
(1983) 10 AHC CK 0008
In the Allahabad High Court
Case No : S.T.R. No. 484 of 1982

Commissioner, Sales Tax

APPELLANT

Vs

Adarash Nirman Sansthan

RESPONDENT

Date of Decision : 07-10-1983

Acts Referred:

Citation : (1984) 57 STC 255

Hon'ble Judges : B.N. Sapru, J

Bench : Single Bench

Advocate : The Additional Chief Standing, for the Appellant; Bharatji Agrawal, for the Respondent

Final Decision : Allowed

Judgement

B.N. Sapru, J.—This is a revision by the Commissioner of Sales Tax and pertains to the assessment year 1973-74.

2. The assessee had taken a contract to make supply of bricks and brick tiles to Sharda Sahayak Project. Under the contract the assessee was required to supply bricks of the size 25 cm X 12 cm x 7 cm and brick tiles of the size 29 cm X 14 cm X 8.5 cm.

3. The Tribunal found that the process of preparing bricks is the same for preparing brick tiles. It further found that the process of manufacture of bricks and brick tiles is the same and that the Tribunal said that it was not in dispute that in commercial circle such brick tiles are neither sold nor used as tiles. Having recorded these findings the Tribunal held that the assessee was liable to pay tax on the turnover of brick tiles treating them as bricks and not as tiles of all kinds as held by the learned Assistant Commissioner (Judicial).

4. Aggrieved, the Commissioner of Sales Tax has come up in revision. The only question in this case is whether the brick tiles manufactured by the assessee fall within entry 13 or 96 of Notification No. ST-II-332/X-1012-1971 dated 15th November, 1971. Entry 13 is "bricks" while entry 96 runs as follows :

Tiles of all kinds.

5. The learned Additional Chief Standing Counsel appearing on behalf of the Commissioner placed reliance on a decision given by me in the case of Commissioner of Sales Tax v. R. C. Gupta & Company printed at page 262 *infra*; 1982 UPTC 1172. In that case the assessee had supplied brick tiles for Sharda Sahayak Pariyojana. The question in that case was whether the turnover of brick tiles of the assessee should be taxed on the basis what he had sold was brick or that he had sold brick tiles. This Court after noticing that process of manufacture of brick and brick tiles was the same, nevertheless held that the commodity sold by the assessee came under the category of tiles of all kinds. The learned counsel for the assessee, Sri Bharatji Agarwal, has argued that the brick tiles sold by the assessee are only a variety of bricks. In this connection he referred to a decision of a Division Bench of this Court in the case of Raj Narain Tiwari v. Commissioner, Sales Tax (printed at page 259 *infra*) 1974 UPTC 240. In that case what the assessee had sold was Jhawan bricks. The nature of the goods sold by the assessee was described in the contract of sale as "jhawan bricks consist of overburnt bricks of standard size and jointed of two or more bricks making a block bigger than a single brick as approved by the Engineer Incharge. Only 1st class overburnt bricks shall be measured as jhawan bricks". It had been contended by the department that the assessee's contention that what he had sold brick, was not covered by the entry in the notification but were unclassified item. This contention was repelled by the Division Bench which held that jhawan bricks were only a special variety of bricks and as such taxable as bricks.

6. The next decision relied upon by the learned counsel for the assessee is the case of Commissioner, Sales Tax Vs. Ram Babu and Company, . The controversy in that case was as to whether tinopal was covered by an entry relating to chemicals of all kinds and was taxable as washing material. The Court found that Tinopal though made of chemicals was taxable not as chemicals of all kinds but as a washing material. The basis of the decision in this case is to be found from the following paragraph of the judgment:

Keeping this principle in mind it would appear that at first the only entry in the field was "chemicals of all kinds". With effect from 1st April, 1960, washing materials were separately mentioned at a lower rate. This would obviously mean that even if a chemical was commercially and popularly used and known as washing material, it would be taxable under that head and not under the general head of "chemicals of all kinds". The intention of the State Government has been manifested still clearer by the notification of 1st December, 1962, where soaps, washing soaps and other washing materials have been specifically mentioned. Under entry No. 20 soaps other than washing soaps have been made taxable at 7 per cent, even though it may be a chemical and may have fallen under the original entry of "chemicals of all kinds", and under entry No. 32 washing soaps and other materials used for washing purposes were subjected to a reduced rate of tax at the rate of 4 per cent. In the context materials used for washing

purposes would clearly fall within entry No. 32 even if such materials were chemicals.

7. What the Bench said was that while making separate category of washing material the State itself was excepting such materials out of general entry of "chemicals of all kinds". This decision" is of no assistance in resolving the question posed in the present case.

8. The learned counsel for the assessee argued that if the material sold by the assessee comes under both the notifications, then that notification should be applied to the assessee under which the tax is lower. In this connection he relied upon a decision of a learned single Judge of this Court in the case of Shakti Lace Factory v. Commissioner, Sales Tax (printed at page 261 infra) UPTC 814. In that judgment it was observed in paragraph 3 that;

It is also essential to mention that if an item is covered under two notifications then it is the notification which is more beneficial to the assessee which should be applied. The principle applies with greater rigour in case where an item is covered by two notifications, the one exempting it from payment of tax and the other levying tax on it. If an item is covered by notification issued u/s 4 of the Act then notwithstanding that it may be covered by other notification issued the taxability or otherwise has to be determined with reference to Section 4.

9. The principle applied in that case by the learned Judge cannot be doubted.

10. The other decision relied upon by the learned counsel for the assessee is the case of Commissioner, Sales Tax v. R. P. Bansal and Company 1980 ATJ 13. In that case the assessee sold marble tiles. Under Notification No. ST-911 dated 31st March, 1956, marble goods were exempted from taxation. There was a general entry taxing since marble tiles were marble goods, they were entitled to exemption notwithstanding that they were tiles.

11. In the present case when the contract of supply was entered into between the authorities and the assessee it was specified that the assessee would supply bricks of a particular dimension, as also supply brick tiles of specified dimension. The fact that brick tiles were specified separately from bricks would indicate that brick tiles were treated in the contract as something distinct from bricks.

12. Entry No. 13 regarding "bricks" and entry No. 96 pertaining to "brick tiles of all kinds" are to be found in the same Notification No. ST-II-332/X-1012-1971 dated 15th November, 1971. When the categorisation was made it must be assumed that the maker of the classification was aware that there were tiles which could also be manufactured from the same material and in the same manner as "bricks". When entry No. 96 was made it stated "tiles of all kinds". Entry No. 96 did not exclude any category of tiles from its field. This indicate that the maker of the notification did not intend to exclude tiles which resembled bricks from the scope of entry No. 96.

13. Another argument of the learned counsel for the assessee has to be dealt

with. He submits that both entry No. 13 and entry No. 96 are general entries and if a commodity falls under both entries then it must be taxed under that entry under which it would bear a lower rate of tax. The principle that he urges is beyond doubt. Nevertheless the fact remains that entry No. 96 and entry No. 13 are found in the same notification. As I have pointed out earlier the maker of the classifications was aware or must be deemed to have been aware that tiles which were manufactured in the same way as bricks out of the same raw material. Entry No. 96 takes in itself all types of tiles. There is no exception therein for brick tiles or tiles made of the same material and in the same manner as bricks. I, therefore, cannot hold that the brick tiles manufactured by the assessee fall under both entry No. 13 and entry No. 96. If my conclusions had been that brick tiles could come under both entries, I would have certainly held that the assessee should be taxed under entry No. 13.

14. The last argument urged by the learned counsel for the assessee is that the Tribunal has recorded a finding that in commercial circle such brick tiles are neither sold nor used as tiles, and therefore, this Court is bound in revision to accept this finding and determine this case on that basis.

15. As I have pointed out earlier in the contract entered into by the assessee with the authorities, bricks had been separately mentioned and brick tiles had been separately specified as items to be supplied by the assessee. The assessee and the department both had treated the brick tiles as different from bricks otherwise it could have been said that bricks of two different qualities or two different dimensions would be supplied by the assessee to the department. The finding of the Tribunal that "in this regard it is also not in dispute that in commercial circle such brick tiles are neither sold nor used as tiles" appears to be based upon what transpired before the Tribunal. There is nothing of this nature to be found in the order of either the Sales Tax Officer or the Assistant Commissioner (Judicial). This finding is unwarranted because in the contract between the assessee and the department brick tiles were specified separately from bricks to be supplied by the assessee.

16. In the result, the revision is allowed. The assessee's sale of bricks tiles will be taxed under entry No. 96 as "tiles of all kinds" of Notification No. ST-II-332/X-1012-1971 dated 15th November, 1971, instead of entry No. 13 as "bricks" of the said notification. Let the papers be sent to the Sales Tax Tribunal for making appropriate orders in accordance with the provisions of Section 11(8) of the Act. The Commissioner is entitled to his costs which are assessed at Rs. 200.