(1980) 01 AHC CK 0032

In the Allahabad High Court

Case No : S.T.R. No''s. 1003 and 1004 of 1978

Commissioner, Sales Tax APPELLANT

Vs

H.M. Industries RESPONDENT

Date of Decision : 21-01-1980

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 11
Uttar Pradesh Sales Tax Act, 1948 — Section 11
Uttar Pradesh Sales Tax Act, 1948 — Section 11

Citation : (1980) 46 STC 99

Hon'ble Judges : R.M. Sahai, J

Bench : Single Bench

Advocate : Bharatji Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Sahai, J.—In these revisions filed u/s 11 of the U.P. Sales Tax Act the following question of law has been raised by the Commissioner of Sales Tax:

Whether, on the facts and in the circumstances of the case, the learned additional revising authority was legally justified to hold that ''sewai ki machine'' was taxable as kitchen appliance under Notification No. S.T. 3115/X-900 (55)/67 dated 18th June, 1971, and not as ''machinery'' taxable under Notification No. 7098/X-1012-1965 dated 1st October, 1965 ?

2. There is no dispute on facts. It is admitted that the assessee is a manufacturer of sewai ki machine made of iron (machine for producing vermicelli). The only question is whether it is "kitchen appliance" within the meaning of Notification No. S. T. 3115 dated 18th June, 1971, as otherwise it being an instrument whereby energy or force is transmitted and transformed from one point to another it would be machinery taxable under Notification No. 7098 dated 1st October, 1965.

3. The learned standing counsel placed reliance on the following definitions of the

words "kitchen" and "appliance" in Chambers''s 20th Century Dictionary :

Kitchen, a room where food is cooked, a utensil with a stove for dressing food, anything eaten as a relish with bread, potatoes, etc., to regale in the cook-room ; to serve as relish to food; to make palatable, to use sparingly, as one would relish to make it last.

Appliance, anything applied; means used.

and urged that kitchen appliance means anything used for dressing food. He maintained that as sewai ki machine is not an appliance used for dressing food it cannot be considered as kitchen appliance. It was emphasised that as sewai is a marketable commodity, therefore the machinery by which it is produced cannot be considered as kitchen appliance. The arguments do not carry conviction as they have been built on one of the meanings given to the word "kitchen", that is, "stove for dressing food". In fact, kitchen is a room where food is cooked, and it is in this sense that it is normally understood.

4. In Webster, "appliance" is defined "as an act of applying, or machine for specified purposes, an instrument or device designed for a particular use in household or office, machine, etc." The Gujarat High Court in Star Radio Electric Co. v. Commissioner of Sales Tax [1971] 27 S.T.C. 367 observed that " ''appliance'' has been defined or employed as meaning a mechanical thing, an apparatus or device ; an instrumental means, aid, or appurtenance ; a thing applied or used as a means to an end, either independently or subordinately".

5. Sewai ki machine is used as a means to an end ; it is a device which gives the desired result by producing sewai by mechanical method. It is, therefore, an appliance. The question is whether it can be said to be a kitchen appliance. In Encyclopaedia Britannica, Vol. II (1973 edition, page 624), gas range or cooker, electric range and refrigerators are mentioned as kitchen equipment. This, however, cannot be of any assistance as food habits, manner of their preparation and appliance used in our country are entirely different as compared to European countries. For instance, oven, heater, toaster, etc., although used for baking and roasting are understood in common parlance in our country as electrical goods rather than kitchen equipment. Even then with march of time and advancement coupled with scarcity of domestic servant and increasing housewives'' employment due to economic pressure, etc., have led to enormous development ranging from hand operated tools for cooking to complicated mechanical and electrical appliances automatically controlled. For instance, pressure cooker, grinder, potato-chips cutter, etc. While interpreting the entry therefore this aspect cannot be lost sight of.

6. Sewai (vermicelli) is cooked in milk or syrup (chasni) and is taken either as snack or as sweet dish after meal and dinner. It is an item of food. It may be produced at commercial level for marketing or it may be produced in home for consumption in household. In either case, the machine from which it is produced is not directly concerned with kitchen. But that is not the test. An article may not

be of direct use yet its use may be such without which it may not be possible to run the kitchen. For instance, chakla (pastry board-it is round or rectangular in shape of wood or stone) and belan (roller) (a roller pin), sil stone or rock, a piece of stone on which condiment or spices are grinded with a wullor, and lorha, millery, etc.. These are items which are used normally in every Indian kitchen, whether poor or rich. No bread or puri can be prepared without help of chakla and belan nor can spices be grinded or reduced to paste without sil and lorha. .And no Indian kitchen can be thought of without bread or puri and spices. These items are not of direct use yet it can hardly be doubted that in popular parlance they are appliances which are used in kitchen. It is, therefore, not necessary that an appliance to be kitchen appliance must be of direct use or help in cooking. The entry is not cooking appliance but kitchen appliance, a term of wider import. Even in European countries, grinders, beaters, crushers and blinders, items which are not directly used for cooking are considered as cooking appliance (in Encyclopaedia Britannica, Vol. II, 1973 edition, page 625). The revising authority was therefore justified in holding that sewai ki machine is understood in common parlance as kitchen appliance.

7. In the result, these revisions fail and are dismissed. The assessee shall be entitled to its cost which is assessed at Rs. 200 one set. The fee of the standing counsel is assessed at Rs. 100.

