(1971) 02 AHC CK 0052

In the Allahabad High Court

Case No : S.T.R. No. 280 of 1970

Commissioner, Sales Tax APPELLANT

Vs

Baijnath Jagan Nath RESPONDENT

Date of Decision : 08-02-1971

Acts Referred:

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

Citation : (1971) 28 STC 496

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

Bench : Division Bench

Final Decision : Disposed Off

Judgement

R.L. Gulati, J.—This is a reference u/s 11(3) of the U. P. Sales Tax Act, at the instance of the Commissioner, Sales Tax, Uttar Pradesh, Lucknow. The Additional Judge (Revisions) Sales Tax, Agra, who has made this reference, has submitted the following two questions of law for the opinion of this Court:

(1) Whether under the circumstances of the case the purchases of dal worth Rs. 95,425.65 made by the assessee from the alleged dal mills can be treated as first purchases in the hands of the assessee and thus assessment on this turnover on the assessee is valid ?

(2) Whether under the circumstances of the case the dal is a commercially different commodity from the whole grain ?

2. The assessee is a dealer in various commodities, including dal. During the assessment year 1964-65, the assessee purchased dal from dal mills worth Rs. 95,425.65. The Sales Tax Officer levied purchase tax on these purchases u/s 3-D(1) of the U. P. Sales Tax Act. Before the Sales Tax Officer the assessee contended that he was not the first purchaser and, as such, no purchase tax could be levied upon him, because, purchase tax is levied only upon the first purchase. His argument was that the first purchaser would be the mills, who purchased the whole dal from the market, and that the split dal, that the

assessee purchased from the mills, was not commercially a different commodity from the whole dal. This contention of the assessee was not accepted by the Sales Tax Officer, but has been upheld by the Judge (Revisions) Sales Tax. The Commissioner, Sales Tax, feels aggrieved and has brought this reference before us.

3. This court, at one time, took the view that whole dal and split dal were not two different commodities, and, therefore, if tax had been paid on the purchase of the whole dal, no further tax may be imposed on the purchase of split dal. But soon afterwards the Legislature passed an Act, known as the Uttar Pradesh Sales Tax (Amendment and Validation) Act, 1970 (U.P. Act No. 2 of 1970). By this Amendment Act, explanation II has been added to Section 3-D. The newly added explanation II reads :

Explanation II.--For the purposes of this Sub-section, split or processed foodgrains such as in the form of dal shall be deemed to be different from unsplit or unprocessed foodgrains and accordingly, nothing in this Sub-section shall be construed to prevent the imposition, levy or collection of the tax in respect of the first purchases of split or processed foodgrains merely because tax had been imposed, levied or collected earlier in respect of the first purchases of those foodgrains in their unsplit or unprocessed form.

4. It has been provided that this explanation shall be deemed always to have been inserted in the Act so that the amendment has been given retrospective effect and, as such, shall apply to the present case also. According to the amendment, the split dal and whole dal are two different commodities, and, therefore, even if the purchase tax had already been imposed on the whole dal the first purchase of split dal can also be subjected to tax.

5. In the circumstances we answer both the questions in the affirmative, in favour of the Commissioner, Sales Tax, and against the assessee. As, however, no one has appeared, we make no order as to costs. The fee of the learned Counsel for the department is assessed at Rs. 100.