Crown Rubber Company and anr. Vs. State of U.P. and anr.

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SooperKanoon Citation : sooperkanoon.com/484029

Court : Allahabad

Decided On : May-28-1997

Reported in : [2003]133STC99(All)

Judge : Om Prakash and ;S.L. Saraf, JJ.

Acts : Uttar Pradesh Trade Tax Act, 1948 - Sections 4, 4B(2) and 4(5)

Appeal No. : Civil Misc. Writ Petition No. 611 of 1985

Appellant : Crown Rubber Company and anr.

Respondent : State of U.P. and anr.

Advocate for Def. : Standing Counsel

Disposition : Writ petition dismissed

Judgement :

1. Heard counsel for the parties.

2. The petitioner seeks quashing of impugned notice dated July 31, 1985 (annexure '3' to the writ petition) calling upon the petitioner to show cause why penalty be not imposed under Section 4-B(5) of the U.P. Sales Tax Act (now 'U.P. Trade Tax Act') (briefly, 'the Act'), for the assessment year 1980-81.

3. The brief facts are that the petitioner applied for recognition certificate under Section 4-B(2) of the Act for the manufacture of rubber products. The recognition certificate was granted and the petitioner purchased raw material, which was, admittedly, used for the manufacture of tubes, used for the animal driven vehicles.

4. The contention of the respondents is that the petitioner is liable to pay penalty, inasmuch as the raw material procured by the petitioner free of tax was used for the manufacture of the goods which were exempt under the law.

5. The question for consideration is whether on the facts and in the circumstances of the case, penalty can be imposed on the petitioner. It is not denied that the recognition certificate was granted to the petitioner and that recognition certificate, inter alia, refers to rubber products. The question is whether the petitioner used the raw material for the manufacture of goods as mentioned in the recognition certificate. If the raw material was used for the manufacture of goods as mentioned in the recognition certificate, then it could not be said that raw material was used contrary to the terms of the recognition certificate and no penalty can be imposed in that case.

6. The question is whether the tubes manufactured by the petitioner for the animal driven vehicles can be said to be rubber product within the meaning of the term 'rubber products' as mentioned in the recognition certificate. Tubes manufactured for animal driven vehicles, per se, are nothing but rubber products and, therefore, it cannot be said that the petitioner used the raw material purchased under the recognition certificate for the goods not mentioned in the recognition certificate. On these facts, we are of the view that no penalty could be imposed on the petitioner.

7. The submission of the Standing Counsel is that the rubber tubes manufactured by the assessee for the animal driven vehicles, are exempt under the law and under the proviso to the Notification No. 7551 dated December 31, 1976, no concession under this notification shall be admissible on the turnover of the goods manufactured by the unit which is exempt under Clause (a) or (b) of Section 4 of the Act. The question of exemption of turnover will be relevant for the purposes of assessment, but so far as question of levying penalty is concerned, penalty can be levied only when raw material purchased under the recognition certificate, is used

in the manufacture of goods not covered by the recognition certificate. This is not the case here, inasmuch as the petitioner used the raw material for the manufacture of rubber tubes, which are nothing but rubber products as notified in the recognition certificate.

On these facts, the petition succeeds and is allowed. The impugned notice dated July 31, 1985 (annexure 3 to the writ petition) is, therefore, quashed.