
(1995) 08 AHC CK 0032
In the Allahabad High Court
Case No : Sales Tax Revision No. 1776 of 1993

Commissioner of Sales Tax	Vs	APPELLANT
S.S.C.A. Glass Works		RESPONDENT

Date of Decision : 04-08-1995

Acts Referred:

Sales of Goods Act, 1930 — Section 2
Uttar Pradesh Sales Tax Act, 1948 — Section 11, 9

Citation : (1996) AWC 240 Supp

Hon'ble Judges : K.L. Sharma, J

Bench : Single Bench

Advocate : R.D. Gupta, for the Appellant; Bharat Ji Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Sharma, J.—This is a revision u/s 11 of the U.P. Sales Tax Act (hereinafter referred to as the Act which means also U.P. Trade Tax Act) against the judgment and order dated 15.7.93 passed by the Sales Tax Tribunal, 1st Bench, Agra in second appeal No. 144 of 1992 (1984-85) whereby the appeal has been partly allowed and the deduction of sales tax amounting to Rs. 65,760.46, has been made in favour of the Assessee.

2. I have heard Sri R.D. Gupta, learned standing counsel for the applicant and Sri Bharat Ji Agarwal learned Counsel for the opposite party.

3. The opposite party is a registered dealer and has been carrying on the business of manufacture and sale of glassware, glass shells, bangles, etc. For the assessment year 1984-85, the opposite party declared turnovers which were accepted by the assessing authority and the books of account were also accepted. The dealer had paid tax at the rate of 8 per cent treating the items as unclassified but the assessing authority treated the goods taxable at the rate of 12 per cent under Notification No. 5784 dated 7.9.1981. The opposite party felt aggrieved and filed the first appeal u/s 9 of the Act. The Assistant Commissioner

(Judicial) partly allowed the appeal holding that the glass shells manufactured and sold by the dealer were taxable at the rate of 12 per cent. The opposite party then filed second appeal before the learned Tribunal which accepted the plea that the glass shells manufactured and sold by the opposite party dealer were unclassified commodity attracting the rate of tax at 8 per cent instead of 12 per cent. The Tribunal accordingly allowed the appeal in part and reduced the tax liability by charging lower rate of tax. At this stage, the Commissioner of Sales Tax, U.P., felt aggrieved and filed this revision under consideration.

4. The short question involved in this revision is whether the glass shells manufactured and sold by the opposite party fall within the classification notified on 7.9.1981 or they are to be treated as unclassified commodity, attracting lower rate of tax at 8 per cent for the assessment year 1984-85.

5. The learned standing counsel for the Commissioner of Sales Tax has invited my attention to the notification No. ST-2-5784/X-10(2)/80-U.P. Act 15-84 Order-81 dated September 7, 1981 which carries following description of goods at serial No. 4 of its schedule:

4. All goods and wares made of glass but not including plain glass panes, optical lenses, hurricane lantern chimneys, bottles and phials, glass heads, clinical syringes, thermometers and scientific apparatus and instruments made of glass.

6. On the basis of this notification, learned standing counsel has emphasised the use of the words "all goods and wares made of glass" used in this entry for the purpose of including all kinds of goods made of glass. In this connection, he has also invited my attention to the definition of the word "goods" u/s 2 of Sale of Goods Act, 1930. This general definition given in the Sale of Goods Act runs in the following words:

2. (7) "goods" means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

This definition of "goods" adopted by the Sale of Goods Act, 1930 has not been accepted in its limited form but it has been enlarged for the purposes of trade tax by giving a new definition of the word "goods" by Section 2(d) clause in the following words:

(d) "goods" means every kind or class of movable property and includes all materials, commodities and articles involved in the execution of A.W.C. 16 a works contract, and growing crops, grass, trees and things attached to, or fastened to anything permanently attached to, the earth which under the contract of sale are agreed to be severed but does not include actionable claims, stocks, shares, securities or postal stationery sold by the Postal Department.

It is, therefore, evident that tax is exigible on every kind or class of movable property, all materials, commodities, articles etc. subject to specific provisions of

the Act and the rates of tax vary from one property to another depending upon its classification, etc., as notified under the Act from time to time. The entries included in a particular notification by a simple reading also distinguish "goods" from articles or other materials or commodities and the description of goods also varies from one case to another. Therefore, the contention made by the learned standing counsel on the basis of general definition of goods either as defined in Sale of Goods Act or as defined by the Act does not necessarily help the court to interpret the entry whether a particular article or commodity or material is to be included by the general word "goods" for the purpose of including that article, commodity or material within the specific entry as notified. A general reading of the various entries included in the notification makes it clear by itself that many kinds of goods and articles even though resembling to the taxable entry are excluded expressly or are not included expressly. Therefore, the necessity for Interpretation arises when a particular article does not correspond to the specific entry and by its own nature it out classes itself.

7. The learned Counsel for opposite party, Mr. Bharat Ji Agarwal has contended that the principle of interpretation for including or excluding a particular item manufactured and sold by a dealer with reference to the entry in the notification is not based on the literal or grammatical meaning but It is to be understood by the meaning attached to it by those dealing with the item in the common parlance or commercial parlance. in support of his view, he has relied upon a decision of the Hon"ble Supreme Court in the case of Indo-International Industries v. Commissioner of Sales Tax U.P. 1981 47 STC 359. In this case the question had arisen whether the hypodermic clinical syringes could be regarded as "glassware" under entry No. 39 of the First Schedule to the U.P. Sales Tax Act, 1948. The Hon"ble Supreme Court answered the question in the negative by making the following observation:

It is well settled that in interpreting items in statutes like the Excise Tax Acts or Sales Tax Acts, whose primary object is to raise revenue and for which purpose they classify diverse products, resort should be had not to the scientific and technical meaning of the terms or expressions used, but to their popular meaning, that is to say, the meaning attached to them by those dealing in them. If any term or expression has been defined in the enactment then it must be understood in the sense in which it is defined but in the absence of any definition being given in the enactment, the meaning of the term in common parlance or commercial parlance has to be adopted.

Though the dictionary meaning of the expression "glassware" is "articles made of glass", in a commercial sense, glassware would never comprise articles like clinical syringes, thermometers, lactometers and the like, which have a specialised significance and utility. A general merchant dealing in "glassware" does not ordinarily deal in such articles, which although made of glass are normally available in medical stores.

8. Mr. Bharat Ji Agarwal also invited attention to another decision of Division

Bench of this Court in the case of Commissioner of Sales Tax U.P. Lucknow v. Manohar Glass Works 1971 27 STC 51(SC). In this case, a question arose whether glass tubes and glass rods manufactured and sold not to the consumers but to dealers who used them as raw materials in manufacturing or fabricating articles like test tubes and toys were to be treated as glassware or not. This Court made the following observations in consonance with the settled principle of interpretation declared by the Hon'ble Supreme Court:

The short question that we are called upon to answer is as to whether glass tubes and glass rods manufactured and sold by the Assessee do come within this entry. The term "glassware" according to its dictionary meaning has a wide connotation and includes all articles made of glass. It is now, however, well settled that entries in a notification under the U.P. Sales Tax Act have to be interpreted not in the literal sense but in a commercial sense, a sense in which they would be understood in the commercial world. In the commercial sense, the term "glassware" would comprehend only such articles of glass as are finished articles capable of being sold to the consumer. A reference to the other items in the list appended to the notification also bears this out. The articles enumerated in the remaining entries are all finished articles or other parts which are sold to the consumer. Therefore, an article which is in a semi-manufactured stage and had yet to undergo some process of manufacturing or fabrication cannot be said to be an article of glassware even if it is made of glass. In the instant case, there is a finding that the glass rods and glass tubes the turnover whereof is in dispute were sold by the Assessee not to the consumers but to dealers who used them as raw material in manufacturing or fabricating articles like test tubes and toys. It is those finished articles that can properly be called "glassware".

9. Mr. Bharat Ji Agarwal further referred to a decision of this Court in the case of Commissioner of Sales Tax, U.P., Lucknow v. P.K. Rajendra and Company, Meerut 1979 UPTC 842. In this case, the question whether bars and rods manufactured from copper, zinc and tin were included within the item of brasswares classified under the notification. This Court applied the principle of interpretation laid down in Manohar Glass Works (supra) and found that bars and rods sold by the Assessee were not finished products but were used as raw materials and could not be taxed as brasswares.

10. On the strength of the aforesaid decisions and principle of interpretation, Mr. Bharat Ji Agarwal has contended that since the glass shells manufactured and sold by the opposite party, not to consumers but to dealers for manufacturing bulbs, cannot be treated as included within the entry No. 4 of the notification dated 7.9.81 (supra). On the other hand, learned standing counsel has stated in reply that the glass shells are by themselves finished products, manufactured and sold by the dealer and as such, they fall within the category of goods made of glass vide entry No. 4 of the notification dated 7.9.81 and as such, they cannot be treated as unclassified even if they are not sold to consumers and are sold to another manufacturer for using them in making the bulbs. The learned

Tribunal has found favour with the contention raised on behalf of the dealer after full examination of the article in question and finding that in the commercial trade glass shell cannot be treated to be a finished item for the consumption of the consumer as such. This glass shell can be used only for making bulbs. The glass shells are manufactured and sold by the opposite party only to other dealers for manufacturing bulbs and they are not, as a matter of fact, sold to the consumers directly. Moreover, these glass shells cannot be used by the consumers for any purpose as their structure is such that they cannot be used even like tumblers. Therefore, their commercial use is confined to making of bulb by another manufacturing process. The glass shells are not sold by a general merchant either as glasswares or goods made of glass. The learned Tribunal came to the conclusion that these glass shells are semi-finished goods and are sold by the manufacturer to another manufacturer for manufacturing the bulbs and only thereafter, the bulbs are sold to consumers. In view of this commercial trade and practice, the glass shells cannot be treated as included within the entry No. 4 of the notification dated 7.9.81 (supra) and as such, the glass shells have been rightly declared as unclassified item attracting a lower rate of tax at 8 per cent. The Tribunal has followed the well settled principle of interpretation as laid down by the Hon'ble Supreme Court and by various decisions of this Court. I do not find any infirmity in the finding recorded by the learned Tribunal. I answer the question that the glass shells manufactured and sold in semi-finished form by the opposite party to other manufacturers for manufacturing the bulbs are not included in Entry No. 4 of the notification dated 7.9.81 (supra) and are treated as unclassified item. The opposite party is liable to pay tax on glass shells only as unclassified item. The Tribunal has rightly given the benefit of lower rate of tax. No interference is called for in this revision.

In the result the revision is hereby dismissed.