(1985) 04 AHC CK 0050

In the Allahabad High Court

Case No : S.T.R. No. 339 of 1984

Commissioner of Sales Tax APPELLANT

Vs

Ruchica Enterprises RESPONDENT

Date of Decision : 01-04-1985

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 3(1)

Citation : (1986) 61 STC 328

Hon'ble Judges : Anshuman Singh, J

Bench : Single Bench

Advocate : P.K. Jain, for the Respondent

Final Decision : Dismissed

Judgement

Anshuman Singh, J.—This revision has been preferred by the Commissioner of Sales Tax against the judgment dated 16th February, 1984, passed by the Sales Tax Tribunal, Meerut Bench, Meerut, relating to the assessment year 1970-71.

2. The respondent-assessee carried on the business in copper plate electrolytic. judgment assessment was passed. First appeal filed by the assessee succeeded and the matter was remanded back to the assessing authority. On remand the books of account were accepted by the assessing authority. However, copper plate electrolytic were subjected to tax by the Sales Tax Officer at the rate of 0.6 per cent. Feeling aggrieved against the aforesaid order a revision was filed by the Commissioner of Sales Tax which was subsequently converted into a second appeal. The appeal was dismissed and it is this order that has been sought to be challenged in the instant revision.

3. Learned standing counsel appearing for the revenue has argued that in view of Notification No. S.T.-2104/X-902(16)-52 dated 21st May, 1963, the rate of tax should have been charged at the rate of 3 per cent and not at 0.5 per cent. The said notification reads as under :

In exercise of the powers conferred by second proviso to Sub-section (1) of

Section 3 of the Uttar Pradesh Sales Tax Act, 1948 (U. P. Act No. XV of 1948), the Governor of Uttar Pradesh is pleased to enhance, with effect from the date of publication of this notification in the Gazette the rate of sales tax in respect of the turnover of wares made of any metal or alloy other than brass or aluminium, from two paise per rupee to three paise per rupee at all points of sale.

4. A perusal of the aforesaid notification indicates that the intention to enhance the rate of tax was in respect of the turnover of wares made by any metal or alloy other than brass or aluminium. The commodity manufactured by the assessee in this case was admittedly not wares. On the other hand the counsel for the assessee has invited my attention to Notification No. S.T.-1366/ X-990-1956 dated 1st April, 1960, and has contended that the tax has rightly been imposed by the Sales Tax Officer in view of the aforesaid notification dated 1st April, 1960. Since in the instant case the commodity manufactured was not wares, in my opinion, the notification dated 21st May, 1963, will not apply and tax would be levied according to the notification dated 1st April, 1960.

5. In the result the revision fails and is accordingly dismissed. However, there will be no order as to costs.

