
(1987) 01 AHC CK 0006
In the Allahabad High Court
Case No : Sales Tax Revision No. 487 of 1986

Rammoo Mal and Sons

APPELLANT

Vs

Commissioner, Sales Tax

RESPONDENT

Date of Decision : 22-01-1987

Acts Referred:

Citation : (1987) 66 STC 41

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

Bench : Single Bench

Advocate : R.C. Sharma, for the Appellant; Standing Counsel, for the Respondent

Judgement

R.R. Misra, J.—This revision is directed against an order dated 10th March, 1986 passed by the Sales Tax Tribunal, Meerut Bench, Meerut. During the assessment year 1981-82 the appellant dealt with jharu and chatai, etc. On the basis of adverse survey dated 12th August, 1981, the Sales-Tax Officer rejected the book version of the turnover and made a best judgment assessment. Both the authorities below have affirmed the aforesaid action of the Sales Tax Officer. Aggrieved against the same the assessee has filed the present revision. Sri R.C. Sharma, learned counsel appearing for the assessee, has vehemently submitted that the Tribunal is in error in affirming the finding regarding rejection of accounts. I have heard counsel for the parties.

2. On survey dated 12th August, 1981, rokar was found written up to 8th August, 1981. It was asserted by the assessee that the said rokar could not be written due to illness. However, during the course of assessment proceedings or even before the authorities below, no medical certificate or the affidavit on the point of illness was filed by the assessee. It appears that an affidavit which was filed by the assessee on other points does not deal with this point regarding illness. The Tribunal therefore, disbelieved the aforesaid explanation of the assessee regarding illness. The second ground for rejection of account books was that the assessee had business in ex-U. P. chatai and neither sale nor purchase

nor turnover in respect thereof had been shown. Having perused the impugned order passed by the Sales Tax Tribunal, I am of the opinion that there is no error of law involved in the same as regards its finding of rejection of account books.

3. The second contention raised on behalf of the dealer is that the "jharu" dealt with by the assessee was on wholesale-cum-retail basis and the Tribunal is in error in holding that the same is an unclassified item. According to the dealer he is liable to be taxed in respect of "seenk" as classified item. Mr. R. C. Sharma, learned counsel, in support of his submission has relied upon Notification No. 449 dated 3rd May, 1975 which seeks to levy tax on an importer of "seenk" at the rate of five per cent upto 6th September, 1981 and thereafter at the rate of 6 per cent. The Sales Tax Officer in his assessment order says that the dealer deals in jharus and not in loose "seenks", therefore, he is not covered by the aforesaid notification. The conclusion, therefore, arrived at by the Sales Tax Officer as well as by both the appellate authorities below is that the jharus are taxable as unclassified items. In my opinion, if loose seenk is bundled up in the form of jharu, it will still retain its character as "seenk" and will be covered by the notification in question. To my mind, the Sales Tax Tribunal is in error in holding that the jharus which are composed of "seenk" are unclassified items. If these jharus which are sold by the dealer are a bundle of seenks only then the same are classified items and are covered by the same notification. To this extent the Tribunal is in error of law. But I find that under the impugned order the Sales Tax Tribunal has stated that the import was of nariyal jharu and other jharus. Since the facts are not clear from the impugned order of the Sales Tax Tribunal to determine as to whether the dealer dealt with in seenk jharu only. In case it is so, then the case of the dealer is correct in law that the jharu made of seenks are classified items. In case it is found that factually the position is different, then it is open to the Tribunal to take a view according to law.

4. In the result, the revision succeeds in part with no order as to costs. The order of the Sales Tax Tribunal as regards rejection of the book version of the turnover is upheld and as regards taxability of jharu, the Tribunal is directed to redetermine the same in view of the observations made above. In doing so the Tribunal will also take into consideration the cash memos issued by the dealer and such other materials as are produced before the Tribunal.