(1978) 08 AHC CK 0022

In the Allahabad High Court

Case No : S.T.R. No. 363 of 1976

Commissioner of Sales Tax APPELLANT

Vs

Merit Industries RESPONDENT

Date of Decision : 09-08-1978

Acts Referred:

Citation : (1979) 43 STC 142

Hon'ble Judges : C.S.P. Singh, J

Bench : Single Bench

Advocate : R.V. Gupta, for the Respondent

Judgement

C.S.P. Singh, J.—The assessee deals in leather, leather belt and leather cutting. Leather belts were brought to tax at the rate of 6 per cent on the footing that they fall within the ambit of the words "mill-stores and hardware" as occurring at item No. 3 of Notification No. ST-4124/X- 950(12)-1967 dated 31st July, 1967. The contention of the assessee that they should be taxed as leather goods was accepted on appeal and the revision filed by the Commissioner of Sales Tax failed.

2. The dispute in this reference is as to whether leather beltings are comprised in the term "mill-stores and hardware". The notification of 31st July, 1967, has been issued u/s 3-A and item No. 3 thereof is to the following effect:

Mill-stores and hardware.

3. The import of this entry has been considered on a number of occasions by this Court, viz., in the case of Commissioner of Sales Tax, U. P. v. Aftab Husain Imdad Husain [1970] 25 S.T.C. 471, Fine Trading Corporation v. Commissioner of Sales Tax, U. P. [1970] 25 S.T.C. 474, Commissioner of Sales Tax v. Kanpur Udyog Bhandar [1970] 26 S.T.C. 431 and in a Full Bench decision in the case of Commissioner of Sales Tax, U. P. v. Ram Niwas Puskar Dutt [1971] 28 S.T.C. 736. It has been held that as both mill-stores and hardware had been coupled together in a single entry, they refer to allied trades. "Mill-stores" consisted of items like small tools and spare parts of machinery and that hardware referred to

small item of base metal particularly building materials like huts, hinges, rivets, etc. The view taken was that all the items falling within this entry must have something common to each other.

4. Now, leather belts are admittedly not tools. They are also not spare parts of machinery as understood in the mill-stores trade, for they are not an additional or an extra part of a machinery which forms one of the components of machine. They were as such rightly assessed as leather goods which they undoubtedly are, being made of leather.

5. The question referred is answered in the affirmative, in favour of the assessee and against the department. The assessee is entitled to its cost, which is assessed at Rs. 300.