AFR
Neutral Citation No. - 2024:AHC:22818

Court No. - 1

Case :- SALES/TRADE TAX REVISION No. - 206 of 2022

Revisionist :- M/S John Oakey And Mohan Limited
Opposite Party :- The Commissioner Commercial Taxes U.P. Lucknow
Counsel for Revisionist :- Shubham Agrawal
Counsel for Opposite Party :- C.S.C.

Hon'ble Shekhar B. Saraf,J.

1. Heard Sri Shubham Agarwal, counsel appearing on behalf of the revisionist and learned Additional Chief Standing Counsel for the respondent.

2. The following questions of law have been admitted in this revision petition :-

> *"(1). Whether the Tribunal was justified in affirming levy of entry tax on craft paper purchased by the applicant from outside the local area, though the craft paper purchased by the applicant has been used in manufacturing of coated abrasive sheet (Regmar paper), and is not meant for writing, printing and packing as provided by notification no.104 dated 15.1.09, upon which only the entry tax is leviable?*
>
> *(2). Whether the Tribunal was justified in affirming levy of entry tax on craft paper and not considering that identical issue been decided in favour of the applicant by this Hon'ble Court for the assessment year 2010-11, and the assessing authority for the subsequent years 2012-13 to 2017-18 has already accepted that entry tax would not be leviable on the craft paper purchased by the applicant from outside the local area, since it is not used for writing, printing and packing within the local area, by the applicant?"*

3. It is to be noted that for the same assessee on the same issue the Tribunal had held in favour of the assessee for the assessment year 2010-11. The matter was carried to this High Court by way of Sales/Trade Tax Revision No.728 of 2014 and by an order dated December 21, 2015 the issue was decided in favour of the assessee and against the department.

4. This decision of the High Court was accepted by the department and has not been challenged by way of any appeal. Hence, applying the doctrine of finality this issue is no longer res-integra.

5. One may ofcourse keep in mind that in taxation matters, the principles of res-judicata do not apply squarely for one assessment year to the other. However, keeping in mind the doctrine of finality, unless there is a marked change from one assessment year to the other, the department cannot be allowed to take a different stand. The above principle has been upheld by the Supreme Court in a catena of judgments including **Bharat Sanchar Nigam Ltd. v. Union of India** reported in **[2006] 3 SCC 1**, wherein the Supreme Court has held as follows :-

> *"The courts will generally adopt an earlier pronouncement of the law or a conclusion of fact unless there is a new ground urged or a material change in the factual position. The reason why court have held parties to the opinion expressed in a decision in one assessment year to the same opinion in a subsequent year is not because of any principle of res judicata but because of the theory of precedent or the precedential value of the earlier pronouncement. Where facts and law in a subsequent assessment year are the same, no authority whether qushi-*

judicial or judicial can generally be permitted to take a different view. This mandate is subject only to the usual gateways of distinguishing the earlier decision or where the earlier decision in per-incuriam. However, these are fetters only on a co-ordinate bench which, failing the possibility of availing of either of these gateways, may yet differ with the view expressed and refer the matter a Bench of superior strength or in some cases to a Bench of superior jurisdiction."

6. In the light of the above, it is clear that as no new facts have emerged in the present case, the questions of law have to be decided in favour of the assessee. Accordingly, the revision petition is allowed. Consequential reliefs to follow.

7. Any amount that has been deposited by the assessee in relation to the above demand shall be returned to the assessee within a period of six weeks from date.

Order Date :- 8.2.2024
Dev/-

(**Shekhar B. Saraf,J.**)