

(1970) 02 AHC CK 0007

Allahabad High Court

Case No: Sales Tax References No"s. 145 and 146 of 1969

Commissioner, Sales Tax

APPELLANT

Vs

Kanpur Udyog Bhandar

RESPONDENT

Date of Decision: Feb. 18, 1970

Citation: (1970) 26 STC 431

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

Bench: Division Bench

Advocate: B. Agarwal and R.R. Agarwal, for the Respondent

Final Decision: Allowed

Judgement

R.L. Gulati, J.

This and the connected reference under the U.P. Sales Tax Act have been submitted by the Judge (Revisions) Sales Tax, Lucknow, for the opinion of this court on the following common question of law :

Whether before 1st June, 1963, on which date the Notification No. ST-2104/X-902 (16)/52 was published in the U.P. Gazette "iron buckets" were taxable at 3 per cent. under Notification No. ST-1367/X-1045(19)/1960 dated 5th April, 1961, or were they taxable at 2 per cent. only as unclassified item u/s 3 ?

2. The assessment years involved are 1961-62 and 1962-63. In the net taxable turnover was included the sale proceeds of iron buckets, which was assessed at 3 per cent. as falling within item No. 7 of Notification No. 1367/X-1045(19)/1960 dated 5th April, 1961, which reads "mill-stores. and hardwares". The assessee's contention that iron buckets do not fall in that entry was not accepted by the Sales Tax Officer, but it was accepted eventually by the Judge (Revisions) before whom the matter went in revision. The Commissioner of Sales Tax is aggrieved and has caused this reference to be submitted to this court.

3. A Division Bench of this court in Commissioner of Sales Tax v. Aftab Husain Imdad Husain S.T.R. No. 576 of 1968 decided on November 13, 1969) Since reported at

[1970] 25 S.T.C. 471 has interpreted this entry. The Bench in that case after examining the rival contentions of the parties at length expressed the opinion that the term "hardware" in the commercial community is confined to the well defined section of trade and it does not include all items made of iron and other base metals. It was pointed out that hardware and mill-stores were allied trades, that mill-stores comprised of items like small tools and spare parts of machinery, that hardware trade by itself referred ordinarily to small items of base metal particularly building materials like nuts, bolts, hinges, rivets, latches, curtain railings, window grills etc. and that there is a separate classification of trade known as iron and steel trade. Steel trunks which was the item in dispute in that case was held to fall in that category. We are, therefore, of opinion that iron buckets are not governed by the entry "hardware and mill-stores".

4. That it was not the intention of the framers of the notification to include iron buckets in that entry is dear from the fact that subsequently another Notification No. ST-2104/X-902 (16)/52 dated 21st May, 1963, was published in the official Gazette of 1st June, 1963, declaring that with effect from the date of the publication of that notification in the Gazette, the rate of sales tax in respect of the turnover of wares made of any metal or alloy, other than brass or aluminium, would be raised from two paise per rupee to three paise per rupee at all points of sale. Iron buckets would clearly fall under that notification. That notification has not been issued u/s 3-A, but under the second proviso to Sub-section (1) of Section 3. It clearly shows that metal wares were never intended to be classified u/s 3-A and even in 1963 iron buckets were to be taxed u/s 3 and not at a higher rate u/s 3-A.

5. For the reasons stated above, we answer the question by saying that the turnover of iron buckets would be taxable at 2 per cent. as an unclassified item u/s 3 prior to 1st June, 1963. The assessee is entitled to the costs of this reference which we assess at Rs. 100 (one set only). The fee of the learned counsel is also assessed at the same figure.