purchasing burnt mobil oil, manufactures refined mobil oil from that raw material. But the Tribunal in the instant case has found on facts that the appellant herein manufactured refined mobil oil from the burnt mobil oil. Therefore, there is substantial factual difference between the present case and the case on which the High Court relied while dealing with the revision proceedings before it. We are of the view that the High Court was not correct in relying on a decision, which is factually distinguishable.

15. For the reasons afore-stated, we cannot sustain the order of the High Court. The order of the High Court is quashed.

16. We remand the matter to the High Court and request the High Court to decide the revisions on the facts of the present case on the principle of revisional jurisdiction indicated hereinabove. We hope that the High Court will come to a reasoned conclusion in the facts and circumstances of the case.

17. We further make it clear that we have not expressed any opinion on the merits of the finding recorded by the Tribunal since the High Court is to re-examine the same afresh. With these observations, the appeal is allowed and the matter is remanded to the High Court for a fresh decision of the revision proceedings on the lines indicated above.

18. In the facts of the case, there will be no order as to costs. S.L.P.(C) NO. 2148 OF 2008 Delay condoned. We do not find any merit in the special leave petition, which is accordingly dismissed.