(1969) 12 AHC CK 0015

In the Allahabad High Court

Case No : Sales Tax Reference No. 253 of 1968

Fine Trading Corporation APPELLANT

Vs

Commissioner, Sales Tax RESPONDENT

Date of Decision : 02-12-1969

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 3

Citation : (1970) 25 STC 474

Hon'ble Judges : R.S. Pathak, J;R.L. Gulati, J

Bench : Division Bench

Advocate : K.P. Agarwal, B.P. Agarwal and R.K. Das, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R.S. Pathak, J.—The assessee deals in knives manufactured by it. It was assessed to tax under the U.P. Sales Tax Act for the assessment year 1962-63 in respect of its turnover of knives. The Assistant Sales Tax Officer treated the knives as cutlery, and accordingly taxed the turnover at 7 per cent. On appeal by the assessee the Assistant Commissioner (Judicial) Sales Tax applied the rate of 3 per cent, on the turnover of table-knives and taxed the sales of penknives and kitchen-knives at 2 per cent. On a revision application filed by the Commissioner of Sales Tax the Additional Judge (Revisions) Sales Tax held that the table-knives were cutlery and specifically taxable at 7 per cent. In respect of penknives and kitchen knives he took the view that they should be described as "hardware" and, therefore, attracted tax at the rate of 3 per cent. At the instance of the assessee the present reference has been made on the following question:

Whether kitchen-knives (knives used in the kitchen for paring vegetables etc.) and penknives (used for general purposes) can be taxed as "hardware" (taxable at 3 per cent.) or they have to be taxed as unclassified items (at 2 per cent.)?

2. The case has been argued on the assumption that kitchen-knives and

penknives are not to be regarded as cutlery. The entire controversy ranges over the question whether kitchen-knives and penknives can be described as "hardware" within the meaning of that term in the expression "mill-stores and hardware" contained in Notification No. ST-1367/X 1045(19)-1960 dated the 5th April, 1961. The notification declares that the rate of tax in respect of the turnover of "mill-stores and hardware" shall be three paise per rupee at all points of sale with effect from 5th April, 1961. It is on the basis of this notification that the Additional Judge (Revisions) has applied the rate of 3 per cent. In our judgment, the Additional Judge (Revisions) is wrong. It may be that speaking generally kitchen-knives and penknives can be described as hardware. The knives are made of iron and are, therefore, goods made of base metal. But 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 member ship of that category. "Mill-stores and hardware" have been deliberately set down as comprising between themselves a single category, and, there fore, 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.

3. Upon these considerations, the word "hardware", we think, cannot refer to kitchen-knives and penknives. In our opinion, the notification dated 5th April, 1961, is not attracted at all. Kitchen-knives and pen knives should be taxed at the general rate of 2 per cent, levied u/s 3 of the U.P. Sales Tax Act. We answer the question referred accordingly.

4. The assessee is entitled to its costs, which we assess at Rs. 100. Counsel''s fee is assessed in the same figure.

