(1979) 04 AHC CK 0057

In the Allahabad High Court

Case No : S.T.R. No. 32 of 1978

Commissioner of Sales Tax APPELLANT

Vs

Murli Dhar Shiv Kumar RESPONDENT

Date of Decision : 23-04-1979

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 4

Citation : (1982) 49 STC 44

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

Bench : Single Bench

Final Decision : Allowed

Judgement

C.S.P. Singh, J.—The Revising Authority, Agra, has referred the following two questions of law for the opinion of this Court :

(1) Whether the sale of the mufflers effected by the assessee fell within the purview of the entry ''woollen fabrics'' or within the category of ''woollen hosiery'' ?

(2) If the answer to the first question is that mufflers fell within the category of woollen hosiery, whether the turnover of the assessee be exempt under the notification dated 14th December, 1957, because the assessee has paid the additional excise duty on this turnover ?

2. The reference is being treated as a revision in view of the amendment in the law. The revision relates to the assessment year 1968-69. In that year, the assessee purchased mufflers from Dhariwal Mills on which additional excise duty had been paid. Apart from these mufflers, it also purchased mufflers made on handloom. The assessee claimed exemption on this turnover on the basis of Notification No. ST-4485/X dated 14th December, 1957, in respect of mufflers purchased from Dhariwal Mills and under Notification No. ST-4064/X dated 25th November, 1958, in respect of mufflers made on handloom. The appellate authority upheld the claim and also the turnover. In this reference, at the

instance of the Commissioner of Sales Tax, the question involved is as regards the taxability of mill-made mufflers. The relevant part of Notification No. ST-4485/X dated 14th December, 1957, issued u/s 4(1) of the Act is to the following effect:

In partial modification of Notification No. ST-905/X dated 31st March,1956 (S. No. 73), and Notification No. ST-418/X-902(9)-52 dated 31st January,1957 (S. No. 105), and in exercise of the powers conferred by Clause (b) of Sub-section (1) of Section 4 of the U.P. Sales Tax Act, 1948 (U.P. Act No. 15 of 1948), as amended up-to-date, the Governor of Uttar Pradesh is pleased to order that, no tax shall be payable under the aforesaid Act with effect from 14th December, 1957, by the dealers in respect of the following classes of goods provided that the additional Central excise duties leviable thereon from the closing of business on 13th December, 19.57, have been paid on such goods and that the dealers thereof furnish proof to the satisfaction of the assessing authority that such duties have been paid :

1. Mill-made textiles, that is to say, (1) cotton fabrics including dhoties, sarees, chaddars, bed-sheets, bed-spreads, counterpanes and table cloth; (2) rayon or artificial silk fabrics; (3) woollen fabrics; and (4) fabrics made of mixture of any two or more of the above fibres, viz., cotton, rayon or artificial silk and wool.

3. The revising authority has taken the view that so far as woollen mufflers are concerned, even though they fall within the category of woollen hosiery, they are exempt in view of this notification. The question as to whether mufflers are woollen fabrics (sic). It is necessary now to refer to a notification issued u/s 3 read with Section 3-A of the Act. This is Notification No. ST-4562/X dated 1st October, 1962. This notification amended two earlier notifications issued u/s 3-A, being Notification No. ST-1365/X dated 1st April, 1960, and ST-1281-A/X dated 1st October, 1961. It is advisable to extract item No. 25 of the notification dated 1st April, 1960 :

25. Woollen goods, excluding carpets, but including knitting wool.

4. The notification of 1st October, 1961, amended this item with the result that item No. 25 read as follows:

25. Woollen goods excluding carpets, but including knitting wool, woollen hosiery and readymade garments made out of woollen cloth.

5. The result of this notification was that woollen hosiery became a commodity taxable at a single point. The notification dated 1st October, 1962, again effected a change, with the result that as from 1st October, 1962, and during the assessment year in question item No. 25 of the notification of 1st April, 1960, read as follows :

25. Woollen goods excluding carpets and hosiery other than pure woollen hosiery, but including knitting wool and readymade garments made out of woollen cloth.

6. The result of this amendment was that while earlier woollen hosiery generally fell within the purview of the notification of 1st April, 1960, it was excluded by the notification dated 1st October, 1962, except pure woollen hosiery, i. e., woollen hosiery made out of wool in which no other material was used. In the case of Commissioner of Sales Tax, Lucknow v. Verma Hosiery, Rakabganj, Lucknow [1972] 30 STC 606, it has been held that cotton mufflers are hosiery. On the . same line of reasoning woollen mufflers would also be hosiery; as they are articles which are used next to the skin and thus satisfy one of the tests for determining whether the commodity is a hosiery. The revising authority does not doubt that mufflers sold by the assessee are hosiery, but he excluded them by reference to the notification issued u/s 4, which has been extracted earlier. Now both the notifications, i. e., the one u/s 4 and the other u/s 3-A had been issued by the State Government. The notification u/s 4 was issued on 14th December, 1957, while these notifications are subsequent. As the authority issuing the notifications is the same, one has to proceed on the footing that it will not issue notifications, which collide or conflict with each other. The safe rule to adopt in interpreting these notifications is that if a commodity is clearly governed by any other notification, a notification, which is general in terms, should be interpreted so as to exclude the commodity, which are specifically governed by some other notification. In the present case, as the revising authority has found that woollen mufflers were hosiery, and as they appear to be governed by the notification of 1st October, 1962-for it is the case of none of the parties that the mill-made mufflers were not made out of pure wool -the notification of 14th December, 1957, when it refers to woollen fabrics made by mills should be interpreted as not taking within this purview, woollen hosiery, which had been made taxable subsequently by the notifications referred to earlier. Any other construction would lead to a conflict between the notification of 14th December, 1957, and the one of 1st October, 1962. It cannot be in the circumstances presumed that the State Government while issuing the notification of 1st October, 1962, was not aware of the earlier notification issued u/s 4 on 14th December, 1957, for the presumption is otherwise, viz., that the State Government is aware of the earlier notifications issued by it. This being so, it is not necessary in the present case to consider as to whether woollen mufflers purchased by the assessee from Dhariwal Mills come under the general category of woollen fabrics, for the words "woollen fabrics" used in the notification of 14th December, 1957, must be given a restricted meaning.

7. The revision succeeds and is allowed. The revising authority is directed to redetermine the tax on the turnover of woollen mufflers in accordance with law. A copy of this judgment will be sent to the revising authority u/s 11(8) of the Act.

8. There shall be no order as to costs.