(2000) 118 STC 486

Allahabad High Court (Lucknow Bench)

Case No: Trade Tax Revision No"s. 67 of 1997, 7, 8, 10 and 95 of 1998, 56 and 60 of 1999

Commissioner of Trade Tax		APPELLANT
	Vs	
R.K. Coal Sales Pvt. Ltd.		RESPONDENT

Date of Decision: Sept. 10, 1999

Acts Referred:

- Uttar Pradesh Trade Tax Act, 1948 - Section 10(2), 4A(3)

Citation: (2000) 118 STC 486

Hon'ble Judges: M.C. Agarwal, J

Bench: Single Bench

Advocate: Rajiv Sharma, for the Appellant; Bharat Ji Agarwal, Senior Advocate, S.M.K. Choudhory and Pradeep Agrawal, for the Respondent

Final Decision: Dismissed

Judgement

M.C. Agarwal, J.

In all the aforesaid revision petitions that have been filed by the Commissioner of Sales Tax u/s 11 of the U.P. Trade Tax Act against the various orders passed by the Trade Tax Tribunal, the controversy is as to whether special smokeless fuel (hereinafter referred to as "SSF") or coal manufactured by the respondents is a prohibited item under annexure II to the notification dated July 27, 1991 and no eligibility certificate could have been granted u/s 4-A to the industrial units manufacturing such coal.

2. Revision Petition No. 60 of 1999 is directed against the Tribunal"s order dated December 31, 1998 passed in appeal No. 46 of 1998 by which the Tribunal set aside an order passed by the Commissioner u/s 4-A(3) of the Act whereby the later had cancelled an eligibility certificate granted to the respondents by the Divisional Level Committee.

3. Revision Petition No. 67 of 1997 is directed against an order dated September 3, 1997 passed by the said Tribunal in appeal No. 71 of 1997 whereby the Tribunal quashed an order passed by the Divisional Level Committee rejecting the respondent''s application for the grant of an eligibility certificate. The Tribunal directed the Divisional Level Committee to issue an eligibility certificate.

4. Revision Petition No. 56 of 1999 is directed against an order dated January 21, 1997 passed by the Tribunal in appeal No. 56 of 1997 whereby allowing the said appeal, the Tribunal set aside an order passed by the Divisional Level Committee rejecting the respondent''s application for the grant of an eligibility certificate u/s 4-A(3) of the Act and directing it to grant the same.

5. Revision Petitions Nos. 7, 8 and 10 of 1998 are directed against an order dated September 26, 1997 passed by the Trade Tax Tribunal whereby it set aside the orders passed by the Divisional Level Committee rejecting the applications of the respondents for the grant of an eligibility certificate and directed it to grant the same.

6. The last revision petition, i.e., No, 95 of 1998 is directed against an order dated March 16, 1998 passed by the Tribunal whereby it set aside an order passed by the Divisional Level Committee rejecting the respondent''s application u/s 4-A of the Act and directed it to grant the same.

7. I have heard Sri Rajiv Sharma, learned Standing Counsel for the Commissioner-revisionist and Sri Bharat Ji Agrawal, Senior Advocate, who appeared for the respondent in petition No. 60 of 1999 and Sri Pradeep Agarwal, Advocate, who appeared for the respondents in petition Nos. 67 of 1997 and 56 of 1999. In other petitions, no one appeared for the respondents.

8. u/s 4-A of the U.P. Trade Tax Act, the Government has the power to grant exemption from trade tax if it is of the opinion that it is necessary so to do for increasing the production of any goods or for promoting the development of any industry in the State. The terms of the exemption and the conditions subject to which the same shall be granted have to be specified by the State Government in a notification to be issued for the purpose. In exercise of the said power, the Government of U.P. issued Notification No. ST-2-1093/XI-7(42)-68-U.P. Act-XV/48-Order-90 dated July 27, 1991. The exemption was stated to be available to goods manufactured in a new unit other than the units of the type mentioned in annexure II. Annexure II of the notification contains a list of industries not entitled to the facility of exemption from or reduction in the rate of tax. At serial No. 11, the entry is "coal powder, firewood, coal briquettes and charcoal manufacturing units". Then at serial No. 16 is another entry reading "hard coke making units". The respondents in all these revision petitions had set up industrial units for manufacturing SSF out of coal and the Divisional Level Committee and the Commissioner have taken the view that the commodity in question, i.e., SSF, which is coal, falls in the goods mentioned in entry No. 11 as the goods are of the nature of coal briquettes. The Tribunal in a detailed order

dated September 3, 1997 passed, inter alia, in the matter of Pandit Fuels Company Ltd. held that SSF was a different commodity and did not fall within the description of the commodities mentioned in item 11 of the annexure II. It, therefore, reversed the view taken by the Commissioner and held that the units were entitled to exemption under the notification.

9. The learned Standing Counsel for the Commissioner reiterated the line of reasonings adopted by the Commissioner. The Commissioner has observed that SSF is a kind of coal and that there was no dispute about it. There was no contest between the parties on this point in these revision petitions as well and it was admitted that SSF is also a kind of coal. The Commissioner has stated that SSF is prepared by removing smoke from the coal through some process and that the same process is adopted in the manufacture of coal briquettes also and that SSF and coal briquettes are both fuel. The Commissioner referred to a letter dated October 14, 1993 from the Government of U.P. in which the Government took the view that smokeless coal is a kind of coal and hence is an item prohibited by annexure II of the notification dated July 27, 1991. The Commissioner has not referred to any expert opinion on the point though the dealers had placed the same before him. The expert opinion is contained in a letter dated April 28, 1997, by the Central Mine, Planning and Design Institute Limited (CMPDIL). A copy of this letter has been placed by the respondent, R.K. Coal Sales Pvt. Ltd., in T.T.R. No. 60 of 1999 and is at page 55 of its counter-affidavit. The relevant portion of the letter is as under :

"In this context, necessary clarification about the difference of each of above items are mentioned below :

(1) Special smokeless fuel (SSF) :

SSF is manufactured through the technology developed by CMPDI, Ranchi. Suitable steam coal is the only raw material for manufacturing SSF. The steam coal is seized to 30 mm. to 100 mm. and is fed into shallow depth vertical retorts, developed by CMPDI, where necessary devolatilisation of coal takes place. While the product, SSF, is a domestic coke, coal tar is recovered as by-product from the plant. SSF is used for domestic purpose for cooking and heating. Other commercial establishments like hotels, canteens, etc., also use SSF. SSF is a different product and is different from coal powder, firewood, coal briquettes, charcoal and hardcoke.

(2) Coal / coal powder :

Coal is not manufactured but is available as a mineral coal powder is merely coal grounded to finer size. The chemical composition of coal powder is not different from the coal. In SSF, the volatile matter in coal is eliminated to a great extent while in coal the volatile matter remains in full.

(3) Firewood :

It is dry wood obtained from felling trees.

(4) Coal briquettes :

The raw material for coal briquettes is coal ground to generally below 2 mm. size. The crushed coal is mixed with suitable binders and pressed in briquetting press out of which regular shape required, briquettes may be carbonised in suitable carboniser. The size of coal (30--100 mm) required for manufacturing SSF is different from the size of coal required for making coal briquettes. No binder is required to be used for production of SSF.

(5) Charcoal :

Charcoal is made by burning of wood in absence of air. The process of making charcoal is manual.

(6) Hard-coke :

While hard-coke is produced from coking coal of higher coking propensity, SSF is produced, generally, from weakly coking steam coal of lower grade. For producing hard-coke, coal is required to be crushed before 3 mm. size whereas, for SSF, coal is sized in the range of 30 to 100 mm. Hard-coke is produced through carbonisation of crushed coal in standard coke oven, SSF is produced through devolatilisation of coal in retorts developed by CMPDI, Ranchi. Operating temperature are. also different for coke oven and SSF retorts. Hard-coke is, generally, used for metallurgical purposes, SSF is used for domestic purpose."

10. The Commissioner has just avoided a reference to this letter and has not mentioned any other expert opinion on the point. The Tribunal in its leading order in the case of Pandit Fuel Co. Pvt. Ltd., has referred to some other materials also. It has referred to the opinion of the Coal Controller which is as under :

"This office has been considering SSF as an industrial product and hence it has been kept out of the purview of Colliery Control Order both in respect of pricing and distribution. This clarification is being given on the request of some of the manufacturers."

The Tribunal has also referred to a write up sent by the CMPDIL to Pandit Fuel Co. Pvt. Ltd., which has been reproduced by the Tribunal as under :

"Special smokeless fuel and coal briquettes :

Through both special smokeless fuel and coal briquettes are used as domestic fuel, there are distinct differences between the two in respect of the product and technology. Financial investment and economics of these two plants are also different.

Products :

Special smokeless fuel (SSF) is produced in the size range of 30--100 mm. and has no regular shape whereas coal briquettes are produced by compressing the coal mass in mechanised roll press and as such has definite shape and size.

No binder is required for production of SSF while some binder like clay or bentonite are generally used for making domestic briquettes resulting in increase in ash in it making it an inferior fuel.

Combustion characteristics of SSF have been found superior to that of coal briquettes made out of the same coal.

In raw material for production of SSF is steam coal which is prepared in the size range of 30--100 mm. For coal briquettes, slack coal is used which is crushed down to the size of below 2/3 mm.

By-product :

While by-product, tar, is recovered in SSF plant, no by-product is obtained during production of coal briquettes.

Technology :

Technology for production of SSF was developed by Central Mine Planning and Design Institute Ltd, (CMPDIL) mainly with a view to reduce atmospheric pollution which is very serious during production of soft-coke by manual method. As such, every care has been taken in SSF plant to keep the pollution level below the prescribed limit. No such pollution control arrangement is existing in any briquetting plant as a result of which there is serious pollution during production of briquettes.

Financial investment :

The fixed capital involved in a SSF plant (l00tpd) is about Rs. 100.00 lacs whereas for briquetting plant of the same capacity it is much less higher capital investment in SSF plant is due to the fact that main purpose for development of the technology for production of SSF has been control of atmospheric pollution while in briquettes plants no such attention has been given."

11. The aforesaid material which comes from an expert in coal technology clearly shows that smokeless coal manufactured by the respondents was different from coal briquettes and, therefore, could not be placed in entry No. 11 of the notification. It is important to note that the notification does not exclude the manufacture of coal in general. The exclusionary list contains only coal powder, coal briquettes and hard coke making units, The commodity manufactured by the respondents does not come in any of the three categories though what is manufactured is no doubt coal but with little or no smoke. In M/s. Pappu Sweets and Biscuits Vs. Commissioner of Trade Tax U.P Lucknow, the

honourable Supreme Court has held that the exclusionary part of annexure II should be construed rather strictly. Therefore, the commodities that are mentioned in annexure II have to be given their ordinary and common sense meaning and cannot be stretched to unreasonable extent so as to bring within their scope things that have no similarity with the commodities mentioned therein. Simply because SSF and coal briquettes are both used as fuel, the two cannot be treated to be the same when the entry in annexure II does not use the general words like "fuel" or "coal". If the intention of the Government was to deny the benefit of exemption u/s 4-A to all units manufacturing fuel or coal then the two entries at serial Nos. 11 and 16 should have been different and entry No. 16 could not have been specifically restricted to hard coke when admittedly there are several varieties of coal. As pointed out by the CMPDIL in manufacturing SSF, the pieces of coal that are fed into the process do not loose their shape and coal-tar is obtained as a by-product while coal briquettes are manufactured out of coal dust by using binders like molasses and other things and there is no by-product. The learned Standing Counsel placed reliance on State of Bihar and others Vs. M/s. Universal Hydrocarbons Co. Ltd. and another, . In that case the question was whether calcined petroleum coke fell within the category of declared goods u/s 14 of the Central Sales Tax Act as "coal including coke in all its forms, but excluding charcoal". The respondent in that case purchased raw petroleum coke and by subjecting it to a process of manufacture produced calcined petroleum coke and sold the later in the course of inter-State sales and had claimed adjustment of local sales tax paid on the raw petroleum coke. The honourable Supreme Court held that in spite of the fact that raw petroleum coke lost its original identity or that in the process of manufacture calcined petroleum coke was produced, calcined petroleum coke could not be taken out of the purview of that entry. Evidently there is nothing in this case that helps the Revenue. SSF is also a kind of coal and all kinds of coal have not been placed in the prohibited category. The view taken by the Revenue was that SSF is of the nature of coal briquettes. This is negatived by the expert evidence produced in the proceedings and about which there is no dispute. This contention is also negatived by the judgment of the honourable Supreme Court where it has treated raw petroleum coke and calcined petroleum coke as coke of two different categories. Reliance is also placed on a judgment of the honourable Madras High Court in Deputy Commissioner of Commercial Taxes Vs. B.R. Kuppuswami Chetty, where "leco" a kind of lignite was held to fall within the category of "coal". Like the other rulings, this too does not held the revenue. Lastly reliance is placed on Khanna Coke Industries and Another Vs. The Assistant Commissioner (Judicial), Sales Tax and Another, in which it was held that coal briquettes being a preparation of coke dust are covered by entry (ia) in Section 14 of the Central Sales Tax Act. There is nothing in this ruling that can justify the view that SSF and coal briquettes are one and the same thing.

12. The learned Standing Counsel also referred to a note on solid smokeless fuel from coal as contained in New Encyclopaedia Britannica, Vol. 21 at page 457, There is nothing in that description which may counter the expert opinion contained in the letter of CMPDIL and the Coal Controller, etc.

13. Having considered the matter at length, I am of the opinion that the Tribunal has rightly held that SSF produced by the respondents does not fall in any of the prohibited items mentioned in annexure II of the notification dated July 27, 1991.

14. The learned counsel for the respondent in T.T.R. No. 60 of 1999 raised another point as well. His contention was that the Divisional Level Committee granted the eligibility certificate on a consideration of the entire facts and circumstances of the case and the question whether the commodity in question fell in the prohibited category was the subject-matter of consideration and the Divisional Level Committee having decided to issue the eligibility certificate to the respondent and having issued the eligibility certificate dated August 25, 1994, copy of which has been placed as annexure CA 1 to the counter-affidavit, the Commissioner had a right of appeal against the decision of the Divisional Level Committee by virtue of an amendment in Section 10(2) of the Act effective from May 14, 1994 and, therefore, he could not have taken a different view on the subject in exercise of powers u/s 4-A(3) for this. He placed reliance on my judgment in Mansarovar Bottling Co. Ltd. v. Commissioner of Trade Tax [1999] 115 STC 530 (All.) : 1999 UPTC 864 in which such a view was taken and it was held that the Commissioner had no authority u/s 4-A(3) to cancel an eligibility certificate on a debatable point when he could appeal against the decision of the Divisional Level Committee. For this reason also, the order of the Commissioner in this case, i.e., R.K. Coal Sales Pvt. Ltd. was bad.

In the result I find no force in these revision petitions and the same are hereby dismissed.