

(2011) 01 CAL CK 0008

Calcutta High Court

Case No: W.P.T.T. No. 59 of 2010

M/s. Dharampal Satyapal Limited

APPELLANT

Vs

The Assistant Commissioner,
Commercial Taxes, Corporate
Division and Others

RESPONDENT

Date of Decision: Jan. 21, 2011

Acts Referred:

- Central Sales Tax Act, 1956 - Section 14
- Constitution of India, 1950 - Article 226, 227

Citation: (2011) 2 CALLT 120 : (2011) 41 VST 463

Hon'ble Judges: Sambuddha Chakrabarti, J; Bhaskar Bhattacharya, J

Bench: Division Bench

Advocate: R.N. Bajoria, Mrs. Swapna Das and Ms. Sourav Bajoria, for the Appellant; Saba Roy for the State, for the Respondent

Final Decision: Allowed

Judgement

Bhaskar Bhattacharya, J.

This application under Articles 226 and 227 of the Constitution of India is at the instance of an applicant u/s 8 of the West Bengal Taxation Tribunal Act, 1987 and is directed against an order dated January 15, 2010 passed by the West Bengal Taxation Tribunal, in Case No.RN-169 of 2008, thereby disposing of the said application by remanding the matter back to the Assessing Authority for a fresh assessment of the goods in question in the light of the observations made in the body of the order with further direction upon the petitioner to disclose the basis of determining the sale-price of the disputed item so that the Assessing Authority can fairly and justly assess the sale-price of "Pan Masala" being sold separately along with "Tobacco" in a single pouch under the brand name "Double Mazza".

2. Being dissatisfied, the applicant u/s 8 of the Act has come up with the present revisional application.

The following facts are not in dispute:

a) The petitioner sells an item under the brand name "Double Mazza" (hereinafter referred to as the disputed item) in a pouch having two parts - one containing "Tobacco" and the other, "Pan Masala". According to the writ-petitioner, the disputed item should fall under the Entry against serial No.82 of Schedule-I of West Bengal Sales Tax Act, 1994.

b) According to the Assessing Authority, the disputed item consists of two commodities - one is "Zarda", a Schedule-I goods and the other is "Pan Mazala", a Schedule-IV goods poured in a single pouch marking two parts separately but the customer has no option to buy either the "Zarda" or the "Pan Masala" alone as both the parts as a whole should be purchased at a time. Therefore, according to the Assessing Authority, the disputed item should be treated as a taxable item under Schedule-IV and consequently, the Authority disallowed the sale of the disputed item of Rs.47,62,500/- as a claim of Schedule-I goods by treating the same as "tobacco".

c) The writ-petitioner, being dissatisfied with the assessment order dated June 05, 2006, filed an appeal before the Appellate Authority and the Appellate Authority, by its order dated December 06, 2006, confirmed the assessment order by making the following observations:

"Now according to the assessment order passed by the learned Assessing Authority he fails to segregate the sale of zarda, Schedule-I goods and pan masala, Schedule-IV goods kept in a single pouch though separately but sold at a time. Thus it is crystal clear that pan masala is not zarda or tobacco Company It falls under Schedule-IV of the WBST Act, 1994. It is a taxable item. The tax charged by the learned Assessing Authority is fully justified".

3. Being dissatisfied, the writ-petitioner preferred a revisional application before the Revisional Authority but the said authority came to the conclusion that "Pan Masala" with "Tobacco" could not fall within entry 82 of Schedule-I of 1994 Act and consequently, confirmed the order of the Assessing Authority.

4. Being dissatisfied, the writ-petitioner filed an application u/s 8 of the West Bengal Taxation Tribunal Act, 1987 before the West Bengal Taxation Tribunal and by the order impugned in this writ application, the said Tribunal modified the order of the Revisional Authority by making the following observations:

"The position is somewhat different under the VAT Act. Tobacco has not specifically been mentioned in any of the schedules under the VAT Act. On the contrary, "Tobacco" is covered by entry 32 of schedule C to the VAT Act because it is an item falling under clause-(ix) of section 14 of the Central Sales Tax Act, 1956. Subheading

24039990 of the Central Excise Tariff Act, 1985 covering "Pan Masala" containing Tobacco has not been mentioned in the said clause-(ix) of section 14 of the Central Sales Tax Act, 1956. Moreover, a quasi judicial authority has to take his/her independent decision determining upon the facts and circumstances of each case. Such an interpretation has no binding effect on quasi judicial authority. In view of the foregoing discussion, we are of the view that "Pan Masala" is liable to be taxed as an unspecified item under 1994 Act. But the applicant is selling "Pan Masala along with Tobacco (Zarda)" both retaining their independent distinctive identity under the brand name "Double Mazza". The question, therefore, is whether in the circumstances even the disputed item as a whole should be treated as an unspecified item ignoring the specific entry regarding Tobacco made against serial No. 82 of schedule I to the 1994 Act. We feel that it would be unjustified to take such a view. We are, therefore, of the opinion that sale prices of "Zarda" included in the total price of "Double Mazza" should merit exemption in terms of entry 82 of Schedule I to the 1994 Act".

5. Being dissatisfied, the writ-petitioner has come up with the present writ-application.

6. Therefore, the only question that arises for determination in this writ-application is whether the Tribunal below was justified in passing the order impugned.

7. There is no dispute that the Central Excise Act, 1944 ("the 1944 Act") is enforceable on manufacture of Pan Masala, Chewing Tobacco Guthka or other Tobacco products as provided in the Central Excise Traffic Act ("the 1985 Act"). Prior to the enactment of Finance Act, 2001, "Pan Masala containing tobacco was classified in the 1985 Act under 21 as "Pan Masala". Note 3 of Chapter 21 defined "Pan Masala" as a preparation containing betel-nuts, lime and kattha (catechu) and tobacco whether or not containing any other ingredient, such as, copra and menthol. The said Tariff item was numbered as 2106. Guthka, prior to the coming into operation of the Finance Act, 2001, was, thus, assessable to Excise duty under the 1944 Act read with the 1985 Act as "Pan Masala" under the Tariff Heading 2106. By the Finance Act, 2001, Note 3 of the Chapter 21 was amended and by such amendment, "Pan Masala", not containing tobacco, alone is assessable under Tariff item No.2106. After the coming into operation of the Finance Act, 2001, "Pan Masala", containing tobacco, was classified in Chapter 24 as a tobacco product as stated in Note 6 thereof and assessable under Tariff Heading 2404.49. In the case before us, we are concerned with the assessment for the four quarters ending March 31, 2004 and thus, the amended provision of Finance Act, 2001 is applicable.

8. Therefore, in order to appreciate the question involved in this writ application, it will be appropriate to refer to the following amended definition of "Pan Masala" mentioned in Note-3 of the Chapter 21 and "Pan Masala containing tobacco" as defined in Note-6 of Chapter 24 of the Act:

"Note 3. In this Chapter, "Pan masala" means any preparation containing betel-nuts and any one or more of the following ingredients, namely:

(i) lime; and

(ii) kattha (catechu),

but not tobacco, whether or not containing any other ingredients, such as cardamom, copra and menthol".

(Emphasis supplied by us).

"Note-6. In this Chapter, "Pan Masala containing tobacco", commonly known as "gutkha" or any other name, means any preparation containing betel-nut and tobacco and any one or more of the following ingredients, namely:

(i) lime; and

(ii) kattha (catechu),

whether or not containing any other ingredients, such as cardamom, copra or menthol."

(Emphasis supplied by us).

9. At this stage, the following General Rules for Interpretation given in the First Schedule of Excise Tariff is relevant and the same is quoted below:

"2(a) - Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled".

10. Therefore, in interpreting the aforesaid definitions of "Pan Masala" or "Pan Masala with tobacco", we are obliged to follow the rule of interpretation as mentioned above and in the process, we are left with on other alternative but to hold that the disputed item manufactured by the writ-petitioner containing two separate folders, one for "Pan Masala" and the other for "tobacco" but not offered to sale separately, is really a "Pan Masala containing tobacco" classified in Chapter 24 under the Tariff Heading 2404.49 although the same is presented as the unassembled or disassembled article which has the essential character of the complete or finished article.

11. Once we hold that the disputed article falls under the Tariff Heading 2404.49, we are of the view that the Tribunal below erred in law in holding that the sale price of "tobacco" included in the total price of the disputed item should merit exemption in terms of the entry 82 of Schedule 1 of 1994 and there was no necessity of

remanding the matter to the Assessing Authority. The Tribunal below totally overlooked the aforesaid general rules of interpretation given in the First schedule to the Excise Tariff.

12. We, therefore, set aside the orders passed by both the Assessing Authority and the Tribunal below, and hold that the disputed item manufactured by the writ-petitioner should be assessed under the Tariff Heading 2404.49 of the Chapter 24 as "Pan Masala containing tobacco" and direct the Assessing Authority to assess accordingly.

13. Writ-application filed is thus allowed.

In the facts and circumstances, there will be, however, no order as to costs.

Sambuddha Chakrabarti, J.

14. I agree.