(1972) 01 AHC CK 0010

In the Allahabad High Court

Case No : Sales Tax Reference No''s. 651 and 652 to 654 of 1970

Commissioner of Sales Tax APPELLANT

Vs

Damodar Dass RESPONDENT

Date of Decision : 31-01-1972

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

Citation : (1973) 31 STC 374

Hon'ble Judges : S.N. Dwivedi, J;R.L. Gulati, J

Bench : Division Bench

Advocate : K.M. Singh, for the Respondent

Judgement

R.L. Gulati, J.—This case and the connected cases were listed again today for further hearing. After hearing the counsel for the parties we are now giving this Judgment.

2. This is a reference u/s 11(3) of the U. P. Sales Tax Act by the Commissioner of Sales Tax, U. P., Lucknow. It relates to the assessment year 1956-57. The connected cases are also references which relate to the assessment years 1957-58, 1965-66 and 1966-67. A common question of law has been referred in all these cases. The question is :

Whether on the facts and circumstances of this case, kulia khand is taxable under Notification No. 4064/X-960(4)-58 dated 25th November, 1958, in the hands of the opposite party or not ?

3. One of the commodities in which the assessee deals is what is known as kulia khand. Kulia khand is prepared out of khandsari sugar by a simple mechanical process. Khandsari sugar is dissolved in water and to the solution are added certain purifying agents. The mixture is then heated and the impurities come to the surface in the form of scum which is removed. The refined solution is then poured into wooden moulds and the moulds are allowed to cool when the liquid takes a solid shape. This substance is then taken out of the moulds and is called

kulia khand. The assessee claimed that the turnover of such kulia khand was not liable to tax. This contention of the assessee has been allowed by the revising authority which has held that kulia khand is only a different form of khandsari sugar and as khandsari sugar is taxable at the point of sale by the manufacturer or the importer, the assessee is not liable to tax, because it is neither the importer nor the manufacturer of khandsari sugar.

4. Now, in the question which has been referred by the revising authority, there is reference to the notification of 25th November, 1958. That notification is u/s 4(1)(a) and unconditionally exempts from the payment of tax the turnover of certain commodities including sugar containing more than ninety per cent of sucrose, but excluding khandsari sugar, sugar candy, batasha, cooked food, confectionary and sweetmeats. It is difficult to understand as to how the taxability or otherwise of kulia khand depends on this notification. In the first place, the notification seeks to exempt rather than to tax certain commodities. Secondly, this notification takes effect from 1st July, 1958. It can have no application to the assessment years 1956-57 and 1957-58. Accordingly, our answer to the question so far as it relates to these assessment years is that kulia khand is not taxable under the notification of 25th November, 1958.

5. As regards the remaining two assessment years, the notification which may apply is Notification No. 1365/X-990-1956 dated 1st April, 1960. That is a notification u/s 3-A and declares that with effect from 1st April, 1960, the turnover of certain goods mentioned in the schedule attached thereto shall be liable to tax at a specified single point. Item No. 40 of the Schedule relates to khandsari sugar at which additional excise duty is not leviable under the Additional Duties of Excise (Goods of Special Importance) Act, 1957, or if leviable it has specifically been exempted from such levy. The point of tax is the sale by the importer or the manufacturer and the rate is 2 paise per rupee. If this notification is applicable, the sale of khandsari sugar is taxable only at the point of sale by the manufacturer or the importer. The assessee is neither of them because he prepares kulia khand from locally purchased khandsari sugar. Kulia khand is only a different form of khandsari sugar and not a different commodity and, therefore, the sale of kulia khand cannot be taxed a second time.

6. If khandsari sugar which is employed in the preparation of kulia khand is such upon which additional excise duty is leviable, then it would be governed by a notification of 14th April, 1957 (No. S.T. 4485/X) which grants exemption to khandsari sugar on the condition that additional excise duty leviable thereon has been paid. In the instant case, there is no finding as to whether khandsari sugar utilised by the assessee in the preparation of kulia khand is sugar contemplated by the notification of 14th December, 1957, or the notification of 1st April, 1960. But in any case kulia khand is not taxable under the notification of 25th Novermber, 1958, mentioned in the question for the simple reason that that notification does not seek to levy tax but exempts from tax certain commodities. Khandsari sugar no doubt has been excluded from the exemption, but that by

itself does not mean that khandsari sugar is taxable under that notification.

7. For these reasons we would answer the question for these two assessment years also in the negative. The assessee will get costs which we assess at Rs. 100 (one set of costs only).

