(1973) 11 AHC CK 0023

In the Allahabad High Court

Case No : Sales Tax Reference No. 637 of 1971

Commissioner of Sales Tax APPELLANT

Vs

Om Iron Foundry RESPONDENT

Date of Decision : 14-11-1973

Acts Referred:

Citation : (1974) 33 STC 82

Hon'ble Judges : Satish Chandra, J;H.N. Seth, J

Bench : Division Bench

Judgement

Satish Chandra, J.—The Additional Judge (Revisions), Sales Tax, Agra, has referred the following question of law for the opinion of this court:

Whether, under the circumstances of the case, the pulleys sold by the assessee are liable to tax at the rate of 6 per cent as machine parts as per Notification No. ST-7098/X -- 1012-1965, dated 1st October, 1965, or are mill-stores and hardware liable to tax at the rate of 3 per cent under Notification No. ST-1367/X -- 1045(19)-1960, dated 5th April, 1961?

2. The question relates to the assessment year 1965-66. In that year mill-stores were liable to tax at the rate of 3 per cent, but the unclassified items were liable to be taxed at 2 per cent. The Sales Tax Officer held that the turnover of pulleys manufactured by the assessee was liable to be taxed as machine parts at 6 per cent. That view was affirmed on appeal. The Judge (Revisions) held that these pulleys were liable to be taxed as hardware. The question, mentioned above, has been referred at the instance of the department. The assessee did not seek any question to be referred to us on the footing that the pulleys were not hardware and were liable to be assessed as unclassified items at the rate of 2 per cent, which was the prevalent rate for the assessment year in question. In view of the abovementioned facts, the question whether the pulleys were hardware does not arise in the present case. We, therefore, reframe the question as under:

Whether, under the circumstances of the case, the pulleys manufactured by the assessee were liable to be taxed as machine parts at the rate of 6 per cent under Notification No. ST-7098/X -- 1012-1965, dated 1st October, 1965?

3. The Judge (Revisions) found that, admittedly, the pulleys manufactured by the assessee were ordinary pulleys which connect shafts for transmission of power, etc., with electrical motors or oil engines. They cannot be treated as machine parts. On this factual view, it cannot be held that these pulleys were machine parts and liable to be taxed at 6 per cent.

4. The question referred to us is, therefore, answered in the negative, in favour of the assessee and against the department. Since nobody appears for the assessee there will be no order as to costs.

