

(1974) 03 AHC CK 0003
In the Allahabad High Court
Case No : S.T.R. No"s. 91 and 92 of 1972

Tarkeshwar Nath Agarwal

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 18-03-1974

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 11(1)

Citation : (1974) 34 STC 497

Hon'ble Judges : Satish Chandra, J; R.L. Gulati, J

Bench : Division Bench

Advocate : Sri Nath Agarwal, S.N. Tandon, R.C. Tandon and R.C. Agarwal, for the Appellant; Standing Counsel, for the Respondent

Judgement

R.L. Gulati, J.—This and the connected case are references u/s 11 (1) of the U. P. Sales Tax Act and relate to the assessment years 1966-67 and 1967-68. Common questions of law arise in both the references. The questions in respect of assessment year 1966-67 are as under:

(1) Whether, upon the facts and in the circumstances of this case, there was material to justify the amounts of the assessee's taxable turnover determined by the Additional Judge (Revisions), Sales Tax, U. P., Allahabad, for the year 1966-67?

(2) Whether, upon the facts and in the circumstances of this case, the Additional Judge (Revisions), Sales Tax, Allahabad, was competent to raise the turnover taxable at the rate of 2 per cent from Rs. 10,000 to Rs. 15,000 for the year 1966-67?

(3) Whether the window-glass, imported and sold by the assessee in 1966-67, was glassware attracting tax at the rate of 10 per cent under Notification No. ST-7094/X--1012-1965 dated 1st October, 1965? If not, what was the correct rate of tax in respect of it?

(4) Whether the looking glass, imported and sold by the assessee in 1966-67

was "toilet requisites" attracting tax at 10 per cent under Notification No. ST-7094/X--1012-1965 dated 1st October, 1965? If not, what was the correct rate of tax in respect of it?

2. Identical questions have been referred in respect of the assessment year 1967-68 and hence the decision in this case shall govern the connected case also.

3. The assessee is a dealer in picture-frames, glass sheets and looking glasses. He keeps no accounts. On the basis of the goods imported by the assessee against C forms, the Sales Tax Officer determined his turnover to the best of his judgment and classified the same in the following categories: (i) Imported looking glasses, (ii) Imported glass sheets, (iii) Picture-frames, and (iv) Other sales which are exempt from sales tax.

4. On appeal the appellate authority determined the net turnovers as below:

1966-67 1967-68 Ex. U. P. Glass sheets and looking glasses taxable at 7 per cent Rs. 30,000 Rs. 55,000 Picture-frames taxable at 2 per cent Rs. 10,000 Rs. 10,000 Tax Rs. 2,300 Rs. 4,050 5. The assessee went up in revision. The revising authority held in the absence of accounts, the assessee's version of turnover could not be accepted and the same had to be estimated. The revising authority found that the authorities below had made a mistake in levying 7 per cent tax on Ex. U. P. glass sheets and looking glasses. The rate under the relevant notification was 10 per cent. He accordingly recast the turnover and applied the rates as under:

1966-67 1967-68 1. Ex. T.J.P. Glassware and looking glasses taxable at 10 per cent Rs. 20,000 Rs. 37,000 2. Picture-frames and plain sheets taxable at the rate of 2 per cent Rs. 15,000 Rs. 15,000 Tax Rs. 2,300 Rs. 4,000 6. He accordingly dismissed the revision for the year 1966-67 and allowed in part the revision for the year 1967-68. The assessee is aggrieved and has brought this reference before us.

7. The first question as framed is a question of fact. Whether, on the facts and in the circumstances of the case, the assessment of the turnover is right, or wrong cannot be a question of law. However, a question of law can arise if the assessment is without any material. We find that the revising authority has determined the turnover on the basis of past records and the size of imports. As such it cannot be said that the assessment of the turnover as fixed by the revising authority is without any material. We would, therefore, reframe the question to read: "Whether there was any material in support of the determination of the turnover by the revising authority" and answer the same in the affirmative.

8. The second question also as framed does not raise any question of law. The ultimate estimate of the turnover is a question of fact and, supported as it is, on the material on record cannot be questioned in a reference. However, the learned counsel stated that the revising authority had enhanced the assessment by

increasing the turnover taxable at 2 per cent from Rs. 10,000 to Rs. 15,000 which was beyond his jurisdiction. It is true that the revising authority at the material time had no jurisdiction to enhance an assessment. But we find that the revising authority has not made any enhancement. An assessment can be said to have been enhanced only if the tax assessed has been enhanced. Changes in the quantum of the turnover and its classification does not mean enhancement, if the tax assessed is not enhanced as a result thereof. In the instant case, the revising authority had enhanced the rate from 7 per cent to 10 per cent on the first category of sales, but had decreased the turnover of this category. With regard to the second category of sales he had enhanced the turnover. The net result of these changes, however, was that the tax assessed for the assessment year 1966-67 was maintained at Rs. 2,300 while the tax for the year 1967-68 was reduced by Rs. 50. Obviously this cannot be said to be a case of enhancement.

9. We accordingly reframe the second question to read: " Whether, on the facts and in the circumstances of the case, the revising authority had enhanced the assessment" and answer the same in the negative.

10. The next question is as to whether the imported glass sheets sold as window-glasses could be taxed as glassware under Notification No. ST-7094/X--1012-1985 dated 1st October, 1965. The contention is that glass sheet is not glassware but is an unclassified item. This point is covered by a recent decision of this court in U. P. Glass Works Ltd. v. Commissioner of Sales Tax 1913 U.P.T.C. 352 where it has been held that glass sheets are covered by the entry "glassware". Question No. (3) is also answered in the affirmative by saying that glass sheets are taxable as glassware.

11. The last question is as to whether looking glass imported and sold by the assessee is covered by the entry relating to "toilet requisites". In S. T. R. No. 641 of 1971 (Commissioner of Sales Tax, U. P. v. fai Shri Products 1974 34 S.T.C. 494 a Full Bench of this Court has held that all articles connected with toilets of a person, whether consumed in the course of application or not, are properly taxable as "toilet requisites". In that case, hairpins and hairclips, which are used by ladies for holding the hair in place, were held to be "toilet, requisites". The Supreme Court has in State of Gujarat Vs. Prakash Trading Co., Ahmedabad, held that tooth-paste is also a toilet requisite. Having regard to the decisions cited above, we have no hesitation in holding that looking glass is a "toilet requisite" and is taxable as such. The fourth question is answered accordingly.

12. As all the questions have been answered against the assessee, the Commissioner is entitled to the costs which we assess at Rs. 100. There will be one set of costs only.