

(1984) 02 AHC CK 0032
In the Allahabad High Court
Case No : S.T.R. No. 92 of 1983

Kailash Chand Ramesh Chand

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 24-02-1984

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 15

Citation : (1985) 58 STC 87

Hon'ble Judges : R.B. Lal, J

Bench : Single Bench

Advocate : R.P. Goel and S.S. Sharma, for the Appellant; The Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

R.B. Lal, J.—This revision by the dealer u/s 11(1) of the U. P. Sales Tax Act (briefly the Act) is directed against the order dated 23rd November, 1982, passed by the Sales Tax Tribunal, Kanpur Bench II.

2. The dealer-applicant deals in cotton. For the assessment year 1972-73 the dealer disclosed taxable sales of Rs. 1,72,400.53 and tax was determined on this amount. Later on, the assessing authority found that the dealer had purchased unginned cotton (kapas) under form III-A and had sold that cotton after ginning it and removing cotton seeds from it, and this purchase was liable to purchase tax which had escaped from imposition of purchase tax. The assessing authority gave a notice u/s 21 of the Act. The stand of the dealer was that unginned and ginned cotton were to be considered one and the same thing and therefore, the purchase of unginned cotton was not liable to be taxed. The assessing authority did not accept this contention and determined purchase tax on this kind of cotton which was purchased for Rs. 38,377.71. The dealer appealed to the Assistant Commissioner (Judicial), Sales Tax, but his appeal was unsuccessful. The dealer filed second appeal before the Sales Tax Tribunal. The Tribunal held that the dealer was liable to pay tax, but held that the rate of tax should be 2 per cent

instead of 3 per cent.

3. The dealer has now filed this revision and has raised the following questions of law for answer of this Court:

(1) Whether the ginned and unginned cotton constitute one and the same commodity for the purposes of payment of purchase tax on unginned cotton purchased against form 3-Ka ?

(2) Whether in the facts and circumstances of this case the law laid down by the Supreme Court in *State of Punjab and Others Vs. Chandu Lal Kishori Lal and Others*, is applicable and the same have been wrongly distinguished by the Courts below?

4. I have heard the learned counsel for the parties.

5. The relevant provisions are Sections 3-AAA and 3-AAAA of the Act. The words in the same form and condition, occurring in Sections 3-AAA and 3-AAAA as they stood in the assessment year under consideration are to be considered and interpreted. The contention of the learned counsel for the dealer-applicant is that unginned and ginned cotton are one and the same thing and the mere fact that cotton has been ginned would not amount to change in form and condition for the purposes of these sections. In support of this submission the learned counsel has placed reliance on the decisions *Raghubir Chand Som Chand Vs. Excise and Taxation Officer and Others*, , *State of Punjab and Others Vs. Chandu Lal Kishori Lal and Others*, and *Dehradun Tea Company v. Commissioner of Sales Tax 1980 UPTC 459* . I have gone through these decisions and in my opinion, they are all distinguishable. In *State of Punjab and Others Vs. Chandu Lal Kishori Lal and Others*, it was observed that ginned and unginned cotton are essentially the same commodity but this view was expressed in view of the provisions of Sections 14 and 15 of the Central Sales Tax Act, 1956. u/s 14 of the Central Act certain kinds of goods have been enumerated as "declared goods" and under one item cotton ginned or unginned has been mentioned. In view of this specific provision, the view was taken that cotton ginned or unginned was to be treated as a single commodity. This Supreme Court case is distinguishable for this reason. The Punjab case of *Raghubir Chand Som Chand* [1960] 11 STC 149 (SC) is also distinguishable for this very reason.

6. In the case of *Dehradun Tea Company 1980 UPTC 459* the question which arose for consideration was whether tea leaves continued to be agricultural produce even after processing. In that connection the learned single Judge considered the definition of the term "manufacture" contained in Section 2(e-l) of the Act and held that the kind of processing of tea leaves done by the dealer was not that kind of processing as envisaged in the definition of the term "manufacture" because there was no transformation and emergence of a new and different article, having a distinct name or character or use. Even this view cannot help the dealer in the instant case. The question for consideration here is not whether ginning of kapas amounts or does not amount to a manufacturing

process, what has to be considered is whether after ginning the resultant cotton could be deemed to have remained in the same form and condition in which the unginned kapas was. The words "in the same form and condition" are to be taken in their natural and normal meaning. The test of manufacture spelt out in the decision Dehradun Tea Company 1980 UPTC 459 is not to be applied for ascertaining the meaning of this expression. In my view, after ginning, the resultant cotton does not remain in the same form and condition in which the unginned cotton was. In this view of the matter the authorities were right in holding that the dealer was liable to pay purchase tax on this quantity of kapas.

7. My answer to the questions of law raised is as above.

8. There is no merit in "this revision and it is accordingly dismissed. However, there will be no order as to costs.