(1968) 12 AHC CK 0006

In the Allahabad High Court

Case No : Sales Tax Reference No''s. 244, 245, 506 and 507 of 1966

Commissioner, Sales Tax APPELLANT

Vs

Banaras Bead Manufacturing Co. RESPONDENT

Date of Decision : 10-12-1968

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 3A

Citation : (1970) 25 STC 100

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

Bench : Division Bench

Advocate : B.L. Gupta and V.B. Upadhya, for the Respondent

Final Decision : Disposed Of

Judgement

R.S. Pathak, J.—The assessee manufactures and sells glass beads. For the assessment year 1957-58 two assessment orders were made in respect of the turnover of glass beads, one under the U.P. Sales Tax Act and the other under the Central Sales Tax Act. The Sales Tax Officer held that glass beads were liable to tax under the head "glasswares" specified in Notification No. ST-905/X dated 31st March, 1956, which levies a rate of one anna per rupee on the sale of goods by the manufacturer in the case of goods manufactured in Uttar Pradesh. He rejected the plea of the assessee that glass beads could not be described as "glassware". The appeals filed by the assessee against the assessment orders were dismissed by the Judge (Appeals) Sales Tax. The assessee applied in revision, and the revision applications were allowed by the Additional Revising Authority who took the view that all articles made of glass could not be described as "glassware" and that "glassware" in the notification referred only to glass utensils. At the instance of the Commissioner of Sales Tax, Sales Tax References Nos. 244 and 245 of 1966 have been made for the opinion of this court on the question :

Whether glass beads could be included in glasswares as appearing at item No. 15 of the Notification No. ST-905/X dated 31st March, 1956?

2. Sales Tax References Nos. 506 and 507 of 1966 also raised the same question. In those cases, however, the Sales Tax Officer assessed the turnover to sales tax under the U.P. Sales Tax Act and under the Central Sales Tax Act for the assessment year 1957-58 at the rate of three pies per rupee. The Commissioner of Sales Tax applied in revision against the assessment orders taking the plea that glass beads were liable to tax as "glassware" under the aforesaid notification of 31st March, 1956. Proceeding on the view already expressed in the earlier cases, the Additional Revising Authority, Sales Tax, dismissed the revision applications.

3. The State Government, in exercise of the powers conferred by Section 3-A of the U.P. Sales Tax Act, 1948, made Notification No. ST-905/X dated 31st March, 1956, declaring that the turnover of goods specified in the list set out in the notification shall not with effect from 1st April, 1956, be liable to tax in Uttar Pradesh except at the point of sale by the manufacturer and that such turnover would be taxed at the rate of one anna per rupee. The list mentions several items. Entry No. 15 specifies: "Glasswares other than hurricane lantern chimneys and bottles." It is urged for the Commissioner that "glasswares" here refers to all articles made of glass excepting those specifically mentioned in the list such as "glass bangles" at entry No. 16. For the assessees, Shri B. L. Gupta contends that "glasswares" must be confined to table ware made of glass intended for serving food and drink. The narrow definition ascribed by the assessees proceeds on the submission that inasmuch as glass bangles have been separately mentioned, "glasswares" must be given a limited meaning and it is not possible to include within that meaning all articles made of glass. It is said that if regard be paid to the entire entry "glasswares other than hurricane lantern chimneys and bottles" it is apparent that "glasswares" is intended to refer only to containers made of glass. It is pointed out that a hurricane lantern chimney is used in a hurricane lantern for containing the flame and a bottle is used for containing a liquid. The argument is that the exclusion of these containers indicates that "glasswares" refers to glass containers only. In the light of these rival contentions we must decide whether glass beads in which the assessees deal can be described as "glassware".

4. At the outset, all articles excepting those exempt u/s 4 of the U.P. Sales Tax Act, were liable to tax u/s 3 of the Act. The levy was imposed at all points of sale and was, what is described popularly as a multi-point tax. Section 3-A, which was brought in by the U.P. Sales Tax (Amendment) Act, 1948, enables the State to declare by notification that the turnover at one point of sale alone shall be liable to tax, thus providing for what is described as single point tax. Hitherto, all articles made of glass were liable to multi-point tax u/s 3. On 8th June, 1948, the State Government made a Notification No. ST-117/923-1948, u/s 3-A, levying single point tax on the turnover of glass bangles at the rate of six pies per rupee. Other articles of glass attracted the lower rate of tax u/s 3 as before. Then by Notification No. ST-369/X-923-48 dated 1st July, 1948,. the State Government levied single point tax on "glasswares" at the rate of nine pies per

rupee. There was nothing in the notification to indicate that glasswares included glass bangles and that the earlier notification dated 8th June, 1948, was affected in any way. When the notifications referred to "glasswares" and "glass bangles", it is clear that glass bangles fell outside the purview of "glasswares". That was made apparent when in Notification No. ST-1425/X-1012-1948 dated 30th March, 1949, rebate was granted on sales for delivery outside the State of "glasswares (excluding glass bangles)" manufactured in the U.P. There were several notifications thereafter affecting the rate of sales tax levied in respect of "glasswares" and glass bangles and throughout the two were treated as mutually exclusive. They were mentioned in the same notification. The notification of 31st March, 1956, as we have seen, showed "glasswares" at entry No. 15 and glass bangles at entry No. 16. Similarly, the Notification No. ST-1365/X-990-1956 dated 1st April, 1960, mentioned "glasswares" at entry No. 10 and glass bangles at entry No. 11. It is apparent, therefore, that whatever "glasswares" was intended to mean, it could not include "glass bangles". It seems to us that in view of the consistent manner in which the State Government has considered glass bangles as distinct from "glasswares" we must hold that the meaning of "glasswares" is limited accordingly. But does that mean that "glasswares" must be limited further ? Merely because glass bangles fall outside the meaning of "glasswares" can it be said that "glasswares" refers to glass containers only ? In our opinion, there is no justification for adopting that view.

5. The submission of the assessees is that the exclusion of hurricane lantern chimneys and bottles lends support to the contention that "glasswares" must be confined to glass containers. It is true that entry No. 15 in the notification of 31st March, 1956, speaks of "glasswares other than hurricane lantern chimneys and bottles". But subsequently this entry was substituted by "glasswares other than hurricane lantern chimneys, optical lenses and bottles" by Notification No. ST-1417/X-902(20-A)-56, dated 13th January, 1958. With the addition of optical lenses to the clause of exclusion it can no longer be said that "glasswares" is intended to refer to glass containers only. The entry has been repeated in the same terms in Notification No. ST-1365/X-990-1956 dated 1st April, 1960. We have been referred to the dictionary meaning of "ware", and it is pointed out that while the general meaning refers to articles of merchandise, the specific meaning refers to containers or vessels and it is said that the specific meaning should be taken into consideration. It is said that if "glasswares" was intended to refer to all articles of glass the notification would have used the language "glasswares of all kinds" as it has done in the case of cloth, chemicals, hosiery, oils and paper. The mere circumstance that the entry does not employ the words "of all kinds" after "glasswares" does not, in our opinion, mean that it must refer to glass containers only. There is no doubt, as we have noticed, that glasswares must be limited to exclude glass bangles, and when glass bangles are mentioned in an entry separate from glasswares we should not expect the notification to use the language "glasswares of all kinds". Apart from this, the omission of those words cannot, in our opinion, lead to the conclusion to which the assessees seek to

persuade us. Having regard to the contextual setting in successive notifications, when at first hurricane lantern chimneys and bottles were excluded from "glasswares" and thereafter optical lenses were also excluded, it appears to us clear that "glasswares" was intended to have a wider connotation than glass containers merely.

6. Then, it is urged that articles of glass are mentioned in other entries, and therefore, the scope of "glasswares" must be considered as amenable to a more limited application. Our attention has been drawn to entries such as "opera glasses and binoculars" in the notification of 31st March, 1956, to "binoculars, telescopes and opera glasses" in Notification No. ST-3687/X-960(5)/57 dated 1st October, 1958, where another entry mentions "cinematographic equipment including cameras, projectors and sound recording and reproducing equipment; lenses, film parts and accessories required for use therewith" while still another entry specifies "all clocks, time-pieces and watches and parts thereof". It is urged that many of the articles mentioned in these entries are made of glass and consequently still further limit the expression "glasswares". There can be no dispute that if these entries refer to articles of glass they cannot be treated as included within "glasswares". If they are included in those entries it is because they form a distinct group along with the parent item, which may be clocks, time-pieces and watches or cinematographic equipment. To that extent the entry "glasswares" is limited. That still, however, does not lead to the conclusion that "glasswares" must be confined to containers.

7. In our opinion, the entry "glasswares" must be taken to refer to all articles of glass except those specifically excluded in the entry and except glass bangles and articles of glass which can be considered as falling within other entries.

8. In the Hindi notification the entry speaks of "kanch ka saman". That lends support to the conclusion to which we have come. It is contended by the assessees that for the purpose of determining the meaning of a term in the English notification we cannot refer to the Hindi notification and reliance has been placed on Jaswant Sugar Mills Ltd. v. Presiding Officer, Industrial Tribunal 1960 A.L.J. 900. But in that case it was laid down that where there is a conflict between the English version and the Hindi version of a statute the English version must prevail. Here there is no conflict between the English notification and the Hindi notification.

9. Shri V. B. Upadhya, on behalf of the assessees, urges that glass beads are used only for the purpose of making necklaces and other articles of ornament and for rosaries used for prayer. He contends that glass beads may fall under the head "articles used for ornament or for prayer", and, therefore, may be excluded from the general meaning of "glasswares". We may have been inclined to accept the contention if such a head was included in the notification. When there is no such head, we cannot take glass beads, which plainly are articles of glass, from the head "glasswares" to any supposed head

In the circumstances, the contention on behalf of the assessees must fail.

10. Accordingly, we answer in the affirmative the question referred in these references. The Commissioner of Sales Tax is entitled to his costs which we assess at Rs. 50 in each case. Counsel''s fee is also assessed in the same figure.

