

(1970) 02 AHC CK 0006

Allahabad High Court

Case No: S.T.R. No's. 60 and 61 of 1968

Commissioner, Sales
Tax

APPELLANT

Vs

Manohar Glass Works

RESPONDENT

Date of Decision: Feb. 2, 1970

Acts Referred:

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

Citation: (1971) 27 STC 51

Hon'ble Judges: R.S. Pathak, J; R.L. Gulati, J

Bench: Division Bench

Advocate: Deoki Nandan, for the Respondent

Final Decision: Dismissed

Judgement

R.L. Gulati, J.

This and the connected case are references submitted by the Additional Judge (Revisions) Sales Tax, Agra, u/s 11(1) of the U.P. Sales Tax Act. The assessment years involved are 1962-63 and 1963-64.

2. The assessee M/s. Manohar Glass Works is engaged in the business of manufacture and sale of glass articles at Firozabad. The dispute relates to the rate of tax on the turnover of articles like glass tubes and glass rods. The Sales Tax Officer taxed the turnover of these articles at 7 per cent. treating them to be glassware within the meaning of entry No. 10 of Notification No. S.T. 1363/X-1045 (1960) dated 5th April, 1961, issued u/s 3-A of the Act. On appeal the Assistant Commissioner (Judicial) held these articles to be unclassified items not falling within the aforesaid notification. He, therefore, levied the tax at the rate of 2 per cent. which was the rate u/s 3 of the Act at the material time. The Commissioner of Sales Tax applied in revision u/s 10 of the Act. Before the Judge (Revisions) it was conceded that the turnover in dispute was not of broken pieces of glass rods and glass tubes as had

wrongly been assumed by the Assistant Commissioner (Judicial), but the glass rods and glass tubes sold by the assessee were whole pieces. However, the Judge (Revisions) thought that this fact made no difference as in his opinion even the whole pieces of glass rods and glass tubes could not be regarded to be "glassware", but were unclassified items taxable u/s 3 of the Act at multiple point. The reason why he took this view was that "glassware" meant only finished articles which were sold to the consumers and according to the finding recorded by him glass rods and glass tubes sold by the assessee were in semi-finished state and were sold not to the consumers but to dealers who utilised them as raw material in manufacturing finished articles like test-tubes and toys. He, therefore, affirmed the order of the Assistant Commissioner (Judicial). At the instance of the Commissioner of Sales Tax, the revising authority has submitted two identical statements of case relating to the two assessment years with the following common question of law for the opinion of this court:

In view of the Hindi version of Notification No. S.T. 1363/X-1045 (1960), dated 5th April, 1961 (which will get precedence in case of difference in meaning) whether glass rods and glass tubes manufactured and sold by the assessee in the circumstances of these cases, are to be taxed as "glassware" (at 7 per cent. single point) or as unclassified items (at 2 per cent. multiple point)?

3. u/s 3 of the Act the turnover of every article is taxable at all points of sale at the rate specified in that section. u/s 3-A the State Government has been invested with the power to declare by a notification that the turnover of certain articles shall be taxed at a specified single point in the series of sales in the hands of successive dealers at a rate to be specified in the notification. In exercise of this power the State Government issued Notification No. S.T. 1365/X-990-1956 dated 1st April, 1960. Item No. 10 in the list appended to that notification reads as under:

Glasswares other than hurricane lantern chimneys, optical lenses and bottles.

4. The point of tax was the sale by the manufacturer where the goods were manufactured in Uttar Pradesh and the rate of tax was 6 paise per rupee. This notification was subsequently modified by a subsequent Notification No. S.T. 1363/X-1045 (1960) dated 5th April, 1961, and the only modification made in entry No. 10 was that the rate was increased to 7 paise per rupee.

5. The short question that we are called upon to answer is as to whether glass tubes and glass rods manufactured and sold by the assessee do come within this entry. The term "glassware" according to its dictionary meaning has a wide connotation and includes all articles made of glass. It is now, however, well settled that entries in a notification under the U.P. Sales Tax Act have to be interpreted not in the literal sense but in a commercial sense, a sense in which they would be understood in the commercial world. In the commercial sense the term "glassware" would comprehend only such articles of glass as are finished articles capable of being sold

to the consumer. A reference to the other items in the list appended to the notification also bears this out. The articles enumerated in the remaining entries are all finished articles or other parts which are sold to the consumer. Therefore, an article which is in a semi-manufactured stage and has yet to undergo some process of manufacturing or fabrication cannot be said to be an article of glassware even if it is made of glass. In the instant case there is a finding that the glass rods and glass tubes the turnover whereof is in dispute were sold by the assessee not to the consumers but to dealers who used them as raw material in manufacturing or fabricating articles like test-tubes and toys. It is those finished articles that can properly be called "glassware".

6. If the contention of the department that the glass tubes and glass rods which are sold not to the consumers but are utilised in fabrication of articles like toys and test-tubes are also glassware is accepted, it would lead to anomalous result inasmuch as tax would be leviable at two stages, once in the hands of the assessee on the sale of glass tubes and glass rods and again in the hands of the dealers who utilised them in the manufacture of articles like toys and test-tubes. Such an interpretation would run counter to the scheme and the intention underlying the notification in question which contemplates tax only at one stage.

7. The learned Standing Counsel appearing on behalf of the sales tax department drew our attention to the decision of this Bench in Commissioner of Sales Tax, U.P., Lucknow v. Banaras Bead Manufacturing Co., Lanka, Varanasi (S.T.R. No. 244 of 1966 decided on 10th December 1968) [1970] 25 S.T.C. 100. There the question was as to whether glass beads could be comprehended in the term "glassware" as appearing in entry No. 15 of Notification No. S.T. 905/X dated 31st March, 1956, which reads as under:

Glasswares other than hurricane lantern chimneys and bottles.

8. In that case the assessee's contention was that the term "glassware" should be confined to receptacles made of glass like jugs, jars and tumblers etc. Repelling that contention we held that the term glassware included all articles made of glass. However, in that case, we were concerned with glass beads which is a finished product and is sold to the consumer. We were not called upon in that case to decide as to whether an article of glass which is in a semi-manufactured state and which is sold not to the consumer but is utilised in the manufacture of other articles can also be included in the category of glassware. That case is clearly distinguishable and affords no help to the department. We are, therefore, clearly of opinion that the glass tubes and glass rods the turnover whereof is in dispute in the instant case cannot be included in the term "glassware" as appearing in the notification of 5th April, 1961.

9. In the question referred to us there is a reference to the Hindi version of the notification which uses the phrase "kanch ka saman" in place of "glassware" as used

in the English version. The Judge (Revisions) seemed to be of the opinion that according to the Hindi version the glass rods and glass tubes could be called "kanch ka saman" and therefore could be included in the notification. To him there appeared to be a conflict between the Hindi version and the English version of the notification. We are of opinion that there is no such conflict. The term "kanch ka saman" has also to be interpreted in the commercial sense and interpreted in that way it would mean only such articles of glass as are in a finished state and are capable of being sold to the consumer. We are, therefore, of opinion that reference to the Hindi version should be omitted from the question which should be reframed as under:

Whether in the facts and circumstances of the case the turnover of glass rods and glass tubes manufactured and sold by the assessee are to be taxed as glassware at 7 per cent. or as an unclassified item at 2 per cent. (multiple point)?

10. We answer the question as reframed by us by saying that the turnover of glass rods and glass tubes would be taxable not at 7 per cent. under the notification in question but at 2 per cent. u/s 3 of the Act.

11. The assessee is entitled to the costs of these references which we assess at Rs. 100 (one set). Counsel's fee is also assessed at the same figure.