

(2002) 01 MP CK 0076
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1109 of 1994

Asian Paints India Ltd.

APPELLANT

Vs

Commissioner, Sales Tax

RESPONDENT

Date of Decision : 08-01-2002

Acts Referred:

Madhya Pradesh General Sales Tax Act, 1958 — Section 42B, 6

Citation : (2002) 126 STC 239

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Advocate : Y.I. Mehta, for the Appellant; P. Verma, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Sapre, J.—By filing this petition under Article 226/227 of Constitution of India, the petitioner has challenged the six orders all dated July 27, 1993 filed (annexure A collectively) passed by Commissioner, Sales Tax, Indore, in exercise of powers conferred u/s 42-B of Madhya Pradesh General Sales Tax Act (since repealed) (for short called "the Act"). Facts in brief are these.

2. Petitioner is a limited company registered under the Companies Act, 1956. It is engaged in the business of manufacture and sale of paints and what is called "primers". Petitioner is a dealer under the Act. The dispute in this case relates to six types of primers manufactured by the Petitioner--namely, (1) Tractor redoxide metal primer, (2) Wood rite primer, (3) Deco prime cement primers (oil base), (4) Asian redoxide metal primer, (5) Apcolite primer surfacer and (6) Decoprime cement primer (water base).

3. A question arose before the taxing authorities under the State Sales Tax Act, as to under which entry the various kinds of primers, manufactured and sold by the petitioner is liable to be taxed. According to petitioner in the absence of any specific entry under Schedule II, the commodity in question, i.e., primer will be

taxable under Part VI, i.e., under the residuary entry, whereas the contention of the department (taxing authorities) was that the commodity in question is liable to be taxed under entry No. 20 of Part II of Schedule II relating to paints. It is to decide this issue, the matter was referred to Commissioner u/s 42-B of the Act. By impugned order, the learned Commissioner held that primer manufactured by the petitioner is in fact a paint and is thus liable to be taxed under entry No. 20 of Part II of Schedule II. In other words, the Commissioner did not accept the contention of the petitioner and held the issue against them. It is against this order of Commissioner, the petitioner has filed this writ.

4. The State has defended the impugned order.

5. Heard Shri Y.I. Mehta, learned counsel for the petitioner and Shri P. Verma, Government Advocate, for the State.

6. While assailing the view taken by the Commissioner in the impugned order, learned counsel for the petitioner urged that the same is not sustainable in law. According to learned counsel commodity, i.e., "primer" by various names as mentioned supra cannot be regarded as paint so as to tax the same under the entry applicable to paints. Learned counsel urged that the word "primer" not finding place in entry No. 20 of Schedule II, or in any other entry of Schedule, it has to be then taxed under residuary entry contained in Part VI of Schedule II. Learned counsel urged that the nature and purpose of primer is not the same as compared to paint. According to learned counsel the primer is used for providing shine surface on wall whereas the paint is used for giving final touches on it (primer). Placing reliance on the decision in the case of Commissioner of Sales Tax Vs. Colour Chem. Limited, Learned counsel urged that there can be no difficulty in holding that the commodity "primer" cannot be equated with either paints, lacquers, enamels, etc., and has to be, therefore, taxed under the entry which applies to those commodities not included in any of the entries of Schedule II, i.e., what we call residuary entry (Part VI). It is these submissions which were elaborated and pressed in service.

7. In reply learned counsel for the State defended the impugned order and the view taken by the Commissioner and urged for its upholding. According to learned counsel both primer and paint are one and the same for all practical purpose and have same object.

8. Having heard the learned counsel for the parties and having perused the record of the case I find no merit in this writ and hence it is liable to be dismissed thereby upholding of the order of Commissioner.

9. In order to decide the issue, the relevant entry of Schedule II, i.e., entry No. 20 of Part II, entry No. 1 of Part VI need reproduction, they read as under :

PART II

20. Dyes, paints, varnishes, lacquers, enamels, glue, 16 per cent, paint brush, sandpaper, turpentine oil and polish excluding dry colours, gulal and shoe polish.

PART VI

1. All other goods not included in Schedule I or 12 per cent. any other part of this Schedule.

10. Perusal of aforementioned entry No. 20 would show that it does not include the word--primer. It is on this premise, the question arises whether primer can be taxed as paint ?

11. To decide the question, one can take assistance from the tariff entries contained in Central Excise (2000-2001). Most of the words used in entry No. 20 of sales tax such as paints, varnishes, lacquers, primers are also used in heading Nos. 32.08, 32.09 and 32.14 falling in chapter 32, for payment of excise because all these commodities are also subjected to payment of Central excise under the Central Excises and Salt Act, 1944. These three headings read as under :

"32.08. Paints and varnishes (including enamels and lacquers) based on synthetic polymers or chemically modified natural polymers, or natural resins, whether or not modified, dispersed or dissolved in a non-aqueous medium ; solutions as defined in Note 3 to this chapter.

32.09 Paints and varnishes (including enamels and lacquers) based on synthetic polymers or chemically modified natural polymers, or natural resins, whether or not modified, dispersed or dissolved in an aqueous medium."

32.14 Glaziers putty, grafting putty, resin cements, caulking compounds and other mastics ; paubters fillings ; non-refractory surfacing preparations for facades, indoor walls, floors, ceilings or the like, but excluding primers (heading No. 32.08), varnishes (heading No. 32.09)."

(underlined Here italicised. by me).

12. Perusal of entry No. 32.14 would show that though the word primers is mentioned therein but it is made taxable under heading No. 32.08 which is applicable to paints. It is clear from the word "but excluding primers (heading No. 32.08)".

13. This, therefore, clearly suggests that even under the Central Excise Act, the word ""primer" though used but it is kept or brought at par with the commodity "paint" and is thus made taxable under heading No. 32.08 which is applicable to paints. If the intention of Legislature was to treat the commodity "primer" as equal to that of "paints" for payment of excise duty then it would not have specified the primer in exclusion clause of heading No. 32.14 but it would have been allowed to be taxed in the same heading, i.e., No. 32.14 along with several other items specified therein. The very fact that the Legislature having inserted the commodity "primer" in different entry (32.14) along with several others but then treated it at par with paint for payment of excise duty suggests that the intention of the framers was to treat both the commodities as one for taxing purposes.

14. In my opinion, this Court can certainly take into account the Scheme of Central excise in dealing with these two commodities as to how these commodities are taxed under the Act, to find out the real intention of framers because the object of Sales Tax Act and that of the Central excise to some extent in dealing with commercial goods is more or less same.

15. When for payment of excise duty on primer the Central Excise Act can treat the primer to be taxed under the heading applicable to paints then on the same analogy or/and parity of reasoning, in my opinion, the primer can certainly be taxed under entry No. 20 of Part II of Schedule II of the Madhya Pradesh General Sales Tax Act as paints.

16. That apart, the reasoning given by the Commissioner in the impugned order after taking into account the working of the paints and primer and its constitution, is proper and hence I am inclined to concur with it.

17. Learned counsel for the petitioner placed heavy reliance on the decision reported in Commissioner of Sales Tax Vs. Colour Chem. Limited, . In my opinion, it is distinguishable on facts. In that case, the question arose as to whether "pigment powder" can be taxed as "paints" occurring in entry No. 39 of Schedule C to the Bombay Sales Tax Act, 1959 or whether it has to be taxed under residuary entry. Their Lordships held having regard to the nature and use of pigment powder which is essentially used as one of the constituents in manufacture of paints, it cannot be regraded or/and make it at par with paints for being taxed as paint. It was accordingly taxed under the residuary entry. Such is not the case here. The commodity in question, i.e., "primer" is not one of the constituents for manufacture of paint but it is used virtually as paint as a finished product on the rough surface of the wall before applying the paint on the wall. It is also in the liquid form alike the paint and even if paint is not actually used after applying the primer, on the wall or on any rough surface, the same will have a look of paint to a naked eyes on the wall. It can therefore safely be said that the primer has an attribute of a paint if not a substitute of a paint.

18. Submission of learned counsel for the petitioner was that the very fact that the word "primer" was not specified in entry 20 of Part II of Schedule II is in itself a ground to tax it under the residuary entry of Part VI in Schedule II. According to learned counsel if a commodity is not specified in any of the Schedule then the same has to be taxed under the residuary entry because it is always the object for which residuary entry is enacted.

19. I do not agree to this proposition. Indeed, if the submission of learned counsel for the petitioner is accepted then it will result into a great hazardous consequences. It is practically impossible for the Legislature to include/add/ specify each and every commodity manufactured and sold in the market by their common names, as they are running in thousand if not in lakhs. Here the craftsmanship of interpretation of statute for a particular word steps in which require interference by the court in finding out the real meaning of the word

specified in a particular notification or the Schedule as the case may be. The use of one word may include more than one commodity though not specified. It is with this approach, the courts have to interpret the words used and specified in the Schedule and then find out its real meanings, and true scope in relation to those commodities which are not so specified. Keeping in view these well-settled rules of interpretation, I have come to conclusion that the word "primer" can be taxed as paint within the meaning of entry No. 20 of Part II of Schedule II.

20. In view of the aforesaid discussion, I do not find any merit in the writ. As a consequence the view taken by the Commissioner that the "primer" is taxable under entry No. 20 of Part II of Schedule II, of Madhya Pradesh General Sales Tax Act (since repealed) is upheld.

Petition fails and is dismissed.

No cost.