
(1997) 11 AHC CK 0127
In the Allahabad High Court
Case No : Sales Tax Revision No. 586 of 1993

Atar Singh Sarraf

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 12-11-1997

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 2

Citation : (1999) 105 ELT 26

Hon'ble Judges : S.L. Saraf, J

Bench : Single Bench

Advocate : K.M. Sahai, for the Appellant;

Final Decision : Allowed

Judgement

S.L. Saraf, J.—By this revision application, the applicant has challenged the order passed by the Tribunal dated 3rd February, 1993. The applicant is engaged in the business of cleaning and repairs of old ornaments. The applicant also buys old ornaments and sells them in the market. The applicant is not engaged in any business as envisaged u/s 2(e-1) of the U.P. Trade Tax Act, 1948 which reads as follows :

""manufacture" means producing, making, mining, collecting, extracting, altering, ornamenting, finishing or otherwise processing, treating, or adapting any goods but does not include such manufacture or manufacturing processes as may be prescribed."

2. On basis of the aforesaid definition, it is submitted by the learned Counsel for the applicant that the applicant is not engaged in manufacturing or processing of any goods. It is submitted that no alteration in the character or nature of the ornaments has been made and the goods remain the same.

3. Learned Counsel for the applicant relied on a decision of the Supreme Court reported in 1981 U.P.T.C. 667, Civil Appeal No. 2398 of 1978, Deputy Commissioner of Sales Tax (Law) Board of Revenue (Taxes), Ernakulam v. Pio

Food Packers, wherein it has been held that the nature and extent of processing may vary from one case to another and indeed there may be several stages of processing and perhaps a different kind of processing at each stage. With each process suffered, the original commodity experiences a change. But it is only when the change or a series of changes, the commodity to the point where commercially it cannot longer be regarded as the original commodity but instead is recognised as a new and distinct article that a manufacture can be said to take place. Where there is no essential difference in identity between the original commodity and the processed article it is not possible to say that one commodity has been consumed in the manufacture of another. Although it has undergone a degree of processing, it must be regarded as still retaining its original identity.

4. On the basis of the decision of the Supreme Court, Counsel submits that no new article has been created or any material change in the character or nature of the ornament has taken place by cleaning and tanka process by the applicant.

5. Learned Standing Counsel, Sri K.M. Sahai, appearing for the department argued that the activities of cleaning and tanka amounts to manufacture in view of Section 2(e-I) of the Act. According to the Standing Counsel the activities relating to cleaning and tanka are covered by the expression of processing, as such, the same is taxable.

6. The Tribunal has held in its order that the work of cleaning and tanka comes within the definition of manufacture as envisaged u/s 2(e-I) of the U.P. Trade Tax Act. I have carefully considered the submission and the materials on record and find no substance in the submission of the learned Standing Counsel appearing for the revenue as cleaning or using tanka shall not change the character and the nature of the article, it will remain the same article. The work of cleaning and putting tanka on the old ornaments does not come within the meaning of Section 2(e-I) of the U.P. Trade Tax Act, 1948, as such revision succeeds and is allowed. The order passed by the Tribunal dated 3rd February, 1993 and other consequential orders passed by the authorities concerned are hereby quashed and set aside. There will be no order as to costs.