

(2008) 08 AHC CK 0102
In the Allahabad High Court

A.H. Wheeler and Co. Pvt. Ltd.

APPELLANT

Vs

Commissioner, Trade Tax

RESPONDENT

Date of Decision : 18-08-2008

Acts Referred:

Citation : (2009) 25 VST 5

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Judgement

Prakash Krishna, J.—All these revisions relate to the assessment years 1992-93 to 1995-96 (U.P. and Central).

2 These revisions were heard together and are being disposed by a common judgement as jointly prayed by the learned Counsel for the parties. They submit that all these revisions relate to one assessee and identical question of law and fact are involved therein. The argument was advanced with reference to the facts of the Trade Tax Revision No. 1047 of 2000 relevant to the assessment year 1994-95 (Central).

3 The applicant, a private limited company, is carrying on business in sports goods. It also manufactures sports wears such as tennis shirts, hockey/football jerseys, cricket-playing lowers, T-shirts, pullovers, sports caps, wrist bands, jogging suits, tract suits, etc. It claimed that these goods are taxable under the U.P. Trade Tax Act, 1948 as sports goods at the rate of three per cent for the years 1992-93 to 1994-95 (up to September 30, 1994), at the rate of two per cent for the assessment year 1994-95 (for the remaining period) and 1995-96, excluding the additional tax. The assessing officer treated these items as ready-made garments and taxed them at the rate of six per cent for the assessment years 1992-93 to 1994-95 and at the rate of four per cent for the assessment year 1995-96 excluding the additional tax.

4 The only point mooted in the present revision is whether the sports-wears are taxable as sports goods or as ready-made garments.

5 All the three authorities below including the Tribunal did not agree with the dealer-applicant and upheld the levy of the tax on such goods at the rate applicable to the ready-made garments. In the memo of revision the following questions of law have been sought to be raised:

A. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in taking the view that the sportswear such as tennis shirts, hockey/football jerseys, cricket playing lowers, T-shirts, pullovers, sports caps, wrist bands, jogging suits, tract suits sold by the applicant were liable to tax as ready-made garments and not as goods required for indoor or outdoor games or sports?

B. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in treating the cricket-playing lowers, sports caps, wrist bands as ready-made garments and not as sports wear?

6. Before proceeding further, the competitive entries involved in the present revisions are noted, excluding the rate of tax.

Notification No. S.T.-2-5785/X-10(I)-80-- Notification No. ST-2-1097/XI-2(3)/88-U.P. U.P. Act XV/48--Order-81, dated Act-XV/48-Order-91, dated July 29,1991. September 7, 1981. (Gazette dt. 07.09.1981) (Gazette dt. 29.07.1991) 4. All kinds of ready-made garments 21. Goods for indoor or outdoor games or (except woollen garments) including sports, except those included in any ties, bows, mosquito-nets, other notification issued under the Act unfilled razais, lihafs or pillow but including rubber bladders of various covers. kinds of balls, toys, swing, jhoola, medal, cups, trophies, badges and whistles. 7. Shri Kunwar Saxena, the learned Counsel for the applicant, submits that various items manufactured by the dealer-applicant even if regarded as ready-made garments but since there is a specific entry relating to the "goods for indoor or outdoor games or sports", these items should be taxed under the specific entry at a lesser rate. Elaborating the argument he submits that the track shirts, etc., manufactured by the dealer may be used by other persons but it does not mean that they are not goods for indoor or outdoor games or sports. According to him, the special type of garments are made for players of games and sports and as such they are liable to be taxed under the notification dated July 29, 1991. The learned Standing Counsel, on the other hands, supports the impugned orders.

8. Considered the respective submissions of the learned Counsel for the parties and perused the record. Attention of the court was invited towards the assessment order wherein the assessing authority has taxed the goods in question treating them as "khel kood ke vastron ki bikri". Much emphasis was laid by the learned Counsel that the assessing officer himself has treated the items in question as sportswear which in turn means sports goods. It is difficult to agree with him.

9. Conceptually the goods for indoor or outdoor games or sports are different than the sportswears. Even if the commodities in question are treated as sportswear it will be stretching too much to treat them as goods for indoor or

outdoor games or sports. In my considered view, the goods for "games and sports" refers to such items with which the games or sports are played, for example--ball, bat, racket, football, net, shuttle cock, cricket ball, stump, etc.

10. It is true that in entry the words "goods" for "indoor or outdoor games" are not qualified and at first sight it may appear that sports wears is also included therein, but when the subsequent part of the entry is also taken into consideration, the word "good" will draw its colour from the words "rubber bladders of various kinds of balls ..." This would show the intention of the Legislature to provide conventional meaning to words "goods for sports and games"--a restricted meaning.

11. The Tribunal has relied upon the Division Bench decision in Commissioner of Sales Tax Vs. Fateh Chand Mahajan, In this case, the entry was of "footwear". A question arose as to whether sports shoes are liable to be taxed as footwear or as unclassified item? This court held that footwear is a term of very wide sweep. It includes all kinds of shoes including those which may be used on particular occasions or events. Simply because one variety of shoe is generally sold by a dealer in sports goods, it will not go outside the purview of the entry "footwear". Even if it be assumed that since these variety of shoes is used by sportsmen and so are generally kept and sold by dealers in sports goods, yet since there is no specific category called "sports goods" in any notification, sports shoes would remain footwear and would be taxed as such. The contention of the learned Counsel for the dealer is that since there was no other competing entry, the sports shoes were held to be included in the entry "footwear". The said argument may be attractive but has got no merit. The word "sport" has been defined in The New Lexicon Webster's Dictionary of the English Language in the following manner:

Sport--(..., spourt) 1. n. "the playing of games or participation in competitive pastimes involving physical exertion and skill, esp. those played outdoors any such game or pastime (esp. Br.) such games collectively the pleasure and satisfaction derived from such games or pastimes or from hunting, etc., it was good sport--an activity pursued for pleasure involving the hunting, taking or killing of wild animals, game or fish, blood sports (pl.) athletics (track events, jumping, etc.) (Br., pi.)--an organised meeting for these a person who has the qualities of sportsmanship...

12 As observed by the Division Bench in the above case even if the wears manufactured by a dealer is used by sportsmen and so far as generally are kept and sold by dealers in sports goods, yet they are garments which possibly cannot be disputed. There being no specific entry of sports wear, the commodities in question have been rightly taxed treating them as garments. The word "garment" is a term of wide sweep and will include all kinds of garments, unless excluded otherwise.

13. The above view finds further support from the fact that the entry relating to

the goods for indoor or outdoor games or sports is exclusive and inclusive as well. It excludes items which are included in any other notification issued under the Act and it includes rubber bladders of various kinds of balls, toys, swing, jhoola, medal, cups, trophies, badges and whistles. Both exclusion and inclusion have been provided in the said entry relating to the goods for indoor games or sports. Nothing can be added or subtracted except the one as provided for. If the interpretation as put by the learned Counsel for the dealer is accepted there would have no reason to include rubber bladders of various kinds of balls, toys, swing, jhoola, medal, cups, trophies, badges and whistles. These items are connected with games and sports but they themselves are not goods for indoor and outdoor sports or games and that is the reason they have been included by making express provision for them.

14. In view of the above, I find no merit in the revisions. All the revisions are hereby dismissed.

15. No order as to costs.