(2008) 08 AHC CK 0101

In the Allahabad High Court

Commissioner APPELLANT

Vs

Kohinoor Glass House RESPONDENT

Date of Decision : 20-08-2008

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2009) 25 VST 135

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Judgement

Prakash Krishna, J.—These two revisions have been filed u/s 11 of the U.P. Trade Tax Act, 1948 by the Department against the common order of the Tribunal dated July 22, 2005 whereby and where -under, the Tribunal has held that looking glass is taxable as unclassified item under the U.P. Trade Tax Act.

2. The revisions were heard together and are being disposed of by a common judgment as jointly agreed by the learned Counsel for the parties.

3. The dispute relates to the assessment years 1999-2000 and 1994-95.

4. The facts are not much in dispute. The opposite party hereinafter referred to as "the dealer" imported looking glass/mirror glass from outside of U. P and sold them. The assessing officer on the sale of such looking glass levied trade tax at 15 per cent treating them as imported mirror glass sheet and covered under the entry relating to the glassware. The contention of the dealer-opposite party was that it is not a glassware and as such is liable to be taxed as unclassified item at 10 per cent. The First appellate authority and the Tribunal as well have accepted the contention of the dealer-opposite party and held that the controversy involved is covered by a decision of this Court in Hindustan Safety Glass Works v. Commissioner of Sales Tax, U.P. [1998] 111 STC 661 and of apex court in Atul Glass Industries (P.) Ltd. v. Collector of Central Excise [1986] 63 STC 322 : [1986] UPTC 1345. The following question of law has been sought to be raised by the Department:

(i) Whether, on the facts and in the circumstances, both appellate authorities below were legally justified in holding that the glass mirror will be taxable as unclassified item and not as glassware?

5. The question is being re-framed in the light of the arguments advanced by the learned Counsel for the parties. "Whether on the facts and circumstances of the case, glass-mirror is taxable as unclassified item or glassware or toilet requisite"?

6. The contention of the learned Counsel for the Department is that even if looking glass is not a glassware, it is liable to be taxed as toilet requisites as held by the Division Bench of this Court in Tarkeshwar Nath Agarwal v. Commissioner of Sales Tax [1974] 34 STC 497 : [1975] UPTC 343.

7. Shri Piyush Agrawal, Advocate, on the other hand submits that the controversy raised before the authorities below was as to whether looking glass is glassware or not. If it is not a glassware, it is liable to be taxed as unclassified item and at this stage it is not open to the Department to raise a new plea and contend that looking glass is taxable as toilet requisites. Reliance was placed by him on Commissioner of Sales Tax v. India Pipe Store [1973] UPTC 606 and Commissioner of Sales Tax v. Radhey Lal Ved Prakash [1992] UPTC 215.

8. Considered the respective submissions of the counsel for the parties. Before proceeding to decide the dispute on merits, it is desirable to consider the objection raised by the learned Counsel for the dealer-opposite party with regard to the plea that the commodity in question is taxable as toilet requisite being a new plea, and cannot be urged in the revision.

9. A bare perusal of the order of the Tribunal would show that even before it, it was contended by the Department that looking glass is taxable as toilet requisite in view of the Division Bench judgment of this Court in the case of Tarkeshwar Nath Agarwal [1974] 34 STC 497 : [1975] UPTC 343. The Tribunal rejected the said plea with the following observations:

In these circumstances it cannot be said that the sold mirror glass comes ''under the category'' of cosmetic as glass.

10. The learned Counsel for the dealer-opposite party is therefore not justified in making the submission that the plea, sought to be raised here, is a new plea and was not urged before the Tribunal. Even otherwise also, on the facts of the present case, the objection raised by the dealer-opposite party is unsustainable for the reason that commodity can be taxed under a residuary entry only if it cannot be classified in any other entry.

11. In Commissioner of Sales Tax v. India Pipe Store [1973] UPTC 606, reference to the High Court was made with regard to a particular notification. Before the High Court, the Department sought to rely on another notification. In this connection it was observed by the High Court that the Department having not relied upon a particular notification up to the stage of judge revision cannot rely on a different notification. This is not so in the present case. Similar was the

position in Commissioner of Sales Tax v. Radhey Lai Ved Prakash [1992] UPTC 215. As discussed above, the argument of the learned Counsel for the dealer-opposite party that it is not open for the Department to contend in the present revision that the glass mirror is taxable as toilet requisite is not sustainable.

In Atul Glass Industries (P.) Ltd. v. Collector of Central Excise [1986] 63 12 STC 322 : [1986] UPTC 1345, the apex court was considering the entry relating to glass and glasswares under the Excise Act. The question was whether glass mirror should be classified as glassware. It noted the manufacturing process of glass mirror in the following words:

...It purchases duty-paid glass sheets from the manufacturers of glass, and either in their original size or after reducing them to smaller sizes puts the glass sheets through a process of treatment. The glass pieces are buffed with the aid of buffing machines in order to improve the surface of the glass and prepare it for mirror processing. The glass is fed into an automatic silvering conveyor line where it passes through a stage of mechanical cleaning and polishing with the aid of nylon bristle brushes so that the glass surface is rendered free of scratches, dust particles and carbohydrates. The glass is then washed mechanically with the aid of cylindrical brushes using distilled water as a washing medium. Thereafter the glass surface is sensitised by chemical compounds such as stannous chloride, and rinsed with distilled or demineralised water to remove excess of chemicals. The sensitised glass is passed through a chamber where silver in liquid form with the aid of reducing solutions is applied as a very thin and uniform adherent reflective film on the surface of the glass. The silver coating, being of malleable metal, is protected by a coating of copper in form of a thin metal deposit with the aid of an electromagnetic spray system. The excess of copper and acidic solutions are rinsed away with the distilled or demineralised water. Subsequently hot air is employed for the purpose of drying, and the humidity is removed completely with the aid of an infra-red heating system. After thorough drying, the silver and copper coatings are protected with four coats of special mirror-backing paint applied with the aid of a roller-coating machine in four stages. The paint is baked in the baking conveyor after thorough drying. The other side of the mirror is mechanically cleaned. The mirror thus produced is finally sent for quality control inspection. Cut glass is employed in the case of decorative mirrors. The cut glass is shaped with the aid of cutting lathe-machines before subjecting it to the silver process. Edge grinding or bevelling and hole-drilling is done, if required, after the mirror has been manufactured.

13. It reached to the conclusion that the original glass sheet undergoes a complete transformation when it emerges as a glass mirror. Taking into consideration the common parlance meaning of glass mirror, it has been observed that in the case of glass mirror, the consumer recalls primarily the reflective function of the article more than anything else. It is a mirror, an article which reflects images. It is referred to as a glass mirror only because the word "glass" is descriptive of the mirror in that glass has been used as a medium for

manufacturing the mirror. The basic or fundamental character of the article lies in its being a mirror.

14. The apex court has held that glass mirror is not a glassware with reference to entries under the Excise Act and the same will be applicable for sales tax purposes also. To this extent the order of the Tribunal that glass mirror is not a glassware does not call for any interference in the revision and the view taken by the Tribunal is correct.

15. The other aspect of the case is as to whether glass mirror can be taxed as toilet requisite or as an unclassified item.

16. A Division Bench of this Court in the case of Tarkeshivar Nath Agarwal [1974] 34 STC 497 : [1975] UPTC 343 following a Full Bench decision of this Court in Commissioner of Sales Tax, U.P., Lucknow Vs. Jai Shri Products, Varanasi, has held as follows:

Having regard to the decision cited above, we have no hesitation in holding that looking glass is a toilet requisite and taxable as such.

17. In view of the above authoritative pronouncement, glass mirror is taxable as toilet requisite. The learned Counsel for the dealer could not show anything to the contrary. It may be added here that toilet requisites are also taxable at 15 per cent, the rate which was levied by the assessing officer on the turnover of imported glass mirror.

18. In this manner, no prejudice is being caused to the dealer-opposite party.

19. Viewed as above, it is held that the authorities below were not justified in taxing the glass-mirror as unclassified item. It is also held that glass mirror is taxable as toilet requisite. The order of the Tribunal is therefore, set aside.

20. Both the revisions succeed and are allowed but no order as to costs.