

(2002) 02 AHC CK 0124

Allahabad High Court (Lucknow Bench)

Case No: Trade Tax Revision No. 171 of 1991

D.S.M. Group of Industries and
Another

APPELLANT

Vs

Chairman, Trade Tax Tribunal
and Others

RESPONDENT

Date of Decision: Feb. 6, 2002

Acts Referred:

- Constitution of India, 1950 - Article 366(28)
- Uttar Pradesh Sheera Niyam Adhiniyam, 1964 - Section 8(4)
- Uttar Pradesh Sugarcane (Purchase Tax) Act, 1961 - Section 13
- Uttar Pradesh Trade Tax Act, 1948 - Section 22

Citation: (2004) 134 STC 255

Hon'ble Judges: I.M. Quddusi, J

Bench: Single Bench

Advocate: Umesh Chandra, Asseem Chandra and Vikas Singh and J.S. Sharma, Vice President, for the Appellant; Rajeev Sharma and Rakesh Bajpai, Vikas Singh, for the Respondent

Final Decision: Allowed

Judgement

I.M. Quddusi, J.

This revision has been filed u/s 11 of the U.P. Trade Tax Act (hereinafter referred to as "the Act") by M/s. D.S.M. Group of Industries against the judgment and order dated October 23, 1999 passed by the division Bench of Trade Tax Tribunal, Moradabad in Appeal Nos. 2 of 1999 (for the year 1988-89) and 3 of 1999 (for the year 1989-90) u/s 22 by revising its earlier judgment/order dated October 28, 1998 and July 2, 1999. The Commissioner of Trade Tax, U.P., Lucknow had not filed any revision u/s 11 challenging the impugned order dated October 23, 1999.

2. The facts of the case in brief are that M/s. Dhampur Sugar Mills Limited, a registered dealer under the Act was assessed under Rule 41(8) read with Section 7 of the Act for the assessment year 1988-89 and disputed the taxability on bagasse, molasses, iron and steel scrap, stock transfer of molasses by its Mansurpur Sugar Mills to Swarup Vegetable Products Ltd., taxing straw board was rejected and for the year 1989-90, the dispute of tax was taxability on molasses, burnt molasses, iron and steel scrap, and taxing the straw board not as paper. The first appellate authority, i.e., Deputy Commissioner (Appeals), Moradabad, on appeal u/s 9 of the Act had remanded the assessment order for the year 1988-89 and confirmed the assessment order for the year 1989-90. Thereafter, the revisionist had filed second appeal u/s 10 of the Act before the Trade Tax Tribunal registered as Appeal No. 12 of 1996 (1988-89) U.P., and 15 of 1997 (1989-90) U.P., before the Trade Tax Tribunal, Bench II, Moradabad.

3. The division Bench of the Trade Tax Tribunal, Moradabad, had allowed both appeals of the revisionist by a common order dated October 28, 1998.

4. The Commissioner of Trade Tax, Uttar Pradesh, had filed application u/s 22 before the Trade Tax Tribunal, Bench II, Moradabad. These applications were registered as Appeals Nos. 2 of 1999 (1988-89) and 3 of 1999 (1989-90) with the said Tribunal for rectifying the decision of taxability of molasses, straw board and refund for molasses granted by not applying Section 29-A of Act. These Appeal Nos. 2 of 1999 (1988-89) and 3 of 1999 (1989-90) with the Commissioner of Trade Tax were dismissed on July 2, 1999 by the Tribunal on the ground that the provisions of Section 22 are not applicable and there was no apparent mistake in the order dated October 28, 1998. Thereafter, the State Representative started not attending the Tribunal on the ground that aforesaid order of the Tribunal was not a correct order. Thereafter the Tribunal suo motu had revised its judgment/order dated October 28, 1998, and July 2, 1999, on October 23, 1999. The Tribunal in its order dated October 23, 1999 u/s 22 had imposed the tax on burnt molasses in Appeal No. 15 of 1997 (1989-90) and had allowed the Appeal No. 12 of 1996 (1988-89) while doing so he had also allowed the Appeal Nos. 2 of 1999 (1988-89) and 3 of 1999 (1989-90) of the Commissioner, Trade Tax, U.P.

5. I have heard the learned Senior Advocate Sri Umesh Chandra along with Sarvasri Asseem Chandra, Vikas Singh and Sri J.S. Sharma, Vice President of the revisionist and also heard Sarvasri Rajeev Sharma and Rakesh Bajpai, learned Standing Counsel for the respondents.

6. The learned Senior Advocate appearing for the revisionist has pressed only the following question of law out of the grounds mentioned in the memo of revision :

"Whether the Tribunal is correct in law to change its opinion or reviewing its earlier judgment or order u/s 22 of the U.P. Trade Tax Act ?"

7. It has been argued by Sri Umesh Chandra appearing on behalf of the revisionist that the Tribunal committed an illegality by reviewing its earlier two orders for imposing tax of Rs. 2,110 on burnt molasses. It was also contended that after the order dated October 23, 1999, the orders dated October 28, 1998 and July 2, 1999 (passed u/s 22 of the Act) stand merged in the order dated October 23, 1999. The imposition of taxability after the order dated October 23, 1999 is that U.P. Trade Tax Act is not applicable to bagassee and on molasses, that no tax was payable on the iron scrap on which tax was paid at the time of purchase ; that molasses transferred by Mansurpur Sugar Mills to M/s. Swarup Vegetables Products Ltd., is not a sale ; that the straw board was taxable at the rate of tax applicable to paper, and Section 29-A of the Act was not applicable on facts of the case. Thus allowing the Appeal Nos. 2 of 1999 (1988-89) and 3 of 1999 (1989-90) of the Commissioner of Trade Tax, U.P. is wholly erroneous. Appeal No. 3 of 1999 (1989-90) should have been allowed partly to the extent of tax of Rs. 2,110 imposed on burnt molasses and Appeal No. 2 of 1999 (1988-89) should have been dismissed in terms of order dated October 23, 1999 of the Tribunal for Appeal No. 12 of 1996 (1988-89) was allowed. This order dated October 23, 1999 passed second time u/s 22 is under challenge.

8. The relevant position of law can be examined with reference to the provisions of Section 22 of the Act which is quoted as under:

"22. Rectification of mistakes.--(1) Any officer or authority, or the Tribunal or the High Court may, on its own motion or on the application of the dealer or any other interested person rectify any mistake in any order passed by him or it under this Act apparent on the record within three years from the date of the order sought to be rectified:

Provided that where an application under this sub-section has been made within such period of three years, it may be disposed of even beyond such period :

Provided further that no such rectification as has the effect of enhancing the assessment, penalty, fees or other dues shall be made unless reasonable opportunity of being heard has been given to the dealer or other person likely to be affected by such enhancement."

9. The learned counsel for the revisionist had submitted that the Commissioner of Trade Tax had accepted the order dated October 23, 1999 for no revision is filed by him u/s 11 of the Act and to that extent it is final so far as Commissioner of Trade Tax, U.P., Lucknow, is concerned. Thus, only dispute after order dated October 23, 1999 passed u/s 22 by the said Tribunal, remained only about the imposition of tax of Rs. 2,110 on burnt molasses in Appeal No. 15 of 1997 (1989-90) U.P., and taxability on other disputed issues attained finality.

10. The learned counsel submitted that the Tribunal had not made any mistake in its earlier orders dated October 28, 1998 and July 2, 1999 because the Trade Tax Tribunal had considered the decision of this Court in S.T.R. No. 422 of 1993 of the

present revision reported as Dhampur Sugar Mills Limited v. Commissioner of Sales Tax, U.P. [1996] 100 STC 434 ; 1996 STI All. HC 128 and the decision of the honourable Supreme Court dated August 5, 1996 whereof the Commissioner's Appeal CC No. 3518 of 1996 against the T.T.R. No. 422 of 1993 (decided by this Court at Allahabad on November 1, 1995) was dismissed. The Trade Tax Tribunal had also relied upon the observation of this Court in the case of Kisan Sahkari Chini Mills Ltd. v. State of Uttar Pradesh STI 1989 All. 294 where molasses were described as the syrup containing impurities present in the cane thereby Tribunal had held that the molasses is residue of sugarcane. This finding of fact is not disturbed by the Tribunal in the impugned order dated October 23, 1999 and is final on facts and circumstances.

11. The learned Senior Advocate further, relied upon the decision given in the case of Commissioner of Sales Tax v. Prag Ice and Oil Mills [1991] 80 STC 403 (SC) ; 1991 UPTC 815. In this decision it was held by the honourable Supreme Court that residue is to be taxed at the rate applicable to the product irrespective of the fact that residue is left over after going through the process of acids and chemicals. This is a case u/s 3-A of the U.P. Sales Tax Act, 1948 (now U.P. Trade Tax Act). Thus, by following this ratio of the honourable Supreme Court, the burnt molasses, can only be taxed as sugarcane.

12. For sugarcane there is a separate Act enacted by the State of Uttar Pradesh being the U.P. Sugarcane (Purchase Tax) Act, 1961. Section 13 of the U.P. Sugarcane (Purchase Tax) Act, 1961, reads as follows :

"13. No sale or purchase tax under any other Uttar Pradesh Act shall be payable in respect of any transaction of sale or purchase of sugarcane in respect of which a tax is payable under this Act, anything contained in the U.P. Sales Tax Act, 1948 to the contrary notwithstanding."

13. It is an admitted fact that the purchase tax is paid on sugarcane and in that event the U.P. Sales Tax Act, 1948 (now U.P. Trade Tax Act) cannot be made applicable for taxing the molasses or burnt molasses on the force of Section 13 of the U.P. Sugarcane (Purchase Tax) Act, 1961.

14. The learned Senior Advocate for the revisionist has submitted alternative argument for the taxability on molasses under the U.P. Trade Tax Act, 1948. He has submitted that the U.P. Sheera Niyam Adhiniyam, 1964, which is a special Act for molasses, will prevail over the general Act, namely, the U.P. Trade Tax Act, 1948, which is applicable for all the commodities.

15. The learned Senior Advocate further submitted that Sub-section (4) of Section 8 of the 1964 Adhiniyam provides :

".....the occupier of a sugar factory shall be liable to pay to the State Government in the manner prescribed, administrative charges at such rate, not exceeding rupees

five per quintal as the State Government may from time to time notify, on the molasses sold or supplied."

16. He has also invited attention to one of the notification issued by the State of U.P., under this section which reads as under:

"Notification No. 4619-E-2/XII/25-4-1983, dated 4th December, 1985, published in the U.P. Gazette, Extra., Part IV, Section (Ka), dated 4th December, 1985."

"In exercise of powers under Sub-section (4) of Section 8 of the Uttar Pradesh Sheera Niyam Adhiniyam, 1964, the Governor is pleased to notify that with effect from the date of publication of this notification in the Gazette, the occupier of a sugar factory shall be liable to pay administrative charges to the State Government at the rate of Rs. 2.50 (rupees two and fifty paise) per quintal of molasses of any category sold by the occupier of the sugar factory."

17. Sri Umesh Chandra had further submitted that the administrative charges at the rate of Rs. 2.50 per quintal of molasses of any category on the sale of molasses by the occupier of sugar factory, is in fact a "tax in terms of definition of "tax" provides under article 366(28) of the Constitution which reads as under :

""Taxation" includes the imposition of any tax or impost, whether general or local or special, and "tax" shall be construed accordingly."

18. Reliance has been placed on behalf of the revisionist on the honourable apex Court decision in the case of [Commissioner of Central Excise, Meerut Vs. M/s Kisan Sahkari Chinni Mills Ltd.](#), in which it was held that the administrative charges leviable under Sub-section (4) of Section 8 of the U.P. Sheera Niyam Adhiniyam, 1964, in the event of sale or supply of molasses are tax as defined under Article 366(28) of the Constitution. The apex Court in that case has held as under :

"If the expression "tax" is to be understood in the absence of any definition, it would certainly cover any levy. In [D.G. Gose and Co. \(Agents\) Pvt. Ltd. Vs. State of Kerala and Another](#), a broad meaning had been given to the expression "tax". In such an event, administrative charges would be covered u/s 4(4)(d)(ii) as "other taxes" because it is a compulsory exaction made under an enactment and, therefore, a duty or impost and such impost must be held to be in the nature of a "tax" covered by the aforesaid provisions."

19. In the matter of [D.G. Gose and Co. \(Agents\) Pvt. Ltd. Vs. State of Kerala and Another](#), decided by a five-Judge Bench in paragraph 5, the same is quoted as under:

"5. The word "tax" in its widest sense includes all money raised by taxation. It, therefore, includes taxes levied by the Central and the State Legislatures, and also those known as "rates", or other charges, levied by local authorities under statutory powers. Taxation" has therefore been defined in Clause (28) of Article 366 of the

Constitution to include "the imposition of any tax or impost, whether general or local or special", and it has been directed that "tax" shall be construed accordingly."

20. The learned Senior Advocate for the revisionist also referred to entry No. 54 of List II of the Seventh Schedule to the Constitution in support of his contention. Entry 54 of List II and entry 92-A of List I of the Seventh Schedule read as under :

"Entry 54. Taxes on the sale or purchase of goods other than newspapers subject to the provisions of entry 92-A, List I."

"Entry 92-A. Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce."

21. That these administrative charges are tax on sale or purchase of molasses and are covered by entry 54 of List II and entry 92-A of List I of the Seventh Schedule to the Constitution of India and the U.P. Trade Tax Act also comes under these entries and is operative in the same field.

22. The learned Senior Advocate further drew the attention of this Court to the honourable Supreme Court decision in the case of [Gobind Sugar Mills Ltd. Vs. State of Bihar and Others](#), in which the honourable Supreme Court has held that the general provisions should yield to the special provision.

23. The learned Senior Advocate also submitted that the interest at the rate of one per cent may also be granted for the amount deposited pursuant to the stay order passed in this revision by this Court. For this he has placed reliance in the matter of *Anuj Bricks v. State of U.P.* 2000 UPTC 999.

24. The learned Standing Counsel has submitted that molasses is covered by the Notification No. ST-2-5784/X-10(1)/80-U.P., Act 15-48-Order-81, dated September 7, 1981, and is taxable at the rate of 12 per cent when manufactured or imported. This is the intention of the legislation to impose trade tax on molasses. It was submitted that molasses, residue product of sugar, is a manufactured goods, and is covered by notification dated September 7, 1981 of the U.P. Trade Tax Act. Therefore, the Tribunal while passing the order on October 28, 1998 and subsequently passing the order on July 2, 1999 on department application u/s 22 was not correct in allowing the appeals and dismissing the application. This mistake was corrected by the Tribunal on October 23, 1999 by exercising its suo motu power u/s 22 of the Act. It was his submission that the order dated October 23, 1999 under appeal in this revision is a correct and legal order passed u/s 22 of the Act and the revision may be dismissed with costs.

25. In [The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.](#), the apex Court has held that the taxing power of the State may manifest itself in three different forms known respectively as special assessments, fees and taxes.

26. In the case of [District Council of the Jowai Autonomous Distt., Jowai and Others Vs. Dwet Singh Rymbai etc.,](#) the apex Court has held as under ;

".....a compulsory exaction of money by a public authority for public purposes enforceable by law, which is not a payment for services rendered is tax."

27. In view of the decision of the apex Court in the case of [District Council of the Jowai Autonomous Distt., Jowai and Others Vs. Dwet Singh Rymbai etc.,](#) and considering the definition of "tax" given in Clause (28) of article 366 of the Constitution, the administrative charges which have not been imposed in view of the services rendered, are in fact tax and hence, in view of Section 13 of the U.P. Sugarcane (Purchase Tax) Act, 1961, and Sub-section (4) of Section 8 of the U.P. Sheera Niyantaran Adhiniyam, 1964, the provisions of the U.P. Trade Tax Act, 1948 are not applicable in the matter in question.

28. Hence, the Trade Tax Tribunal had rightly held in its order dated October 28, 1998 that molasses are not taxable under the U.P. Trade Tax Act, 1948. The special Act will prevail over the general Act of the State Government of Uttar Pradesh which operates in the same field. In view of the above, it is held that the U.P. Trade Tax Act, 1948 cannot be invoked for levy of tax on sale of molasses. The Tribunal vide its order dated July 2, 1999 had also rightly dismissed the application No. 2 of 1999 (1988-89) and 3 of 1999 (1989-90) filed by the Commissioner, Trade Tax u/s 22 on the ground that the provisions under this section cannot be made applicable for change of decision or judgment refund which needs long drawn argument and debate.

29. It will not be out of place to mention that since the Tribunal had allowed the Appeal No. 12 of 1996 (1988-89) of the revisionist, the cross Appeal No. 2 of 1999 (1988-89) of Commissioner of Trade Tax cannot be legally allowed. I find the Tribunal partly disallowed the appeal of the revisionist for limited tax of Rs. 2,110 on burnt molasses in Appeal No. 15 of 1997 (1989-90) of the revisionist the Application No. 3 of 1999 (1989-90) of the Commissioner of Trade Tax, could not be allowed. There cannot be inconsistency in decision. I also find that the Tribunal had not correctly applied Section 22 in its order dated October 23, 1999. Thus, the order dated October 23, 1999 passed by the Tribunal fixing the liability of tax only on burnt molasses is not proper in the eye of law and is liable to be set aside.

30. In the result, the revision succeeds, and is allowed and the order dated October 23, 1999 passed by the Trade Tax Tribunal, Moradabad, is hereby quashed. It is further directed that in view of the decision of the division Bench of this Court in the case of Anuj Bricks 2000 UPTC 999 interest at the rate of 15 per cent per annum, shall be paid to the revisionists from the date of deposit of amount with them by the revisionists, within two weeks from the date of production of a certified copy of this order.