(1973) 08 AHC CK 0014

In the Allahabad High Court

Case No : Sales Tax Reference No. 356 of 1971

Commissioner of Sales Tax — APPELLANT

Vs

Hamidullah and Sons — RESPONDENT

Date of Decision : 06-08-1973

Acts Referred:

Citation : (1974) 33 STC 571

Hon'ble Judges : R.L. Gulati, J;A. Banerji, J

Bench : Division Bench

Advocate : J.C. Bhardwaj, for the Respondent

Judgement

R.L. Gulati, J.—The assessee deals in building materials and among other things sells marble chips. In the assessment year 1965-66, which is the year in dispute, the assessee contended that marble chips were marble goods and, as such, were exempt from tax. This contention was not accepted by the Sales Tax Officer, but was accepted on appeal by the appellate authority, as also by the Judge (Revisions). The Commissioner is aggrieved and at his instance the Additional Judge (Revisions), Sales Tax, Bareilly, has referred the following question for our opinion:

Whether, in the facts and circumstances of the case, when the assessee is a dealer of building material, the Additional Judge (Revisions) was justified in exempting the turnover of marble chips?

2. Under Notification No. ST-911/X dated 31st March, 1956, the turnover of several commodities enumerated in the two lists attached to the notification, has been exempted from tax u/s 4 of the Act. Item No. 12 in List II is "marble goods". The learned standing counsel contends that the notification in question is meant to apply to goods manufactured by small-scale industries only and, secondly, that, in any case, "marble chips" cannot be regarded as "marble goods", which term includes such articles as are manufactured or made out of marble. It. is true that most of the goods mentioned in the notification are those

manufactured by small-scale industries, but it cannot be held that the notification applies only to goods manufactured by small-scale industries. Indeed, such a point was never raised on behalf of the department before the revising authority and, as such, he has not dealt with it. All that we have to consider is as to whether "marble chips" can be said to be "marble goods".

3. The expression "marble goods" is very wide and would include all articles of marble. Of course, an article of marble must be such as has been produced or designedly shaped out of marble. Waste or bye-product obtained from the production of marble articles cannot be said to be an article of marble or marble goods. One gets the impression that marble chips are waste obtained in the process of production of marble articles. If that were the position, marble chips certainly could not be regarded as marble goods. But from the finding recorded by the Judge (Revisions) it appears that marble chips sold by the assessee are not obtained as waste but are purposely made by grinding marble slabs. In these circumstances, it cannot be said that "marble chips" are not "marble goods".

4. We accordingly answer the question in the affirmative in favour of the assessee and against the department. The assessee is entitled to costs which we assess at Rs. 100.

