(1974) 02 AHC CK 0030

In the Allahabad High Court

Case No : S.T.R. No. 247 and 315 of 1972

Commissioner of Sales Tax — APPELLANT

Vs

Mango Mal Nanak Ram — RESPONDENT

Date of Decision : 22-02-1974

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 3A

Citation : (1974) 33 STC 556

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

Bench : Division Bench

Advocate : Gopal Behari, for the Respondent

Final Decision : Disposed Of

Judgement

R.L. Gulati, J.—This is a reference u/s 11(3) of the U.P. Sales Tax Act relating to the assessment years 1964-65 and 1965-66 raising a common question of law.

2. The assessee is a dealer in cement, white cement, refractory cement, etc. The turnover of all varieties of cement was assessed at 7 per cent. The assessee appealed and contended that white cement and refractory cement were not the same thing as ordinary cement and should have been assessed as unclassified items and not at the rate of 7 per cent which is applicable to ordinary cement only. This contention was accepted by the appellate authority and the order of the appellate authority has been upheld by the Judge (Revisions). The Commissioner of Sales Tax is aggrieved and at his instance the following question of law has been referred to us for opinion:

Whether, on the facts and in the circumstances of the cases, white cement, refractory cement and cement are the same commodity and the turnover of white cement and refractory cement should have been taxed as turnover of cement at 7 per cent under Notification No. ST-6438/X -- 1012-1962 dated 1st December, 1962.

Under the notification dated 1st December, 1962, issued u/s 3-A of the U.P. Sales

Tax Act, cement other than cement covered by entry 46 of the schedule is liable to tax at the rate of 7 paise per rupee at the point of sale by the manufacturer, if it is manufactured in U.P. or at the point of sale by the importer, if it is imported from outside U.P. Under entry 46 also the rate is 7 paise per rupee. It deals with cement sold by stockists appointed by the State Trading Corporation of India or stockists appointed by the Government Cement Factory, Churk, Mirzapur. So this entry 46 is not material for our purposes.

4. The word "cement" not having been defined in the Act or in the Rules, it has to be understood as in common parlance. Cement is a commodity of everyday use. White cement is only a special variety of ordinary cement which is grey in colour. Ordinary cement is most extensively used as a building material. The white cement or refractory cement is also used as a building material, but sparingly because of its high price. White cement is ordinarily used in flooring and other decorative cement works.

5. Our attention has been drawn to a booklet relating to A.C.C. White Cement. We find that the process of manufacture of white cement and the ordinary cement is the same except that in the white cement certain ingredients are mixed in small quantities which give it whitish colour. In that booklet it is also mentioned that white cement can be used for the same purpose as the ordinary grey cement.

6. In Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh, a question arose before the Supreme Court as to whether the word "coal" includes charcoal. It was argued before the Supreme Court that while coal is a mineral product, charcoal is manufactured by human agency from products like wood and other things and, therefore, "coal" would not include charcoal. The Supreme Court rejected this argument by observing that while interpreting items in statutes like the Sales Tax Acts, resort should be had not to the scientific or the technical meaning of such terms, but to the popular meaning or the meaning attached to them by those dealing in them, that is to say, to their commercial sense. After noticing various cases cited at the Bar, the Supreme Court reached at the following conclusion:

The result emerging from these decisions is that while construing the word ''coal'' in entry 1 of Part III of Schedule II, the test that would be applied is what would be the meaning which persons dealing with coal and consumers purchasing it as fuel would give to that word. A sales tax statute, being one levying a tax on goods, must, in the absence of a technical term or a term of science or art, be presumed to have used an ordinary term as coal according to the meaning ascribed to it in common parlance. Viewed from that angle both a merchant dealing in coal and a consumer wanting to purchase it would regard coal not in its geological sense but in the sense as ordinarily understood and would Include ''charcoal'' in the term ''coal''. It is only when the question of the kind or variety of coal would arise that a distinction would be made between coal and charcoal; otherwise, both of them would in ordinary parlance as also in their commercial sense be spoken as coal.

7. These observations are fully applicable to the case before us. In common parlance and in commmercial sense the word "cement" would include all varieties of cement. Unless the Legislature makes a distinction between different varieties of cement, the word "cement" by itself would include all kinds and varieties of cement. White cement, as we have already observed, is only a variety of cement.

8. It was pointed out to us that under the U.P. Sales Tax (Amendment) Act, 1973, the entry "white cement" has specifically been included in the cement. This does not show that white cement was not covered by that entry. The Government has clarified the position which was previously implicit, may be because of the contrary view taken by the sales tax authorities.

9. We accordingly answer the question in the affirmative in favour of the department and against the assessee. The Commissioner of Sales Tax is entitled to the costs of this reference which we assess at 100. There will be one set of costs only.