(1986) 02 MP CK 0019

In the Madhya Pradesh High Court

Case No : M.C.C. No. 169 of 1984

Agro Pipes APPELLANT

Vs

Commissioner of Sales Tax RESPONDENT

Date of Decision : 17-02-1986

Acts Referred:
Madhya Pradesh General Sales Tax Act, 1958 — Item 56(ii), 44(1)

Citation : (1987) 65 STC 438

Hon'ble Judges : R.K. Verma, J;G.G.Sohani, J

Bench : Division Bench

Advocate : G.M. Chaphekar, for the Appellant; Surjit Singh, Government Advocate, for the Respondent

Judgement

R.K. Verma, J

1. This is a reference made on an application filed by the applicant-assessee u/s 44(1) of the M.P. General Sales Tax Act, 1958 (hereinafter referred to as the Act), whereby the learned President, Board of Revenue, has referred the following question of law to this Court for decision:

Whether the Tribunal was justified in holding that the P.V.C. pipes will not be covered under Notification No. 1061-537-V-ST dated 7th April, 1967, as modified by Notification No. 1432-138-V-ST dated 3rd July, 1971 and were assessable to tax under entry Co. 56(ii) of Part II of Schedule II appended to the M.P. General Sales Tax Act, 1958 ?

2. The facts in brief, leading to this reference are as under:

The applicant''-assessee which is engaged in the business of manufacture and sale of P.V.C. tubes and pipes was assessed to tax for the period 1st July, 1974 to 30th June, 1976. The sale of P.V.C. pipes was assessed to tax for the period 1st July, 1974 to 30th August, 1974 at the rate of 7 per cent under the residuary entry No. 1 of Part VI, Schedule II and for the period 31st August, 1974 to 30th June, 1976, at the rate of 12 per cent under entry No. 66(ii) of Part II of

Schedule II appended to the Act.

3. The applicant''s contention was that the rate of tax applicable was 3 per cent under Notification No. 1061-537-V-ST dated 7th April, 1967, issued u/s 12 of the Act, as modified by Notification No. 1432-138-V-ST dated 3rd July, 1971. In first appeal, the order of assessment was maintained and it was observed by the Appellate Assistant Commissioner, Sales Tax, that P.V.C. pipe was different from polythene pipes.

4. In second appeal, the assessee contended that P.V.C. (pipes) and polythene (pipes) are the same goods and, therefore, the P.V.C. pipes manufactured by the appellant are assessable to tax at the same rate at which polythene tubings are assessable in the light of Government Notification No. 1061-537-V-ST dated 7th April, 1967, as modified by Notification No. 1432-138-V-ST dated 3rd July, 1971, which remained in force during the relevant period of assessment. It was also contended on behalf of the assessee-applicant that P.V.C. pipes are not sanitary pipes and, therefore, they cannot be governed by entry No. 56 of Part II of Schedule II of the Act. On behalf of the Revenue, it was contended that with effect from 31st August, 1974, entry No. 56,of Part II of Schedule II of the Act has been split into two parts, that the first part was in respect of sanitary goods and fittings while the second part was in respect of all types of pipes including polythene, rubber, cement, canvas and aluminium and that the P.V.C. pipes would be governed by entry No. 56(ii).

5. The Tribunal, however, did not give any finding on the material question as to whether P.V.C. pipes were included within the meaning of the expression "polythene tubings" covered by the notification dated 7th April, 1967, as modified by notification dated 3rd July, 1971, referred to above. Therefore, in the absence of a finding by the Tribunal on this material question, the Tribunal was not justified in holding that P.V.C. pipes would not be covered under Notification No. 1061-537-V-ST dated 7th April, 1967, as modified by Notification No. 1432-138-V-ST dated 3rd July, 1971 and were assessable to tax under entry No. 66(ii) of Part II of Schedule II appended to the M.P. General Sales Tax Act, 1958.

6. Reference answered accordingly. In the circumstances of the case, parties shall bear their own costs.