(1981) 11 AHC CK 0014

In the Allahabad High Court

Case No : S.T.R. No. 397 of 1981

Commissioner of Sales Tax — APPELLANT

Vs

Gupta Brothers — RESPONDENT

Date of Decision : 02-11-1981

Acts Referred:

Citation : (1982) 51 STC 400

Hon'ble Judges : R.M. Sahai, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.M. Sahai, J.—By this revision the Commissioner of Sales Tax challenges the correctness of the view taken by the Sales Tax Tribunal that purchase of old gold ornaments was not taxable u/s 3-AAAA as the purchases were made in the shape of bullion and were taxable as such. In treating old ornaments as bullion the Tribunal obviously committed an error of law. In Deputy Commissioner of Sales Tax v. G. S. Pai and Co. 1980 UPTC 524 (SC) it has been held by the Honourable Supreme Court that bullion in popular sense cannot include ornaments. It connotes gold or silver in the form of raw gold or silver or ingots or bars.

2. The learned counsel for the assessee argued that as tax has been paid on the sale of ornaments the assessee was not liable to pay any tax on the purchase made by it. The argument suffers from fallacy. Admittedly, the assessee purchased old gold ornaments which were broken and unusable and thereafter sold them after cleaning and improving. In other words, from unusable it became usable. The sale, therefore, was not in the same form and condition as it was purchased. Liability to pay tax u/s 3-AAAA is on purchases in respect of goods which are taxable at point of sale to consumer, but if in view of any provision in the Act no tax is payable by the seller and the purchasing dealer does not resell such goods in the same condition either inter or intra-State then tax is leviable on such purchases. In the purchase of old ornaments and their sale all the ingredients of this Section are satisfied. Sale of old ornaments to dealer is not

taxable under the Act. Purchasing dealer that is, the 3 admittedly did not sell them in the same form and condition. The purchases made by it therefore became taxable. The learned counsel for the assessee placed reliance on a recent notification where old ornaments have been treated as bullion and has urged that this indicates the legislative intent; therefore even in the year in dispute the old ornaments should be understood as bullion. Admittedly the notification is not retrospective in nature. It is therefore difficulty to accept this contention.

3. In the result this revision succeeds and is allowed. The order passed by the Tribunal in respect of turnover of ornaments u/s 3-AAAA is set aside. A copy of this order shall be sent to the Tribunal to take action u/s 11(8) of the Act. The Commissioner of Sales Tax shall be entitled to costs which is assessed at Rs. 50.

