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2015 (315) E.L.T. 385 (All.)

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
Rajes Kumar, J.

COMMISSIONER OF TRADE TAX, U.P., LUCKNOW
Versus
UMESH CHANDRA

Trade Tax Revision No. 681 of 1999, decided on 29-8-2006

Utensils made of brass - Art brass wares - Brass utensils - Shivling Kandhari, Paandeep, Amar daan, Agar daan and Kalyani Lota, etc. being utensils made of brass used in worship, liable to tax as utensils made of brass and not as a Art brass wares - Since there is a specific entry of utensils made of brass, the items in dispute are liable to tax under such specific entry - Entry of "Art brass wares" is a general entry which may include utensils, statues and other various items if they are manufactured, as a result of Art or it contains artistic appearance. [paras 10, 15]

Revision dismissed

CASES CITED

Collector v. Wood Craft Products Ltd. — [1995 \(77\) E.L.T. 23](#) (S.C.) — *Referred*..... [Para 14]
H.P.L. Chemicals Ltd. v. Commissioner — [2006 \(197\) E.L.T. 324](#) (S.C.) — *Referred*..... [Para 13]
Har Narain Purshottam Das v. Commissioner of Sales Tax — 28 STC Page 77 — *Referred* [Para 11]
Shiv Shankar Murti Foundry v. Commissioner — Trade Tax Revision No. 1009 of 1996 — *Referred*..... [Para 4]
State of Maharashtra v. Bradma of India Ltd. — 2005 (AIR) SCW Page 894 — *Referred* . [Para 12]

[Order]. - The present revision under Section 11 of U.P. Trade Tax Act (hereinafter referred to as the "Act") is directed against the order of Tribunal dated 10-6-1999 relating to assessment year 1996-97 under the U.P. Trade Tax Act.

The question raised in the present revision is as follows :-

"Whether on the facts and in the circumstances of the case, the Trade Tax Tribunal was legally justified to hold that the goods such as Panddeep, Amardan, etc. manufactured by the dealer are taxable as Utensils made of brass and not as art brass ware despite the fact that the dealer was registered for manufacturing of art brass ware only?"

2. Dealer/Opposite Party (hereinafter referred to as "the Dealer") is a Karkhaneydar and owns Furnaces for manufacturing of various items made of Brass. It was found that during the year under consideration, dealer manufactured and sold Shivling Kandhari, Paandeep, Amar Daan, Agar Daan and Kalyani Lota, etc. These goods appear to have been manufactured by casting process and after finishing and polishing, were sold. The Assessing Authority treated the aforesaid items namely Shivling Kandhari, Paandeep, Amar Daan, Agar Daan and Kalyani Lota, etc. as a Art Brassware and levied tax @ 10%. The claim of dealer was that the aforesaid items were the Pooja Utensils and therefore, they were liable to tax as a Utensil made of Brass-wares @ 4%. The First Appellate Authority accepted the claim of the dealer that the aforesaid items were liable to tax as Utensils made of Brass being used as Pooja Utensils. The view of the First Appellate Authority has been affirmed by the Tribunal.

3. Heard learned Counsel for the parties.

4. Learned Standing Counsel submitted that the dealer was registered for "Art Brass-wares", therefore, items in dispute were liable to tax as "Art Brass-wares". He submitted that the goods in dispute may have been manufactured by casting process and may be used as worship Utensils but since it involves Art, therefore, it is liable to tax as "Art Brass-wares". In support of his contention, he relied upon the decision of this Court in Trade Tax Revision No. 1009 of 1996 *Shiv Shankar Murti Foundry v. Commissioner of Trade Tax, U.P. Lucknow*, in which, learned Single Judge of this Court held that Brass-Statue manufactured by casting process used in the worship was liable to tax as a "Art Brass-wares" and not as an unclassified items as claimed by the dealer. Learned Counsel for the dealer submitted that in the present case, dispute was not of a Statue made of Brass, but Utensils used in the worship. He submitted that since there was a specific entry for Brass Utensils, therefore, it was liable to tax @ 4% under the entry of Utensils made of Brass.

5. Having heard learned Counsel for the parties and perused the order of Tribunal and the authorities below.

6. It is useful to refer the Notifications relating to the "Art Brass-wares" and Utensils made of Brass.

7. The relevant portion of Notification No. ST-6750, dated 1-10-1985 is reproduced below :-

"In exercise of the powers under clause (d) of sub-section (1) of Section 3A of the U.P. Sales Tax Act, 1948 (U.P. Act No. XV of 1948) read with Section 21 of the Uttar Pradesh General Clauses Act, 1904 (U.P. Act No. 1 of 1904), the Governor is pleased to made with effect from October 1, 1985, the following amendments in Government Notification No. ST-II-5784/X-10 (1)-80-U.P. Act 15/48-Order-81, dated September 7, 1981 :

AMENDMENTS

In the Schedule to the aforesaid notification, after the entries against serial numbers 6 and 26, the following new entries shall respectively be inserted column wise namely;

Sl. No.	Description of goods	Point of tax	Rate of tax
1	2	3	4
6A	Art Brasswares and Utensils made of brass, bronze (Kansa) bell metal (Phool) or German silver and parts thereof. First sale by the dealer other than Karkh-nedar as defined by the State Government by Notification from time to time or sale by the importer.		10%

The Hindi version of Art Brass wares and Utensils is "Pital Kay Kalatmatic Patra. Bartan Aur Unkay Bhag."

8. The aforesaid Notification was amended by Notification No. ST-II-2152, dated 26-10-1991 with effect from 1-11-1991. The relevant portion of which is quoted below :

Sl. No.	Description of goods	Point of tax	Rate of tax
1	2	3	4
6-A(a)	Art Brass wares First sale by the dealer other than Karkh-nedar as defined by the State Government by Notification from time to time or sale by the importer.		10%
(b)	Utensils made of Brass Bronze (Kansa) bell metal (Phool) or German silver and parts thereof. First sale by the dealer other than Karkh-nedar as defined by the State Government by Notification from time to time or sale by the importer.		8%

Here also Hindi version of Art Brassware is "Pital Kay Kalatmak Patra"

9. The aforesaid Notification has been further amended by the Notification No. TT-2-3402/11-9-116/94-U.P. Act-15/48-Order-94, dated 1-10-1994, by which, the entry of Utensils made of Brass Bronze (Kansa) Bell Metal (Phool) or German Silver and parts thereof has been made taxable @ 4%.

10. Now the question for consideration is whether the item in dispute namely Shivling Kandhari, Paandeep, Amar Daan, Agar Daan and Kalyani Lota etc. being Utensils used in the worship, is liable to tax as a "Art Brass-wares" or as a Utensil made of Brass. There is no dispute that the items in dispute are the Utensils used in the worship made of Brass. In my view, since there is a specific entry of Utensils made of Brass, the items in dispute are liable to tax under the specific entry of Utensils made of Brass. The entry of "Art Brass-wares" is a general entry which may include Utensils, Statues and other various items, if they are manufactured, as a result of Art or it contain artistic appearance, but since there is a specific entry for Utensils made of Brass, in my opinion, the items in dispute which are Utensils used in the worship and are made of Brass, they are covered under the entry "Utensils made of Brass".

11. In the case of *Har Narain Purshottam Das v. Commissioner, Sales Tax, Uttar Pradesh, Lucknow* reported in 28 STC page 77, the question involved was whether the Tinopal was liable to tax as a Chemical or washing material. The Division Bench of this Court held that though, Tinopal earlier held as a Chemical, but on the introduction of entry of washing material, was held liable to tax as washing material being more specific. It has been held that specific entry excludes general entry and to be preferred.

12. In the case of *State of Maharashtra v. M/s. Bradma of India Ltd.* reported in 2005 AIR SCW page 894, Apex Court held that the specific entry would override the general entry.

13. In the case of *H.P.L. Chemicals Ltd. v. Commissioner of Central Excise, Chandigarh* reported in (2006) 5 Supreme Court Cases 208 = [2006 \(197\) E.L.T. 324](#) (S.C.), the Apex Court held that the specific entry is to be preferred over the residuary entry.

14. In the case of *Collector of Central Excise, Shillong v. Wood Craft Products Ltd.* reported in 1995 (3) SCC page 454 = [1995 \(77\) E.L.T. 23](#) (S.C.). Apex Court held that the residuary can be resorted to only when even a liberal construction of the specific headings is not capable of covering the goods in question.

15. For the reasons stated above, in my view, item in dispute namely Shivling Kandhari, Paandeep, Amar Daan, Agar Daan and Kalyani Lota, etc. being Utensils made of Brass used in the worship, is liable to tax as Utensils made of Brass and not as a Art Brass-wares.

16. In the result, revision fails, and is, accordingly, dismissed.

