(1999) 07 AHC CK 0023

In the Allahabad High Court

Case No : Sales Tax Revision No''s. 277, 278 and 361 of 1994

Commissioner, Sales Tax — APPELLANT

Vs

Swastik Glass Enterprises — RESPONDENT

Date of Decision : 14-07-1999

Acts Referred:

Citation : (2000) 118 STC 109

Hon'ble Judges : M.C. Agarwal, J

Bench : Single Bench

Advocate : Surya Prakash, for the Appellant; Bharat Ji Agrawal, Senior Advocate, for the Respondent

Final Decision : Dismissed

Judgement

M.C. Agarwal, J.—These three revision petitions by the Commissioner of Sales Tax u/s 11 of the U.P. Sales Tax Act, 1948 (now U.P. Trade Tax Act) raise a common question. The dealer-respondents are represented by the same counsel. They were, therefore, heard together and are disposed of by this common order.

2. Sales Tax Revision Nos. 277 and 278 of 1994 are directed against a common order dated October 11, 1993 passed by the Sales Tax Tribunal, Agra whereby it allowed the dealer''s Second Appeal Nos. 129 of 1990 (U.P.) and 160 of 1990 (Central) for assessment year 1983-84 and held that the glass shells, rods and tubes manufactured and sold by the dealer were taxable as unclassified goods.

3. Sales Tax Revision No. 361 of 1994 is directed against the Tribunal''s order dated December 9, 1998 in Second Appeal No. 595 of 1988, for assessment year 1983-84 which too has been allowed for the same reason.

4. I have heard Sri Surya Prakash, learned Standing Counsel for the Commissioner-revisionist and Sri Bharat Ji Agrawal, Senior Advocate for the dealer-respondent.

5. The respondents are manufacturers of glass shells, rods and tubes which are

not consumer goods but are used as raw material for the manufacture of other goods. Under Notification No. S.T.-2-5784/X--10(1)-80--U.P. Act 15/48/ Order-81 dated September 7, 1981 the following goods are taxable at the rate of 12 per cent :

"4. All goods and wares made of glass, but not including plain glass-panes, optical lenses, hurricane lantern chimneys, bottles and phials, glass-beads, clinical syringes, thermometers and scientific apparatus and instruments made of glass."

6. According to the assessing officer the said goods were taxable in the aforesaid category while according to dealer the goods manufactured by them were not finished goods and wares of glass and, therefore, did not fall in the aforesaid description and were taxable as an unclassified goods. This contention was not accepted by the assessing officer as well as by the first appellate authority, namely, the Assistant Commissioner (Judicial). However, on the aforesaid appeals, the Tribunal accepted this contention following, inter alia, a judgment of a division Bench of this Court in Commissioner, Sales Tax Vs. Manohar Glass Works, in which such goods were held not to fall under the classification "glasswares other than hurricane lantern chimneys, optical lenses and bottles" and were, therefore, held to be taxable as unclassified goods. This judgment of this Court was cited before the assessing officer who took the view that it was distinguishable because the description/categorization mentioned in the notification dated September 7, 1981 was different and included all goods made of glass.

7. The description contained in entry No. 4 of the notification dated September 7, 1981 reproduced above, came up for consideration before a learned single Judge of this Court in Commissioner of Sales Tax, U.P., Lucknow v. C.A. Glass Works [1995] 99 STC 308 ALL : 1996 UPTC 1 and the question was whether the glass shells which were unfinished goods and were to be used for manufacturing bulbs fell in the aforesaid description or were to be treated as unclassified goods. The learned single Judge on a detailed discussion held that reading the description as a whole the glass shells cannot be taxed under entry No. 4 aforesaid and the Tribunal had rightly held them to be taxable as unclassified goods.

8. Learned Standing Counsel could not show me any authority to the contrary and I find no reason to take a different view. The entry has to be read as a whole and given a purposive interpretation which leads me to agree with the view expressed by the learned single Judge in Commissioner of Sales Tax, U.P., Lucknow v. C.A. Glass Works [1995] 199 STC 308 All : 1996 UPTC 1.

These revision petitions, therefore, have no force and are hereby dismissed. The parties will bear their own costs.

