

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 6209 OF 2001

M/S. MARBLE MEN

Appellant (s)

VERSUS

STATE OF UTTAR PRADESH & ORS.

Respondent(s)

(With office report)

WITH

CIVIL APPEAL NOS. 6210 & 6211 OF 2001

(with office report)

Date: 19/04/2007 This Matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE C.K. THAKKER

For Appellant(s)
in CA 6209/2001

Ms. Manjula Gupta, Adv.

In CA 6210 & 6211
of 2001

Mr. S.Borthakur, Adv.
Mr. Aneesh Mittal, Adv. for
Mr. Sunil Kr. Jain, Adv.

For Respondent(s)

Mr.T.N.Singh, Adv. for
Mr. Kamlendra Mishra, Adv.

UPON hearing counsel the Court made the following

O R D E R

The Civil Appeal No. 6209 of 2001 is dismissed as withdrawn.

The Civil Appeal Nos. 6210 and 6211 of 2001 are dismissed. No costs.

(Parveen Kr. Chawla)
Court Master

(Kanwal Singh)
Court Master

[Signed Order is placed on the File]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6210 OF 2001

M/s. Chandra Bottles

..Appellant

Versus

State of U.P. & Another

..Respondents

WITH

CIVIL APPEAL NOS. 6211 AND 6209 OF 2001

O R D E R

Civil Appeal Nos.6210 & 6211 of 2001

Appellant challenged the constitutional validity of

Section 2 (ee)(ii) of the Uttar Pradesh Trade Tax Act, 1948

(for short 'the Act').

Section 2(ee)(ii) of the Act reads as follows:

"Sec.2(ee)- "manufacturer" in relation to any goods means the dealer who makes the first sale of such goods in the State after their manufacture and includes-

(i) a dealer who sells bicycles in completely knocked down form,

(ii) a dealer who makes purchases from any other dealer not liable to tax on his sale under the Act other than sales exempted under Sections 4, 4-A and 4-AAA."

The High Court by the impugned order dated 1st

March, 2001 has dismissed the writ petition relying upon its decision in Writ Petition No. 321 of 2001(M/s. Sikandar Baksh Company vs. State of U.P. & Another) rendered on the same day. The said case was dismissed by the High Court by observing that the appellant had challenged the constitutional validity of Section 2(ee)(ii) of the Act being in conflict with Section 3 of the Act. High Court rejected the plea raised by observing:

"We see no unconstitutionality in the above provisions. Learned counsel for the petitioner submitted that the above provision is in violation of Section 3 of U.P.Trade Tax Act. We are afraid this argument is wholly misconceived. The validity of a provision of an Act can be challenged on the ground that it is in violation of some provision of the Constitution, and not on the ground that it is in violation of some provision of the Act. If there is an apparent contradiction in two provisions of an Act that problem is to be resolved by the principle of harmonious construction and not by declaring one of the two provisions invalid.

Thus we find no Constitutional illegality in Section 2(ee)(ii) of the U.P.Trade Tax Act. In particular, we find no violation of Article 14 or 19 of the Constitution by the said provision.

We agree with the view taken by the High Court that the constitutional validity of the provision is different than being in conflict with the provisions of the Act itself. High Court was right in observing that there was no constitutional illegality attached to the provisions of Section 2(ee)(ii) of the Act and the same were not in violative of Articles 14 and 19 of the Constitution.

The Appeals are dismissed accordingly. No costs.

Civil Appeal No. 6209 of 2001

Counsel for the appellant, on instructions, states that she wants to withdraw this appeal. Accordingly, the Civil Appeal is dismissed as withdrawn.

.....J.

[ASHOK BHAN]

NEW DELHI;

.....J.

APRIL 19, 2007.

[C.K.THAKKER]