(1968) 11 AHC CK 0013

In the Allahabad High Court

Case No : Sales Tax Reference No. 48 of 1965

Imperial Surgico Industries APPELLANT

Vs

Commissioner, Sales Tax RESPONDENT

Date of Decision : 01-11-1968

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

Citation : (1969) 23 STC 201

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

Bench : Division Bench

Advocate : Ashoke Gupta and B.L. Gupta, for the Appellant; The Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Pathak, J.—The assessee manufactures and sells operation tables, beds including fowler beds, bedside lockers, dressing carriages, instrument cabinets, revolving stools, instrument trollies, instrument tables and self-propelling chairs. It was assessed to sales tax under the U.P. Sales Tax Act for the assessment year 1957-58. The Sales Tax Officer treated the aforesaid items as furniture and levied tax at the rate of one anna per rupee by virtue of Notification No. ST-905/ X dated 31st March, 1956, issued u/s 3-A of the U.P. Sales Tax Act. The item "furniture" is entered at serial No. 14 in the list appended to that notification. The Sales Tax Officer repelled the contention of the assessee that the items sold by it constituted hospital equipment and not furniture and was, therefore, liable to tax u/s 3 of the Act at the lower rate prescribed therein. The assessee filed an appeal and the Judge (Appeals) Sales Tax allowed the appeal in respect of the turnover of operation tables only. He held that operation tables could not be described as furniture. The revision application filed thereafter by the assessee was dismissed by the Judge (Revisions) Sales Tax. At the instance of the assessee, the Judge (Revisions) has made the instant reference to this Court for its opinion on the following question :

Whether the rest of the articles manufactured by the applicant-dealer are to be classified as unclassified items chargeable u/s 3 as contended by the applicant or they fall within the operation of Section 3-A under the category of furniture ?

2. The entry in Notification No. ST-905/X dated 31st March, 1956, speaks of "furniture". Webster defines "furniture" as "that with which anything is furnished or supplied" and "articles used for convenience or decoration in a house or apartment." In Chambers''s Twentieth Century Dictionary "furniture" is defined as "movables, either for use or ornament, with which a house is equipped." Articles which are employed for the purpose of convenience or for decoration in a dwelling place are described as furniture. They are articles which supply the daily conveniences of the common man in relation to the place where he lives. They may be articles of furniture now deemed essential to civilized living such as chairs, tables, beds and cupboards. They may include articles of greater refinement or luxury, such as sofas, carpets and articles of ornament and decoration. Whether an article can be described as furniture turns upon its function in relation to the daily needs of convenient living.

3. It is urged on behalf of the revenue that the articles in question in this case, though intended for use in a hospital, are nevertheless amenable to a comparable use in a dwelling place. It is said that they correspond, with some variations, to articles in normal use in the home and that there is nothing in their design or equipment which precludes them from being put to a domestic use. Now, there is nothing in the statement of the case or in the orders of the Sales Tax Officer, the Judge (Appeals) Sales Tax and the Judge (Revisions) Sales Tax indicating the description, design and equipment of these several articles. It was for the revenue, which justifies the application of the higher rate under the notification on the ground that the articles constitute furniture, to place before the Judge (Appeals) and the Judge (Revisions) appropriate material indicating that by reason of the description, design and equipment of the articles they are liable to be described as furniture. There is no indication in the record before us to show that such material was placed. The record does not refer to any such material. On the contrary, learned counsel for the assessee has produced before us a printed copy of the catalogue of items manufactured by the assessee and supplied as modern hospital equipment. Learned counsel for the revenue does not dispute that the catalogue faithfully describes the articles in question before us. In paragraph 8 of the assessee''s reference application filed before the Judge (Revisions) it is stated that catalogues were produced before the Judge (Revisions). We may, therefore, refer to the catalogues. From a perusal of the catalogues it is obvious that the articles in question were specially designed for use in hospitals. In the case of beds only, it appears that some beds are almost identical with those in domestic use. But there are other beds, apart from fowler beds, which are specially designed for use in a hospital. There is, however, nothing before us to indicate whether the beds supplied by the assessee are of one kind or the other. We may take note of the fact that in the catalogues the articles in question have been described as hospital equipment. We are

constrained to refer to the unfortunate omission of the Judge (Revisions) to describe clearly the design and equipment of the articles in question. Had he done so, we would have received considerable assistance in deciding the question referred by him. Confining ourselves to the contention of the revenue that the description and the design of the articles do not preclude them from use as furniture, we are inclined to the view that the test on which the contention proceeds is not acceptable. The test, in our opinion, is not whether the articles are capable of being used as furniture ; the test is whether they are ordinarily so used and can be accepted as such according to the general or popular notion of what furniture is. Sales tax is a liability which affects the mercantile community and the consumer public. The list of items mentioned in the notification must be construed according to the understanding popular in that community and section of the people. To impose a technical or artificial meaning will result in defeating or stultifying the intention behind the provision. It may be that the bedside lockers, dressing carriages, instrument trollies, instrument tables, instrument cabinets, revolving stools and self-propelling chairs can be put to use as lockers, tables, cabinets, stools and chairs in the home. But the question is whether they can be said to be articles of furniture in the popular or general sense. The contention of the revenue is not that in the generally accepted sense they are articles of furniture. The contention is that their design and equipment do not preclude them from being used as furniture. It is one thing to say that although they cannot be generally described as furniture they can be used as such. That points to a compulsive use, a role for which they were never originally intended. That is not the same thing as saying that they are articles which in the popular or general sense are accepted as furniture.

4. In our opinion, it has not been established that the articles in question in this reference are liable to be classified as "furniture" within the meaning of Notification No. ST-905/X dated 31st March, 1956. They should be treated as articles chargeable u/s 3 of the U.P. Sales Tax Act. We answer the question referred accordingly.

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

