(1978) 10 AHC CK 0018

In the Allahabad High Court

Case No : S.T.R. No. 1155 of 1976

Commissioner, Sales Tax APPELLANT

Vs

P.K. Rajendra and Company RESPONDENT

Date of Decision : 20-10-1978

Acts Referred:

Citation : (1979) 43 STC 228

Hon'ble Judges : C.S.P. Singh, J

Bench : Single Bench

Advocate : Bharatji Agarwal, for the Respondent

Judgement

C.S.P. Singh, J.—The revising authority has referred the following question of law for opinion of this Court:

Whether, on the facts and in the circumstances of the case, the Additional Judge (Revisions), Sales Tax, Meerut Range, Meerut, was legally justified in holding that non-ferrous metal alloys of brass bars and rods manufactured by the assessee and sold inside and outside U. P. in the assessment years 1966-67 and 1967-68 were covered by Notification No. ST-1365/ X-990-1956 dated 1st April, 1960, and taxable at the rate of 2 per cent ?

2. The assessee manufactured bars and rods from copper, zinc and tin, and effected sales within U. P. as also sales outside. The Sales Tax Officer taxed the turnover of U. P. sales under Notification No. ST-6439/X-1012-1962 dated 1st December, 1962, as clarified by Notification No. ST-2104/I/X-902(16)-52 dated 21st May, 1963, as "brasswares". The assessee appealed, but the appeal failed. On a revision being filed, the assessee''s contention that the article sold by him were not brasswares was accepted. Under Notification No. ST-6439/X-1012-1962 dated 1st December, 1962/"brasswares" were made taxable at 3 paise per rupee on all points of sale. The Hindi version of the notification used the words "peetal ka bartan". This was substituted by the words "peetal ka saman" by Notification No. ST-2104/I/X-902(16)-52 dated 21st May, 1963.

3. Sri V. D. Singh, the standing counsel, contended that brasswares meant all articles made of brass, and as the bars and rods sold by the assessee were articles made of brass, they were taxable under the notification dated 1st December, 1962. In view of the amendment to the Hindi version of the notification, the word "brasswares" has to be read as meaning all articles of brass and not confined to utensils made of brass. However, before a commodity can be described as a ware, it must be in a finished state and not in the shape of raw material used for manufacturing other commodities. See the case of Commissioner of Sales Tax, U. P. v. Manohar Glass Works [1971] 27 S.T.C. 51. In the present case, the Judge (Revisions) has found that the bars and rods sold by the assessee were not finished products but were used as raw material. In view of this finding of fact, the Judge (Revisions) was right in holding that the bars and rods sold by the assessee could not be taxed as brasswares.

4. The question referred is answered in the affirmative in favour of the assessee and against the department. The assessee is entitled to its costs, which is assessed at Rs. 200.

