(2004) 04 AHC CK 0179

In the Allahabad High Court

Case No : Sales Tax Revision No. 1338 of 1993

Commissioner, Sales Tax APPELLANT

Vs

Kunwar Saheb and Co. RESPONDENT

Date of Decision : 09-04-2004

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 2
Uttar Pradesh Trade Tax Act, 1948 — Section 2

Citation : (2004) 137 STC 195

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prakash Krishna, J.—This is Commissioner''s revision u/s 11(1) of the U.P. Sales Tax Act, 1948. The following question of law has been framed in the memo of revision :

"Whether the Sales Tax Tribunal was legally justified to hold that the resultant glass strips and other glass items cut out from a glass sheet do not fall under the definition of ''manufacture'' despite the fact that Section 2(e-l) of the U.P. Sales Tax Act, 1948 indicates otherwise ?"

2. Heard the counsel for the parties and perused the record. Dispute relates to the assessment year 1984-85. In the relevant assessment year the dealer did not admit any tax liability on the sale of looking glass. The assessing authority treating the dealer as manufacturer of looking glass determined the turnover and imposed the tax on self-manufactured looking glass along with other items. This order has been set aside by the first appellate authority and confirmed by the Tribunal by the order under revision.

3. The first appellate authority as well as the Tribunal have found that the activity of the dealer in cutting the looking glass from a big glass sheet does not amount manufacturing of looking glass.

4. The learned standing counsel has placed reliance upon the definition of manufacture as given u/s 2(e-I) of the Act which reads as follows :

" ''Manufacture'' means producing, making, mining, collecting, extracting, altering, ornamenting, finishing or otherwise processing, treating or adapting any goods ; but does not include such manufactures or manufacturing processes as may be prescribed."

5. It was submitted by him that the activity of the dealer falls within the aforesaid definition of manufacture as given in the U.P. Sales Tax Act. He has placed reliance upon a judgment of this Court given in the case of Commissioner of Sales Tax v. Kanpur Glass House 1985 UPTC 1261. In this case the assessee purchased the glass sheets and mirror sheets from the local market. He also purchased plywood. He converted the mirror sheet into toilet looking glass and sold them in the market as such. The court relied upon a judgment of a division Bench given in the case of Commissioner of Sales Tax v. Kaderul Sehat Dawakhana 19841 56 STC 133 (All.) ; 1984 UPTC 224 and Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food Packers, In that case it was found that the assessee after procuring the mirror sheets, framed the same with plywood so as to convert the sheets into "toilet looking glasses". It was concluded that the mirror sheets are given at least one or more treatment referred to in Section 2(e-I) of the Act.

6. The said case is distinguishable from the case in hand. In the present case the activity of the dealer is that it purchased the glass of 122 x 83 x 18 size and after using kerosene converted it into glass strip and glass of different sizes. The further finding of the Tribunal is that by this activity of the assessee a different commercial commodity has not come into existence. He has sold the glass in the same form and condition by cutting it into different sizes as per requirements of the customers. Cutting of glass is not manufacturing of glass. Recently the Supreme Court in the case of State of Maharashtra Vs. Mahalaxmi Stores, has come to the conclusion that that the definition of manufacture as given u/s 2(17) of the Bombay Sales Tax Act (which is similar to U.P. Sales Tax Act) is very wide. But every type of variation of goods or finishing of goods would not amount to manufacture, unless it results in emergence of a new commercial commodity. In this case the Supreme Court has approved its earlier judgment given by it with respect to U.P. Sales Tax Act in the case of Commissioner of Sales Tax, UP Vs. M/s. Lal Kunwa Stone Crusher (P)Ltd., with reference to crushing of boulders resulting in different sizes ordinarily known as gitti.

7. In view of the above I do not find any merit in the revision. The revision is dismissed.

