(1972) 04 AHC CK 0005

In the Allahabad High Court

Case No : S.T.R. No''s. 759 and 760 of 1970

Commissioner of Sales Tax APPELLANT

Vs

Verma Hosiery RESPONDENT

Date of Decision : 10-04-1972

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 11(3), 3

Citation : (1973) 30 STC 606

Hon'ble Judges : S.N. Dwivedi, J;R.L. Gulati, J

Bench : Division Bench

Advocate : Radhey Shyam and C.P. Pandey, for the Respondent

Judgement

K.L. Gulati, J.—These are two references u/s 11 (3) of the U. P. Sales Tax Act at the instance of the Commissioner of Sales Tax, U.P., Lucknow.

2. These cases were first heard on 24th February, 1972, and judgment was dictated in court but before the judgment could be signed, it was discovered that the references related to the assessment years 1964-65 and 1961-62, but in the two questions referred by the Revising Authority only the year 1964-65 had been referred. In order to have the matter clarified, the cases were listed for further hearing on 20th March, 1972, when the judgment was reserved.

3. The assessee deals in hosiery goods of all kinds. The dispute relates to the rate of tax applicable to the turnover of mufflers and topas. These two articles are manufactured by the assessee. They are knitted out of cotton yarn. The question is as to whether cotton mufflers and topas are "ready-made garments" or "hosiery goods". The rate of tax on hosiery goods is 1 per cent., while the rate of tax for ready-made garments is 2 per cent. The revising authority has referred the following two questions for our opinion :

(1) Whether cotton mufflers and topas are covered by the entry ''ready-made garments other than those made out of woollen cloth'' in Notification No. ST-6439/X-1012-1962 dated 1st December, 1962, and were liable to tax in the

assessment year 1964-65 at the rate of 2 paise per rupee u/s 3 of the U.P. Sales Tax Act.

(2) If the answer to question No. (1) is in the negative, whether cotton mufflers and topas were in 1964-65 liable to tax as ''hosiery made of pure cotton or silk'' at 1 paisa per rupee under Notification No. ST-4562-II/X-902(7-M) dated 1st October, 1962, or as unclassified goods at 2 paise per rupee u/s 3 of the Sales Tax Act.

4. Question No. (1) relates to the assessment year 1964-65 while question No. (2) relates to the assessment year 1961-62. The controversy in the two assessment years is, however, the same, the controversy being as to whether cotton mufflers and topas are ready-made garments or hosiery goods. If they are neither, they would be taxed as unclassified goods u/s 3 of the Act. There is thus a common question, which arises in both the years, which we reframe as under :

Whether cotton mufflers and topas are ''ready-made garments'' or are ''hosiery goods'' for the purposes of assessment to sales tax for the assessment years 1964-65 and 1961-62 ?

5. "Garment" according to Webster''s Dictionary means an article of clothing. It is thus a very wide term and includes everything that can be called an article of clothing. In that sense even hosiery goods would be covered by the term "garments". The term "hosiery" originally meant knitted garments like socks and stocking, which were meant to cover the feet and the legs. This term has, however, now come to acquire a wider meaning and means knitwear (Webster''s Dictionary). Topas and mufflers are knitted garments and, as such, would fall in the category of hosiery goods. Thus, the term "hosiery goods" refers to a class of garments. This court in Ram Lal and Brothers v. Commissioner of Sales Tax, U.P. S.T.R. No. 284 of 1964 decided on 6th February, 1969, has held that "hosiery" means an underwear or underclothing, i.e., articles which are used next to the skin. The Rajasthan High Court in Jaipur Hosiery Mills v. State of Rajasthan [1967] 19 S.T.C. 416 has held that "hosiery" means machine-knitted garments. Now, topas and mufflers are machine-knitted garments and are worn next to the skin. Therefore, they satisfy both the tests. We have thus no hesitation in holding that the two articles in question are articles of hosiery and are covered by the Notification No. ST-4562-II/X-902(7-M)-57 dated 1st October, 1962, and are taxable at 1 paisa per rupee. That being so, they cannot be taxed as ready-made garments nor can they be taxed as unclassified goods. We answer the question as reframed by us accordingly.

6. The assessee is entitled to costs which we assess at Rs. 100. There will be one set of costs only.

