

Court No. - 10

Case :- SALES/TRADE TAX REVISION No. - 103 of 2021

Revisionist :- The Commissioner Commercial Tax U.P.
Lucknow

Opposite Party :- S/S Varun Beverages Ltd.

Counsel for Revisionist :- Bipin Kumar Pandey

Counsel for Opposite Party :- Shubham Agrawal

Hon'ble Rohit Ranjan Agarwal,J.

1. Heard Sri A.C. Tripathi, learned Standing Counsel for the State and Sri Sohail Ahmad Ansari, Advocate holding brief of Sri Shubham Agrawal, learned counsel for the assessee.

2. This revision was preferred by the Revenue against the order of the Tribunal dated 21.11.2019 passed in Second Appeal No.88 of 2015 (2009-10), U.P.

3. Learned Standing Counsel states that question of law which arises in the revision is as under:-

"Whether on the facts and circumstances of the case the Commercial Tax Tribunal was legally justified in holding that pet pre-form is taxable as a goods mentioned in schedule 2 part C at serial no. 174 and not as an unclassified item?"

4. The short controversy before this Court is that as to whether pat pre-form of plastic bottles which are supplied by the assessee who is manufacturer to various dealers is liable to be taxed @ 4% as mentioned in Schedule-II Part C Entry No.174 of the U.P. Value Added Tax Act, 2008 (hereinafter referred to as "Act of 2008"), or at the rate of 12.5% as held by the Tribunal.

5. Learned Standing Counsel submitted that the assessing authority as well as the first appellate authority has rightly declined to grant the benefit to the assessee in terms of Schedule II Part C Entry No.174 and according to him, pat pre-form of plastic bottles are intermediate products made by the assessee and is not the articles for packing of goods of plastic, namely, crates, containers, carboys, bottles, jars, jerry canes and their stoppers, lids, caps of plastic as mentioned in the Entry No.174 and the goods which have been supplied by assessee was in an intermediate form. He then contended that it was after the blowing of products by the purchasers that the shape of the bottles takes place and thus, to be taxed @ 12.5% by the assessing authority.

6. Learned counsel appearing for assessee submitted that the pat pre-form of plastic bottles are in fact in compressed form manufactured by the assessee and by use of technology by the purchasers, it takes the form of bottles and are used by the purchasers for storing liquid. He then contended that the Tribunal has recorded findings that the assessee is entitled to be benefit as provided under Entry No.174 Part C Schedule II of the Act of 2007.

7. I have heard the counsel for respective parties and perused the material on record.

8. This Court finds that the bottles which are manufactured by the assessee in pat pre-form of plastic bottles are actually the bottles which find place in Entry No.174 of Schedule II Part C. It is only in the compressed form and after it reaches the place of the purchasers that before use, by use of technology, it takes the shape of expanded bottles by blowing air into it. The bottles which are being manufactured by the assessee is easy to be transported to the place of purchasers and not much storage/place is needed for storing these bottles in the form of pat pre-form of plastic bottles.

9 Considering the facts and circumstance of the case, I find that the Tribunal has recorded categorical findings of fact which needs no interference by this Court.

10. Revision fails and is, hereby, **dismissed**.

11. The questions of law, raised above, stand answered in favour of the assessee and against the revenue.

Order Date :- 17.1.2023

SK Goswami