(1983) 01 AHC CK 0027

In the Allahabad High Court

Case No : Sales Tax Revision No. 127 of 1980

Commissioner, Sales Tax — APPELLANT

Vs

Ram Deo Uma Shanker — RESPONDENT

Date of Decision : 04-01-1983

Acts Referred:

Citation : (1983) 53 STC 159

Hon'ble Judges : B.N. Sapru, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.N. Sapru, J.—The only question in this revision by the Commissioner of Sales Tax which pertains to the year 1975-76, is as to whether the Tribunal rightly found that the cast iron karahies sold by the assessee which were made of cast iron and silica sand, were taxable under item 83 of Notification No. ST-II-332/X-1012-1971 dated 15th November, 1971, or as an unclassified item.

2. Item 83 of the notification runs as follows :

Scissors, nut-crackers (sarautas), ordinary knives and chhuries, razors (ustare), iron-made kitchen utensils and appliances....

3. The Additional Judge (Revisions) has taken the view that karahies sold by the assessee were iron-made kitchen utensil and taxable at the rate of 3 per cent under the notification and not as an unclassified item.

4. On behalf of the Commissioner it is contended that these karahies are not used as kitchen utensils and they do not fall within this entry. The Additional Judge (Revisions) has, as a fact, found that they are so used and imposed tax on that basis.

5. Once it is found that karahies which were admittedly made of cast iron and silica sand, are used for kitchen purposes, it must be held that it falls within item 83.

6. Another argument advanced by the learned standing counsel is that karahies are not made up of pure iron but silica sand is mixed with iron and as such karahies cannot be considered to be an iron-made kitchen utensil.

7. There is no evidence on record to indicate what is the proportion of the silica sand which is mixed with iron and this question has not been raised by the Commissioner before the Judge (Revisions). The question, therefore, cannot be allowed to be raised for the first time in the revision.

8. The order of the Additional Judge (Revisions), Sales Tax, suffers from no error of law.

9. In the result, the revision is dismissed. There will be no order as to costs.