

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

SRI JUSTICE S.K. MISHRA, A.C.J.
AND
SRI JUSTICE R.C. KHULBE, J.

11TH MARCH, 2022

COMMERCIAL TAX REVISION No. 12 OF 2013

Between:

M/s Bhatia Sports Company.

...Revisionist

and

The Commissioner, Commercial Tax, Uttarakhand.

...Respondent

Counsel for the revisionist. : Mr. S.K. Posti, the learned Senior Counsel assisted by Mr. Surendra Posti, the learned counsel.

Counsel for the respondent. : Ms. Puja Banga, the learned Brief Holder for the State of Uttarakhand.

Upon hearing the learned Counsel, the Court made the following

JUDGMENT : (per Sri S.K. Mishra, A.C.J.)

By means of this Commercial Tax Revision, the revisionist is challenging the order passed by the Assistant Commissioner, Commercial Tax, Sector-1, Dehradun dated 25.08.2012, as confirmed by the Commercial Tax Tribunal, Uttarakhand, Dehradun Bench, Dehradun in Second Appeal No. 141 of 2012 dated 02.07.2013.

2. The simple question that arises for consideration in this case is whether fitness equipment like dumbbell, treadmill, exerciser etc. shall be included in Entry No. 106 of Schedule II (B) of the Uttarakhand Value Added Tax Act, 2005 (hereinafter referred to as the “VAT Act, 2005”, for brevity), and shall be liable to tax @ 4%, which was prevailing at the relevant time. The assessment relates to the year 2008-09.

3. Mr. S.K. Posti, the learned Senior Counsel appearing for the revisionist, relies upon the judgment of the Hon’ble High Court of Allahabad in the case of ***Cosco Industries Ltd. v. State of U.P. & others; [2009 NTN (Vol. 40)]***, and submits that fitness equipment should come within Entry No. 106 of Schedule II (B) of the VAT Act, 2005.

4. We take note of the aforesaid judgment, specifically paragraph nos. 6, 7 and 8. The Hon’ble High Court of Allahabad has observed that sports goods have been exempted from levy of Value Added Tax with effect from 09.04.2008. Earlier, it was liable to tax @ 4%. However, Section 70 of the Act empowers the State Government to give Commodity Code numbers to any

goods falling under particular entry, and if the State Government allots the Commodity Code under a particular entry to any goods, in view of the provisions of Section 70 of the Act, it would be deemed that the said goods fall under the referred entry. In the said case, the Hon'ble Allahabad High Court further held that that the said goods would fall under the referred entry. In the said case the equipment of general physical exercise, gymnastics, athletics were under Entry No. 60 i.e., sports goods, games and toys. That being the position, the Hon'ble Allahabad High Court further held that they were of the considered opinion that the equipment for general physical exercise, gymnastics, athletics etc. sold by the petitioner would fall within the entry of the sports goods and, therefore, exempted from payment of tax, as at that time it was exempted.

5. Applying this principle to this case, we hold that Entry No. 106 of Schedule II(B) provides for sports goods excluding apparels and footwear, and it is liable to tax @ 4%. Fitness exercises are also held to be goods relating to sports and games by the aforesaid judgment. The learned Tribunal, however, did not accept the view taken by the Hon'ble High Court of Allahabad only on the

ground that HSN Code was not provided in the VAT Act, 2005, which was drawn under the Uttar Pradesh Value Added Tax Act.

6. We are unable to agree with the view taken by the learned Tribunal in view of the fact that the question is whether fitness equipment and other equipment of exercises are sports good, or not. Whether HSN Code was provided, or not, was not the question.

7. In that view of the matter, we are unable to agree with the view taken by the learned President of the Commercial Tax Tribunal, Uttarakhand, Dehradun Bench, Dehradun in Second Appeal No. 141 of 2012 dated 02.07.2013. Moreover, Entry No. 106 of Schedule II(B) of the VAT Act, 2005 itself shows that sports goods, excluding apparels and footwear, have been charged @ 4% tax. It does not exclude equipments of exercises. So, our view is fortified by the said Entry itself.

8. Hence, the present Commercial Tax Revision is, hereby, allowed. The assessment order passed by the Assistant Commissioner, Commercial Tax, Sector-1, Dehradun dated 25.08.2012, and the order passed by

the learned Commercial Tax Tribunal, Uttarakhand, Dehradun Bench, Dehradun in Second Appeal No. 141 of 2012 dated 02.07.2013, are, hereby, set-aside. It is further directed that the goods are to be assessed @ 4% tax.

9. Urgent copy of this order be supplied to the learned counsel for the parties, as per Rules.

10. In sequel thereto, all pending applications also stand disposed of.

S.K. MISHRA, A.C.J.

R.C. KHULBE, J.

Dt: 11th March, 2022
Rahul