
Super Cassette Industries Ltd. Vs Commissioner of Trade Tax

Sales/Trade Tax Revision No. 438 of 2004

Court: Allahabad High Court

Date of Decision: Jan. 17, 2015

Acts Referred:

Central Sales Tax Act, 1956 - Section 8#General Clauses Act, 1897 - Section 21#Uttar Pradesh Trade Tax Act, 1948 - Section 11

Citation: (2015) 3 ADJ 167 : (2015) 84 VST 183

Hon'ble Judges: Pankaj Mithal, J

Bench: Single Bench

Advocate: Nikhil Agarwal, Shubham Agarwal, Bharat Ji Agarwal and Piyush Agarwal, for the Appellant; B.K. Pandey, Advocates for the Respondent

Judgement

Pankaj Mithal, J.

1. Heard Sri Bharat Ji Agarwal, Senior Advocate, assisted by Sri Shubham Agarwal, learned counsel appearing for the assessee revisionist and Sri

B.K. Pandey, learned Standing Counsel for the respondent. This revision under Section 11 of the UP. Trade Tax Act, 1948 (hereinafter referred

to as the U.P. Act) is directed against the order of the tribunal dated 25.2.2004 in connection with the assessment year 1997-98 under the Central

Sales Act, 1956 (hereinafter referred to as the Central Act)

2. The assessee revisionist is manufacturing electronic goods and is engaged sale of those items also. It's manufacturing units are situate in Noida

and Greater Noida. The assessee revisionist undertook expansion of its units and there is no dispute that it was granted eligibility certificate under

Section 4A of the U.P. Act in respect to the expansion and the date of production and the first sale happens to be before 5.5.1997.

3. Under the notification No. 781 dated 31.3.1995 issued under Section 8 of the Central Act the assessee revisionist was entitle to

exemption/rebate on the tax for the first 10 years of the production/sale as prescribed in annexure-1 to the said notification. Column 4 of annexure-

1 to the said notification provides that the exemption or reduction in the rate of tax on any transaction of sale shall not exceed 5% of the sale price

and it shall be as percentage of the rate of tax normally applicable under the U.P. Act.

4. In view of the clear recitals in Column 4 annexure-1 the exemption or reduction of tax was admissible to the assessee revisionist at the

percentage of the rate normally applicable to it under the U.P. Act.

5. It is admitted that at the relevant time under the U.P. Act the rate of tax applicable on electronic goods was 5%.

6. The aforesaid notification was amended by subsequent notification dated 5.5.1997. The said notification provided that w.e.f. date of the

publication of the said notification in the gazette, the notification dated 31.3.1995 shall stand amended and in place of the words ""U.P. Act"" used

therein in Column 4 of the annexure-I will be read as an "Act" only.

The aforesaid notification came to be published on 5.5.1997 itself and as such the amendment referred to therein in respect to the notification

dated 31.3.1945 become applicable from the said date only.

7. The relevant portion of the notification dated 5.5.1997 is reproduced hereinbelow.

In exercise of the powers under sub-section 5 of the Section 8 of the Central Sales Tax Act, 1956 (Act No. 10 of 1897), read with Section 21 of

the General Clauses Act, 1897 (Act No. 10 of 1897), the Governor is pleased to make, with effect from the date of publication of this notification

in the Gazette, the following amendment in Government notification No. TT-2-781/XI-9(226)/94-Act-74-56-Order-95, dated March 31, 1995,

as amended from time to time.

AMENDMENT

In the aforesaid notification, in Annexure-1

(i) in the heading, in column 4 for the words ""under the U.P. Act"" the words ""under the Act"" shall be substituted;

8. The short question which has been raised in this revision is whether the amendment made by the aforesaid notification dated 5.5.1997 is

applicable from the said date itself or it would operate retrospectively from the date of the issuance of the notification amended i.e. notification 781

dated 31.5.1995.

9. The tribunal in passing the impugned order has refused the benefit of exemption/reduction in tax to the assessee revisionist for the relevant year

1997-98 on the ground that the use of the word ""U.P. Act"" in Column 4 of annexure-1 to the notification dated 31.3.1995 appears to be a clerical

mistake and that in view of the subsequent amendment made by the notification dated 5.5.1997, the said mistake stands rectified which would be

operative from 1.4.1995 itself.

10. It is settled position in law that the taxing statute is generally prospective in nature and if it has to be made retrospectively it has to be

specifically provided.

11. There is nothing on record to suggest that the amendment by substitution has been given retrospective step rather the notification dated

5.5.1997 in specific and unequivocally terms recites that the amendment which is being made in the notification dated 31.3.1995 shall come into

effect from the date of publication of the notification in the gazette. The said notification in the gazette was admittedly published on 5.5.1997.

Therefore, when the notification itself provides for the date of applicability of the aforesaid notification no retrospectivity to it can be attributed so

as to apply it from the effective date of notification No. 781 dated 31.3.1995.

12. In view of the plain, clear and simple language of the notification dated 5.5.1997, the amendment brought into by the said notification would be

effective from the date of its publication i.e. 5.5.1997. It cannot be applied retrospectively or from the date of the issuance of the earlier notification

which was amended by the same.

13. The tribunal as such is not justified in holding that the amendment would be operative from 1.4.1995. Even if it is assumed that there was some

mistake in the notification dated 31.3.1995, the said mistake cannot be taken note of. The mistake if any as suggested by the tribunal was

corrected by the notification dated 5.5.1997 and the said mistake would stand rectified from the date of publication of the subsequent notification

and would not relate back to the notification dated 31.3.1995. In view of the aforesaid discussion the question formulated above is answered in

favour of the assessee revisionist and against the department and it is held that the amendment to the notification dated 31.3.1995 brought about by

means of the notification dated 5.5.1997 shall be effective from 5.5.1997 and would not apply retrospectively w.e.f. 1.4.1995 as held by the

tribunal.

The revision succeeds and is allowed with no order as to costs.