(1988) 11 RAJ CK 0041

In the Rajasthan High Court

Case No : S.T. Revision No. 252 of 1987

A.C.T.O. APPELLANT

Vs

Bhomawat Industries RESPONDENT

Date of Decision : 18-11-1988

Acts Referred:
Rajasthan Sales Tax Act, 1964 — Section 5

Citation : (1989) 74 STC 28

Hon'ble Judges : A.K. Mathur, J

Bench : Single Bench

Advocate : P.K. Bhansali, for the Appellant; Vineet Kothari, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Mathur, J.—This revision petition is directed against the order dated 22nd October, 1986 passed by the Rajasthan Sales Tax Tribunal, Ajmer (hereinafter referred to as a "Tribunal").

2. The question before me is whether "falcofix-SH" is to be taxed at 12 per cent as per the Notification No. F. 5(22)FD/CT/70-7, dated 9th March, 1970. The assessing authority found that the commodity "falcofix" is glue which is covered by serial No. 18 of the aforesaid notification and as such it is to be taxed at the rate of 12 per cent.

3. Aggrieved against this the assessee approached the appellate court, i.e., Additional Commissioner of Taxes and the Additional Commissioner also held that "falcofix" is taxable at 12 percent. Aggrieved against this order, the assessee approached the Tribunal and the Tribunal examined the constituent of "falcofix" and "glue" held that it is not a glue, therefore, it is not covered by entry No. 18 of the notification dated 9th March, 1970 and is not taxable at 12 per cent but it will be taxable under the residuary Clause at 7 per cent.

4. Aggrieved against this, the State has approached this Court by filing the present revision petition. In order to appreciate the controversy it will be

relevant to produce the relevant notification which reads as under :

S.O. 287.-In exercise of the powers conferred by Section 5 of the Rajasthan Sales Tax Act, 1964 (Rajasthan Act 29 of 1954), the State Government hereby notifies that with immediate effect the rate of the tax payable by a dealer in respect of the goods specified in column 2 of the list annexed hereto shall be as shown against them in column 3 of the said list.

List -- S. No. Description of goods Rate of tax 1 2 3 -- 18 Dyes, paints and varnishes, dry colours, pigments,lacquers, glue, polish (other than boot polish), paint brush, sand paper, turpentine oil, enamels and white oil. 12% --

5. The department has not lead any evidence to show that how they want to bring this item into the definition of "glue".

6. The "glue" has been defined by the Condensed Chemical Dictionary, 10th Edition which reads as under :

glue. A colloidal suspension of various proteinaceous materials in water. Most familiar are those obtained by boiling animal hides, tendons, or bones which are high in collagen. Chief sources are slaughterhouse wastes and fish scraps. Other animal derived glues are made from casein (milk) and blood. The most important vegetable glue is made from soyabean protein. Combustible in solid form. Nontoxic, but inedible. See also adhesive, fish glue, collagen gelatin.

7. The adhesive have also been defined in the Condensed Chemical Dictionary, 10th Edition which reads as under :

Any substance, inorganic or organic, natural or synthetic, that is capable of bonding substances together by surface attachment.

8. It shows that adhesive is a very wider expression and it includes organic as well as inorganic bonding substances. So far as "glue" is concerned it is said to be one of the organic adhesive.

9. According to the assessee the present "falcofix" is prepared out of chemical compounds and the chemical compounds manufacturing this "falcofix" are as follows :

1. Ploy vinyl alcohol

2. Octyl alcohol

3. Vinyl aceltate monomer

4. Ploy acrylamide

5. Acrylo nitrate

6. Butyl acrylate monomer

7. Potassium persulphate

8. Styrene.

10. From the perusal of the above definitions of the "glue" and the "adhesive" it is apparent that adhesive is a very wider term and glue is a specific term which means only compound extracted from organic elements. But the "falcofix-SH" is a synthetic compound and it does not fall in the narrow definition of a "glue" which is organic in nature. Though, the purpose of both the items is binding, but the "falcofix" is a new development in the horizons of the binding industry or in a hardware industry. The effect of this item is also the same but since all the items in the list has been enumerated by nomenclature and it does not include synthetic adhesive, therefore, falcofix, synthetic adhesive, does not fall in this entry and it cannot be said to cover by item No. 18 of the aforesaid notification. If the general nomenclature has been used as an adhesive perhaps this wider expression would have encompassed this item also.

11. But that is not so and a specific item like glue has been mentioned and glue being an organic one, the "falcofix" being inorganic by-product of the chemical compound, it does not fall in the definition of "glue".

12. In this view of the matter the view taken by the Tribunal appears to be correct and it does not call for any interference by this Court.

13. There is no merit in the revision petition and same is dismissed. No order as to costs.

