(1970) 02 AHC CK 0033

In the Allahabad High Court

Case No : S.T.R. No''s. 238 and 239 of 1969

Commissioner of Sales Tax APPELLANT

Vs

Brijvasi Traders RESPONDENT

Date of Decision : 26-02-1970

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 11(3)

Citation : (1971) 27 STC 55

Hon'ble Judges : Satish Chandra, J;R.L. Gulati, J

Bench : Division Bench

Advocate : B.L. Gupta and Mohanji Varma, for the Respondent

Judgement

R.L. Gulati, J.—u/s 11(3) of the U.P. Sales Tax Act, the Additional Judge (Revisions) Sales Tax, Agra, has at the instance of the Commissioner of Sales Tax, U.P., Lucknow, submitted this statement of the case with the following question of law for our opinion:

Whether the rexine covers and pads are cycle parts or accessories as mentioned in Notification No. S.T. 187/X-900(15)/61 dated 13th May, 1963, and taxable as such or as unclassified articles taxable at 2 per cent.?

2. The assessee M/s. Brijvasi Traders of Agra carries on the business of manufacture and sale of cycle seat covers and pads made of rexine. The assessment years involved are 1961-62 and 1962-63.

3. In Commissioner of Sales Tax, U.P. v. Free India Cycle Industries (S.T.R. No. 574 of 1968 decided on 26th February, 1970) Since reported at [1970] 26 S.T.C. 428, we have held that rexine covers for cycle seats and pads are neither cycle parts nor accessories within the meaning of the notification referred to in this question. There, however, appears to be a slight mistake in the question in these references inasmuch as the notification referred to is dated 13th May, 1963, which would not be applicable to either of the assessment years involved in these cases. The relevant notification which would be applicable is Notification No. S.T.

1363/X-1045 (19)/60 dated 5th April, 1961, and the relevant entry is at serial No. 34 of the Schedule annexed to that notification. Entry No. 34 reads:

Bicycles, tricycles and perambulators and parts and accessories thereof other than tyres and tubes.

4. However, there is no material difference between this notification and the notification referred to in the question except that in the later notification the words "cycle rickshaws" have been added.

5. We would, therefore, reframe the question to read:

Whether the rexine covers and pads are cycle parts or accessories as mentioned at item No. 34 of Notification No. S.T. 1363/X-1045(19)/60 dated 5th April, 1961, and taxable as such or as unclassified articles taxable at 2 per cent.

6. For the reasons stated in our judgment in Commissioner of Sales Tax, U.P. v. Free India Cycle Industries (S.T.R. No. 574 of 1968) Since reported at [1970] 26 S.T.C. 428, we answer the question by spying that rexine covers and pads are not cycle parts and accessories but are unclassified items taxable at 2 per cent. The assessee is entitled to its costs which we assess at Rs. 100 for both the references. The fee of the learned counsel is also assessed at the same figure.

