(1981) 01 AHC CK 0063

In the Allahabad High Court

Case No : Sales Tax Revision No''s. 794, 795 and 796 of 1980

Commissioner, Sales Tax APPELLANT

Vs

Thakur Ram Kishori Lal RESPONDENT

Date of Decision : 06-01-1981

Acts Referred:

Citation : (1981) 48 STC 294

Hon'ble Judges : R.R. Rastogi, J

Bench : Single Bench

Advocate : M.K. Agrawal, for the Respondent

Final Decision : Dismissed

Judgement

R.R. Rastogi, J.—These three revisions filed by the Commissioner, Sales Tax, can be conveniently taken up together. The assessment years involved are 1976-76, 1976-77 and 1977-78. The assessee carried on business, inter alia, in purchase and sale of brass scraps and the question in the present revisions is confined to the taxability of the same. The Sales Tax Officer assessed the turnover in respect of sales of scraps under entry No. 1 of the schedule to Notification No. ST-II-4949/X-10(2)-74 dated 30th May, 1975, which reads :

All kinds of minerals, ores, metals and alloys except those included in any other notification issued under the Act.

2. The turnover in respect of these goods is liable to tax at the point of sale by the manufacturer or by the importer and the rate of tax is 2 per cent. This notification has come into effect from 1st June, 1975.

3. The assessee''s contention was that he was not liable to tax in respect of the aforesaid turnover under the aforesaid entry because he was neither the manufacturer nor the importer. This contention was repelled by the assessing authority. The same view was taken on appeal but on further revision the Additional Judge (Revisions) has accepted the assessee''s contention and has

exempted him from tax on the aforesaid turnover.

4. After hearing counsel for the parties I find that the entry aforesaid is not applicable to the facts of the present case because admittedly the disputed turnover is in respect of brass scraps. There is a specific notification which may be applicable to such scraps. Entry 2(b) of the schedule to Notification No. ST-II-333/X-1012-1971 dated 15th November, 1971, reads :

Scrap meant for melting and sheets including circles meant for making brasswares and containing only any or all of the aforesaid metals, viz., copper, tin, nickel or zinc.

5. This notification was superseded by Notification No. ST-II-6628/X-1012-1972 dated 1st December, 1973, and entry 2 of the schedule to that notification reads:

Copper, tin, zinc, nickel, or alloy or scraps containing any of these metals only, including sheets and circles used in the manufacture of brasswares.

6. The rate remains the same and all that has been done by this notification is that Clauses (a) and (b) of entry 2 have now been amalgamated in one entry with, a view to simplify it. Anyhow, as noted above, brass scrap is not covered by entry 1 of the schedule to Notification No. ST-II-4949 dated 30th May, 1975, and the disputed turnover could not be taxed accordingly thereunder.

7. After the revisional orders there is no dispute left in regard to the acceptance of books and the disclosed turnover in respect of utensils. The dispute is confined only to the taxability of the turnover in respect of brass scrap and the same, as held above, is not taxable under entry No. 1 of the schedule to the notification dated 30th May, 1975.

8. In the result, therefore, these revisions fail and are dismissed. The assessee is entitled to costs which are assessed at Rs. 200 but of one set only.

