

Neutral Citation No. - 2024:AHC-LKO:54437

Court No. - 7

AFR

Case :- SALES/TRADE TAX REVISION No. - 196 of 2013

Revisionist :- M/S Sarswat Peroxides Private Ltd. Throu Its Director

Opposite Party :- The Commissioner Commercial Taxes U.P.Gomti Nagar Lko.

Counsel for Revisionist :- Kunal Srivastava,Rajesh Kumar Verma

Counsel for Opposite Party :- C.S.C.

Hon'ble Alok Mathur,J.

1. Heard Sri Rajesh Kumar Verma, learned counsel for the revisionist as well as Sri Sanjay Sarin, learned counsel appearing for the opposite party.

2. Present revision has been preferred by the revisionist against order of Full Bench of the Commercial Tax Tribunal dated 10.07.2013 wherein they were adjudicating the appeal preferred by the revisionist against order of Commissioner, Commercial Tax, U.P. passed under Section 59 of the U.P. Value Added Tax Act, 2008 (*hereinafter referred to as "the Act, 2008"*). Controversy in the present case pertains to the goods produced by the revisionist which are categorized as "vitamins and minerals pre-mix".

3. It has been submitted by learned counsel for the revisionist that all around the opposite party were treating "vitamins and minerals" to be falling in the category of Entry 29 of Schedule II of the Act, 2008 under the heading "chemicals" and it was taxed @ 4%. Subsequently, it seems that some controversy arose with regard to classification of the goods produced by the revisionist and with regard to rate of levying Value Added Tax, on the said goods, due to which the revisionist moved an application under Section 59 of the Act, 2008 before the Commissioner, Commercial Tax, seeking his opinion as to

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whether "vitamins and minerals pre-mix" would fall under the Entry 29 of Schedule II-A of Act, 2008 or under the category of Entry 89 of "ores and minerals".

4. The Commissioner, Commercial Tax after due consideration of the submissions made on behalf of revisionist was of the view that "vitamins and minerals pre-mix" does not fall under the Entry 89 under the heading "ores and minerals" inasmuch as "ores and minerals" pertain to "raw material" and "vitamins and minerals pre-mix" could not fall under the category of Entry 89 and accordingly rejected the application of the revisionist and held that "vitamins and minerals pre-mix" would be categorized as "unclassified goods" liable to be taxed @ 12.5%.

5. The revisionist being aggrieved by order of the Commissioner, Commercial Tax dated 11.09.2012, preferred an appeal before the Commercial Tax Tribunal. The Tribunal upheld the view taken by the Commissioner, Commercial Tax and held that "vitamins and minerals pre-mix" does not fall under the category of "ores and minerals" or "drugs and medicines" and nor under the Entry 29 of "chemicals" and was liable to be taxed as "unclassified goods" and accordingly rejected the appeal preferred by the revisionist.

6. Before this Court also same arguments have been reiterated and it has been submitted that the revisionist produced mineral preparation named as "vitamins and minerals pre-mix" . Composition of 100gm of the said preparation is as follows :-

S. No.	Name of Mineral and Vitamin	Chemical Name	Weight
1	Minerals – Element Calcium	Calcium Carbonate	160mg
2	Minerals – Element Iron	Ferrous Fumerate	7.2mg
3	Vitamins – Vitamin – A	Retinyl Palmitate	200mcg

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4	Vitamins – Vitamin – B-1	Thiamine Hydrochloride	0.31mg
5	Vitamins – Vitamin B-2	Riboflavin	0.35mg
6	Vitamins – Vitamin – 5	Nicotine Acid (Niacin)	3.88mg
7	Vitamins – Vitamin – C	Ascorbic Acid	16mg
8	Vitamins – Vitamin – D	Free Folic Acid	16Mcg

7. Perusal of Schedule II of the Act, 2008 would indicate that Entry 29 pertain to "chemicals" has been defined as :-

29. *Chemicals including caustic soda, caustic potash, soda ash, bleaching powder, sodium bicarbonate, sodium hydro sulplate, sulphate of alumina, sodium nitrate, sodium acetate, sodium sulphate, acid slurry, trisodium phosphate, sodium tripoly phosphate, sodium silicate, sodium meta silicate, carboxymethyle cellulose, sodium sulphide, acetic acid, sodium bisulphite, oxalic acid, sodium thiosulphate, sodium sulphite, sodium alginate, benzene, citric acid, diethylene glycol, sodium nitrate, hydrogen peroxide, acetaldehyde, pentaerythritol, sodium alpha olefin, sulphonate, sodium formate, chemical components and mixture and all other chemicals not specified elsewhere in this Schedule or any other Schedule.*

While "oars and minerals" have been provided for in Entry 89 of Schedule II of Act, 2008.

8. Considering the case of the revisionist firstly as to whether "vitamins and minerals pre-mix" would fall under the category "chemicals". It is noticed that according to the revisionist the goods produced by him are termed as "vitamins and minerals pre-mix", which are made from certain chemicals including Calcium Carbonate, Di-calcium Phosphate, Potassium, Iodine, Sodium Banzol etc. which according to the revisionist are 'chemicals' and accordingly the goods are liable to be taxed treating them to the “chemicals”.

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9. The arguments of the revisionist cannot be accepted considering the fact that even if the finished product namely "vitamins and minerals pre-mix" is made from chemicals which are its raw material, while the goods which is sought to be taxed under the Act, 2008 are not the raw material but the finished goods namely "vitamins and minerals pre-mix".

10. Section 4 of the Act, 2008 which a charging section clearly states that the "*tax payable on sale of goods under this Act, shall be levied and paid.....*" accordingly tax is levied on the goods and not individually on the raw material from which the goods are prepared. Undisputedly, items given in Entry 29 are not the goods which are being sought to be taxed in the present case, but it is the finished product which is "vitamins and minerals pre-mix".

11. Accordingly, this Court is unable to accept contention of the revisionist that goods classified as "vitamins and minerals pre-mix" would fall under the category 'chemicals'.

12. The second contention raised by the revisionist is as to whether "vitamins and minerals pre-mix" would fall under the category "drugs and medicines" as provided under Entry 41. Entry 41 also specifically in its contents excludes medicated soap, shampoo, antiseptic cream, face cream, massage cream, eye gel and hair oil etc. This entry very clearly defines the products which are used for alleviation of any disease or its symptoms.

13. The words "drugs" and "medicines" are used synonymously in common parlance. They have been defined in various English dictionaries as under :-

Merriam Webster

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Drug – a substance used as a medication or in the preparation of medication.

Medicine – a substance or preparation used in treating disease, something that affects well-being.

Cambridge

Drug – any natural or artificially made chemical that is used as a medicine, a natural or artificially made substance, especially one that is illegal, which is taken for pleasure, to improve performance in an activity, or because someone is addicted.

Medicine – a drug that is used to treat illness or injury.

Collins

Drug – any substance used in the treatment, prevention, or diagnosis of disease, a chemical substance, such as a narcotic, taken for the effects it produces.

Medicine – any substance used in treating or alleviating the symptoms of disease.

Oxford

Drug – a medicine or other substance which has a physiological effect when ingested or otherwise introduced into the body. A substance taken for its narcotic or stimulant effects.

Medicine – a drug or other preparation for the treatment or prevention of disease.

14. From the above it is clear that "vitamins and minerals pre-mix" does not fall in the category of "drugs and medicines" nor has any material adduced either before the authorities below or before this Court that it would qualify for being classified as “drugs and

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medicines” and accordingly, there is no reason to accept the contention of the revisionist that "vitamins and minerals pre-mix" would fall under the category of "drugs and medicines".

15. Lastly, the argument of revisionist with regard to inclusion of "vitamins and minerals pre-mix" under "ores and minerals" as defined in Entry 89 of Schedule II of the Act, 2008, the said entry provides only for raw "ores and minerals", without mentioning "vitamins and minerals pre-mix" falling under the said entry, and hence it is clear that “vitamins and minerals pre-mix” would not fall under the category of “ores and minerals”.

16. For the aforesaid reasons, this Court does not find any infirmity in the order passed by the Additional Commissioner or the Tribunal that "vitamins and minerals pre-mix" would be termed as unclassified item and liable to be taxed as such.

17. In the light of discussion made above, the revision is **dismissed**. The substantial questions of law are decided against the revisionist and in favour of revenue.

Order Date :- 7.8.2024

A. Verma

(Alok Mathur, J.)