
(1981) 07 AHC CK 0040
In the Allahabad High Court
Case No : Sales Tax Revision No. 19 of 1980

Union Carbide India Ltd.

APPELLANT

Vs

Commissioner, Sales Tax

RESPONDENT

Date of Decision : 28-07-1981

Acts Referred:

Citation : (1982) 50 STC 175

Hon'ble Judges : Satish Chandra, C.J

Bench : Single Bench

Advocate : V.N. Tandan, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Partly Allowed

Judgement

Satish Chandra, C.J.—In this revision which relates to the assessment year 1972-73, the assessee challenges the levy of sales tax at the rate of 3.5 per cent on the sale of zinc sheets. The Judge (Revisions) held that the assessee sells zinc sheets to printing presses where they are used for making blocks for printing. He held that this turnover was taxable at the rate of 3.5 per cent as an unclassified item. The learned counsel questions this finding. According to him zinc sheets are taxable at the rate of 1 per cent under entry No. 2 of Notification No. ST-II-333/X--1012-1971 dated 15th November, 1971. This entry reads as follows :

2. (a) Copper, tin, nickel or zinc, or any other alloy containing any of these metals only.

(b) Scrap meant for melting and sheets including circles meant for making brasswares and containing only any or all of the aforesaid metals, viz., copper, tin, nickel or zinc.

2. Under entry No. 2(a) copper, zinc or any alloy containing any of these metals is taxable at 1 per cent. This entry obviously refers to the metal itself or any alloy containing any of these metals. The learned Judge (Revisions) appears to me to be right to hold that finished product of zinc will not be covered by this

entry. Admittedly the assessee sells zinc sheets earlier purchased by it. This turnover will not be within the purview of entry No. 2(a).

3. The learned counsel then invited my attention to entry No. 2(b) of this notification which says "scrap meant for melting and sheets including circles meant for making brasswares". Under it the emphasis is on the use or purpose for which sheets are sold. The intention of the parties ought to be that brassware will be made out of the sheets. Here in the present case the zinc sheets are sold by the assessee to printing presses which use it for making blocks for printing purposes. These facts clearly show that there was never any intention on the part of the assessee that the zinc sheets sold by it will be or were likely to be used for making brassware. The fact that this entry emphasised the intention behind the sale being the making of brassware is strengthened by the amendment of this entry. Instead of the word "meant" the word "used" has been substituted subsequently. That shows that merely the intention was not enough but actual user had to be proved in order to bring the turnover within the purview of this entry. So a sale which was neither intended nor did in fact use the sheets for making brassware would be outside the purview of entry No. 2(b). Under the circumstances the transaction was rightly assessed under the category of unclassified item at 3.5 per cent.

4. In the next place the learned counsel submitted that the assessee's business was not dealing in "scrap. The assessee manufactured torches and the by-product of scrap was not usable and so it was sold. Till 1st April, 1973, the definition of "sale" did not include such dealings. It was with effect from 1st April, 1973, that the definition of "sale" (sic) was amended and transactions of sales of scrap were included in it. The year in question in the present case was 1972-73, which ended on 31st March, 1973. He further submitted that in any event any additional tax could not be levied by the Sales Tax Officer. He had no jurisdiction to do so. These two points were repelled by the revising authority on the ground that they were not taken at the appellate stage. He relied upon *Gaddar Mal Dau Dayal v. Commissioner of Sales Tax 1972 UPTC 262*. The learned counsel seriously questioned the correctness of the view taken by the Judge (Revisions). He has invited my attention to *Commissioner of Sales Tax v. Moti and Jawahar, Varanasi 1980 STJ 172*. In this case it was held that there can be no estoppel against law. If in law the assessee was not taxable on the turnover in respect of certain commodities, then certainly he could not have been taxed thereon. Such a plea goes to the root of the matter and raises a jurisdictional question and such a plea can be taken for the first time in appeal or in revision. The Judge (Revisions) therefore held it distinguishable.

5. In *Gaddar Mal's case 1972 UPTC 262* the position was that the assessee had admitted liability to pay the tax and he deposited the same on the admitted turnover at the appellate stage. At the revisional stage the assessee wanted to raise the plea that the commodity in question was exempt from tax in the relevant assessment year. The learned Judge (Revisions) held that *Gaddar Mal's*

case 1972 UPTC 262 will not apply to a case where the jurisdiction of the assessing authority was challenged to levy tax at all. The same circumstance obtained in the present case. The plea taken by the assessee was that the turnover of scrap was not taxable at all in the relevant assessment year, and that in any event the additional tax could not be levied or imposed by the Sales Tax Officer. These pleas went to the jurisdiction of the assessing authority and could be raised for the first time in revision. Since the Judge (Revisions) declined to entertain the plea the case has to go back for consideration of these pleas by him.

6. In the result the revision succeeds and is allowed in part. The matter is sent back to the Sales Tax Tribunal. The Tribunal will entertain the plea relating to the taxability of the turnover of scrap and the imposition of additional tax. The other points will not be reopened. In view of the divided success the parties shall bear their own costs.