(1971) 03 AHC CK 0005

In the Allahabad High Court

Case No : Sales Tax Reference No. 277 of 1970

Commissioner, Sales Tax APPELLANT

Vs

Ram Niwas Puskar Dutt RESPONDENT

Date of Decision : 29-03-1971

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 3A

Citation : (1971) 28 STC 736

Hon'ble Judges : R.S. Pathak, J;H.N. Seth, J;C.S.P. Singh, J

Bench : Full Bench

Judgement

R.S. Pathak, J.—The Additional Revising Authority, Sales Tax, Allahabad, has referred the following two questions for the opinion of this Court:--

(1) Whether, under the facts and circumstances of the case, the weights and measures made of iron and sold by the assessee were covered by the expression "mill-stores and hardware" under the Notification No. ST-1367/X-1045(19)-1960 dated 5th April, 1961 ?

(2) Whether, under the facts and circumstances of the case, the turnover of the sales of the iron weights and measures from 1st April, 1963, to 31st May, 1963, was taxable at the rate of 3 per cent, or at the rate of 2 per cent, only ?

2. The assessee was assessed to sales tax under the U.P. Sales Tax Act on a turnover which included weights and measures. The Sales Tax Officer treated the weights and measures as liable to tax at 3 per cent. and determined the tax liability accordingly. On appeal by the assessee, the Assistant Commissioner (Judicial) Sales Tax did not agree with the view taken by the Sales Tax Officer and held that weights and measures were liable to tax at 2 per cent. only. The State applied in revision. The Additional Revising Authority affirmed the view taken by the appellate authority, holding that the proper rate of tax attracted was 2 per cent. and not 3 per cent. for the period 1st April, 1963, to 31st May, 1963. As for the turnover for the period 1st June, 1963, to 31st May, 1964, the

Additional Revising Authority referred to a subsequent Notification No. ST-2104/ X-902(16)-52 dated 21st May, 1963, under which he held that the rate had been raised from 2 paise to 3 paise per rupee. At the instance of the Commissioner of Sales Tax, this reference has now been made to this Court.

3. The reference came on for consideration before a Bench of this Court. In support of its contention that weights and measures could not be described as "hardware" the assessee relied upon Commissioner of Sales Tax, U.P. v. Aftab Husain Imdad Husain [1970] 25 S.T.C. 471, Fine Trading Corporation v. Commissioner of Sales Tax, U.P. [1970] 25 S.T.C. 474 and Commissioner of Sales Tax, U.P. v. Kanpur Udyog Bhandar [1970] 26 S.T.C. 431. The Bench, being of opinion that those decisions called for reconsideration, referred this case to a larger Bench. Accordingly, the case has been placed before us.

4. In Aftab Husain Imdad Husain [1970] 25 S.T.C. 471, the question before this Court was whether steel trunks could be described as "hardware" within the meaning of the expression "mill-stores and hardware" mentioned as item No. 7 in Notification No. 1367/X-1045(19)-1960 dated 5th April, 1961. The court expressed the view that they could not. In coming to this conclusion the court relied on materials indicating how the expression "hardware" was understood in the commercial world. It observed that every article made of iron or of other base metal could not be regarded as an article of "hardware". In the popular sense, that expression would comprise small articles of base metals, such as iron, copper, aluminium and their alloys like brass etc. The trade journals and catalogues of hardware items, to which the parties referred in that case, indicated that "hardware and mill-stores" were allied trades, that mill-stores consisted of items like small tools and spare parts of machinery and that the hardware trade by itself ordinarily refers to small items of base metals particularly building materials like nuts, bolts, hinges, rivets, latches, curtain railings, window grills etc. In the next case, Fine Trading Corporation [1970] 25 S.T.C. 474, the question arose whether kitchen-knives and penknives could be described as "hardware". In holding that they could not, the court observed :

...it cannot be overlooked that the entry in the notification does not refer to hardware alone. It speaks of ''mill-stores and hardware''. It seems to us that a distinct category of goods is contemplated here. A perusal of the notification shows that each entry in it refers to a distinct category of goods. We are of opinion that the various items mentioned in the entry must be understood in the sense implied from their membership of that category. ''Mill-stores and hardware'' have been deliberately set down as comprising between themselves a single category, and, therefore, when determining what ''hardware'' as used here means we must read the entire entry to ascertain what was intended within the category covered by it. It could be said that the word ''hardware'' in the entry takes its colour from ''mill-stores''. Its meaning is limited by the company it keeps. If the word was intended to comprehend its wider meaning it would, we think, be entered as a separate entry and not be put in the same entry as ''mill-stores''. We had occasion to consider the expression ''mill-stores and hardware'' in Commissioner of Sales Tax v. Aftab Husain [1970] 25 S.T.C. 471 and we pointed out that the expression referred to commodities belonging to allied trades, that while ''mill-stores'' consisted of items such as small tools and spare parts of machinery, ''hardware'' referred ordinarily to items made of base metal consisting of building materials such as nuts, bolts, hinges, rivets, latches etc.

Upon these considerations, the word ''hardware'', we think, cannot refer to kitchen-knives and penknives.

5. In the third case, Kanpur Udyog Bhandar [1970] 26 S.T.C. 431 this Court expressed the view that iron buckets also could not be comprehended in the expression "mill-stores and hardware" and referred in that behalf to what was said in Aftab Husain Imdad Husain [1970] 25 S.T.C. 471.

6. The entire case of the Commissioner of Sales Tax before us is that weights and measures made of iron are popularly understood as "hardware" and, therefore, are covered by the expression ''"mill-stores and hardware" mentioned in the aforesaid notification of 5th April, 1961. It is urged that the word "hardware" used in that expression must be treated as something distinct and separate from the word "mill-stores" and that there need not be any connection between the two, the word "and" connecting the two words should be read as "or".

7. We have carefully considered the matter and we are of opinion that the contention of the Commissioner must fail. The notification of 5th April, 1961, contains a number of entries:--

(1) Aluminium wares.

(2) Carpets.

(3) Cardboard and strawboard.

(4) Tari.

(5) Leather goods other than footwear.

(6) Ornaments made of gold or silver with or without any other alloy, and ornaments made of gold and silver with or without any other alloy.

(7) Mill-stores and hardware.

(8) Machinery and spare parts of machinery, not being such machinery or spare parts thereof which are taxable under any other notification issued u/s 3-A of the Uttar Pradesh Sales Tax Act, 1948.

8. It is obvious that each entry contains a complete classification of goods and in that classification related items have been included. If that is true, for example, of cardboard and strawboard, ornaments made of gold or silver, machinery and spare parts of machinery, it should be equally good, we think, in the case of "mill-stores and hardware". What is comprehended within the expression "mill-stores

and hardware" are all those articles which whether described as mill-stores or hardware have something common with each other. That common factor and the limits within which its range is circumscribed have been broadly indicated in the cases already referred to above. Upon that test, weights and measures have nothing in common with mill-stores and, therefore, do not fall within the expression mill-stores and hardware" mentioned in the notification of 5th April, 1961. They can be described ''as wares made of metal liable to tax up to 31st May, 1963, at the rate of two paise per rupee, and subsequently by virtue of Notification No. ST-2104/X-902(16)-52 dated 21st May, 1963, at the rate of three paise per rupee.

9. The questions referred are answered accordingly.

10. As no one appears on behalf of the assessee, there is no order as to costs. Counsel''s fee is assessed at Rs. 200.