

(1970) 02 AHC CK 0009

Allahabad High Court

Case No: Sales Tax References No. 632 to 634 of 1967

Indian Ceramic House

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision: Feb. 13, 1970

Acts Referred:

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

Citation: (1970) 26 STC 413

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

Bench: Division Bench

Advocate: J. Sarup, V. Sarup, G.D. Vidyarthi, Gopal Behari and R.R. Agarwal, for the Appellant; Standing Counsel, for the Respondent

Final Decision: Dismissed

Judgement

Satish Chandra, J.

The Additional Judge (Revisions), Sales Tax, Agra, has submitted this statement of case u/s 11(1) of the U.P. Sales Tax Act and has invited the opinion of this court on the following question of law :

Whether liquid gold was rightly taxed as chemical. If not whether it is taxable as an unspecified item or as bullion?

2. The three connected references relate to the assessment years 1956-57 under the U.P. Sales Tax Act and 1957-58 under the U.P. Sales Tax Act and the Central Sales Tax Act.

3. The assessee manufactures and sells liquid gold. The assessee claimed that liquid gold was taxable either as bullion or specie or as an unclassified item. It was not a chemical. The assessing authority, however, did not accept this contention. He held that it was chemical and, as such, liable to tax at the rate of one anna per rupee and not at the rate of four annas per cent. either as bullion or specie or as an

unclassified item. The Judge (Appeals) confirmed the finding and dismissed the assessee's appeals. The assessee filed three revisions but the same were also dismissed on the 12th August, 1964.

4. Liquid gold is a dark viscous substance. It is extensively used for the decoration of glass and ceramic ware. It is manufactured by melting gold bullion in the shape of filigree which is then dissolved in aqua regia. The product is then treated in essential oils. Ultimately, the product called "liquid gold" is produced which contains about 12 per cent. gold and 88 per cent. of the oils and other chemicals. The gold is contained in this product in a colloidal state. The particles of gold are so minute that on being filtered through paper, they pass through it. The particles of gold cannot be seen even by an optical test. The process of manufacturing liquid gold is a highly guarded secret. For decoration purposes, the product called "liquid gold" is applied on the article. The article is heated at a temperature 600° to 650° C. The essential oils and organic matter burn off, leaving a lustrous adherent film of metallic gold on the article.

5. According to the Text-Book of Inorganic Chemistry by J.R. Partington, Fifth Edition, at page 815, it is stated that if gold is dissolved in aqua regia it forms a bright yellow solution, which on evaporation deposits deliquescent yellow crystals of chloric acid, soluble in water, alcohol or ether. Thereby it becomes auric chloride. According to the manufacturing process, this auric chloride, when heated at higher temperature, decomposes into chlorine and gold, which are also chemicals.

6. It will thus be seen that liquid gold is the popular name of a product, which is not gold in liquid form. The product is obtained by chemically treating gold according to a set process. The gold contained in it cannot be recognised as metal. It is not used as bullion is. In the Encyclopaedia Britannica, 1968, Volume 10, page 536-B, it has been stated that by far the largest single use for gold is as the backing for the world's currency. This is the monetary use. But gold is also used for art purposes. Its inertness, malleability and pleasing bright yellow colour have made gold valuable as an artistic material. It has also industrial usage. Where high reliability, corrosion resistance and high electrical conductivity are needed in electrical and electronic circuits, gold is employed. It is used to plate contacts, terminals, printed circuits and semi-conductor system. The gold in its metallic form is also used for gilding, in gold leaf or powder form. Admittedly, the liquid gold manufactured by the assessee is not put to any such uses. It has a specialised use of decorating glass bangles etc. or ceramic wares. The manner of using it for this purpose is not like the use of gold even for gilding. While gilding, the gold is put on the object in the form of gold-leaf or powder. It is not mixed in oils or heated. In our opinion, the liquid gold cannot be held to be within the meaning of the expression "gold" or "specie" and was rightly not taxed as such.

7. The next question is whether the liquid gold is a chemical. Words and Phrases, Perry Edition, Volume 6, page 740, states that a chemical is a substance used for

producing a chemical effect, or one produced by a chemical process ; a chemical agent prepared for scientific or economic use. In the Oxford English Dictionary "chemical" is defined as a "substance obtained by or used in chemical process." As seen above, liquid gold is obtained by a chemical process involving metallic gold and various other chemical substances. The liquid gold is used as an agent for economic use for decorating glass or ceramic articles. It is, thus, evident that in the commercial world, liquid gold is known to be the product of a chemical process and is used as a chemical agent, for economic or business purposes. The liquid gold, in our opinion, is a chemical and taxable as such.

8. In Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh, the Supreme Court held that a sales tax statute, being one levying a tax on goods, must in the absence of a technical term or a term of science or art, be presumed to have used an ordinary term as "coal" according to the meaning ascribed to it in common parlance. The matter should be viewed from the angle of a merchant dealing in coal and a purchaser wanting to purchase it. It was held that "charcoal" was included within the term "coal". In our opinion, the term "chemical" is a scientific term and its scientific background would be relevant. Further, as seen above, the manner of producing liquid gold and the limited purpose for which it is used would also show that in common parlance of the commercial world, it is considered a chemical and not the gold metal.

9. In Bishambar Dayal v. Commissioner, Sales Tax [1963] 14 S.T.C. 184, a Bench of this court held that zinc oxide and red lead were sold by the assessee to glass manufacturers. It was observed that if an article is sold as an article belonging to one category, it must be treated as a sale of an article of that category even though it answers the description of another category. If an article is capable of being used as a chemical and also as a colour, the answer to the question what was sold, would depend upon how it was treated by the vendor. If he stocked and sold it as a chemical it would be sale of chemical and more so if it was bought by the vendee also as such. It will be seen that liquid gold is not manufactured for being used for purposes for which gold metal is normally used. It has a special use for decoration of glass and ceramic articles by processing them. In our opinion, the vendor as well as the purchaser of liquid gold would consider it a chemical and not gold metal. From this point of view also liquid gold will fall under the head "chemicals of all kinds". It could not hence be taxed as an "unclassified" item.

10. We answer the question referred to this court as follows :

Liquid gold was rightly taxed as chemical. It was not taxable as an unspecified item or as "bullion".

11. The Commissioner of Sales Tax would be entitled to his costs which we assess at Rs. 100, one set. The counsel's fee is also assessed at the same figure.