(1973) 04 AHC CK 0013

In the Allahabad High Court

Case No : S.T.R. No''s. 806 and 807 of 1971

U.P. Glass Works Ltd. APPELLANT

Vs

Commissioner, Sales Tax RESPONDENT

Date of Decision : 19-04-1973

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

Citation : (1973) 32 STC 252

Hon'ble Judges : R.L. Gulati, J;C.S.P. Singh, J

Bench : Division Bench

Advocate : G.N. Porwar and S.P. Gupte, 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 relating to the assessment years 1965-66 and 1966-67 respectively. The question of law referred for our opinion is common in both the cases. Hence the judgment in this case shall govern the connected case also.

2. The assessee is engaged in the manufacture and sale of glass sheets. There is no dispute about the quantum of turnover. The dispute relates to the rate of tax at which the turnover of glass sheets would be taxable. The assessee''s contention was that glass sheets were an unclassified item and as such the* rate of 2 per cent prescribed by the charging Section 3 was applicable to its turnover. The Sales Tax Officer, on the other hand, held that glass sheets were "glasswares" and as such were covered by Notification No. S.T. 905/X dated 31st March, 1956, issued u/s 3-A and the turnover of glass sheets would be taxable at the rate of 7 per cent till 30th September, 1965 and, thereafter, at the rate of 10 per cent. The assessee''s appeal and the revision having failed, he, applied for a reference. The Additional Judge (Revisions), Sales Tax, Bareilly, has accordingly referred the following question :

Whether glass sheet is covered Under the term glassware and is liable to tax at single point u/s 3-A of the U. P. Sales Tax Act

3. The term "glassware" has not been defined in the Act or Under the Rules. Therefore, such meanings shall have to be given to it as are commonly attributed to it. According to the dictionary, the general meaning of "glassware" is "articles made of glass". However, the special meaning of this term is "vessels or containers made of glass". It is contended that having regard to the context in which this entry appears in the notification, the term "glassware" should not be given its general meaning, but it should be given restricted or special meaning. Full entry No. 15, where ''glassware" is listed, reads :

Glasswares other than hurricane lantern chimneys and bottles.

Entry No. 16 is "glass bangles" and entry No. 26 is "opera glasses and binoculars". It is argued that if the term "glassware" was intended to include all articles of glass, it was not necessary to specify separately glass bangles, opera glasses and binoculars and, therefore, restricted meaning should be given to this entry. This court in Commissioner of Sales Tax, U. P., Lucknow v. Banaras Bead Manufacturing Company, Varanasi [1970] 25 S.T.C. 100, has already held that the term "glassware" as appearing in entry No. 15 of the notification dated 31st March, 1956, must be taken to refer to all articles of glass except those specifically excluded or those separately listed in other entries. On this finding, it was held that "glass beads" were included in the term "glasswares".

4. It was then contended that a glass sheet is not an article of glass, but "glass" itself. A reference was made to the Encyclopaedia Britannica from which it appears that sheet glass is one of the forms in which glass is produced. The argument does appear to be attractive and we have examined this matter in some detail, but we find that there is no evidence much less a finding on this point. Whether the assessee manufactures glass in the form of sheet glass or manufactures glass sheets in the shape of a finished commodity, is a question of fact to be determined on evidence. Since this question was not raised before the sales tax authorities, there is no finding on the point. What we find is that the assessee manufactures and sells glass sheets which are used as window and door panes.

5. A similar question arose before the Bombay High Court in Tribuwandas Gulabchand of Nagpur v. State of Maharasthra [1965] 16 S.T.C. 452,, where it was held that the term "glassware" in entry 15 of Schedule I, Part I, of the C. P. and Berar Sales Tax Act, 1947, includes glass sheet. An argument was raised in that case that in commercial world "glass sheets" were known as glass distinct from "glassware". That argument was repelled on the ground that there was no evidence to that effect. We find the same situation in the present case.

6. The case of Commissioner, Sales Tax Vs. Manohar Glass Works, is distinguishable. There it was found that glass tubes and glass rods were sold to dealers who used them as raw material for manufacturing or fabricating articles like test-tubes and toys. In the opinion of the court the word "glassware" was intended to mean only finished articles or goods which were sold to the

consumer and not glass in semi-manufactured stage, which was used as raw material. In the present case, there is no finding that glass sheets manufactured by the assessee are used as raw material for manufacture or fabrication of other articles out of it. In fact, a contention to this effect was sought to be raised before the Jugde (Revisions), but he declined to permit the assessee to raise that contention, because the same was not raised before the lower authorities.

7. We, accordingly, answer the question in the affirmative in favour of the department and against the assessee. The assessee shall pay the costs of this reference to the Commissioner of Sales Tax, which we assess at Rs. 100. There would be one set of costs only.