
(2002) 02 MP CK 0060

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1110/94

Asian Paints India Ltd., Indore

APPELLANT

Vs

Commissioner, Sales Tax, M.P., Indore

RESPONDENT

Date of Decision : 13-02-2002

Acts Referred:

Citation : (2002) 3 MPHT 78 : (2002) 2 MPLJ 111

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 Articles 226 and 227 of the Constitution of India, the petitioner has challenged the order dated 27-9-1993 (Annexure A) in Case No. 11/61/42-B/92 by Commissioner, Sales Tax, Indore in exercise of powers conferred u/s 42-B of M.P. General Sales Tax Act [(since repealed) for short hereinafter will be referred to as Act]. Facts in brief are these.

Petitioner is a Limited Company registered under the Companies Act. It is engaged in the business of manufacture and sale of paints, primers, thinner etc. Petitioner is a dealer under the Act. The dispute in this case relates to a commodity manufactured and sold by the petitioner called "Thinner".

A question arose before the taxing authorities under the State Sales Tax Act, as to under with entry the commodity "Thinner" is liable to be taxed. According to petitioner in the absence of any specific entry under Schedule II, the commodity in question, i.e. Thinner will be taxable under Part VI i.e., under the residuary entry, whereas the contention of Department (Taxing Authorities) was that the commodity in question is liable to be taxed under serial No. 20 of Part II of Schedule II relating to paints and be taxed as paint. 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 Thinner is in fact an accessory of Paint and hence, it is liable to be taxed as Paint under Sr. No. 20 of Part II of Schedule II. In other words, the Commissioner did not accept the contention of the petitioner and decided the issue against them. It is against this order of Commissioner, the petitioner has filed this writ.

The State has defended the impugned order.

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., "Thinner" is neither a paint, nor it has an attribute of a Paint, nor it can ever be used as Paint as its substitute in day to day use by anybody. Learned Counsel urged that Thinner has acquired a definite name in the commercial word which is in fact used to thin down the viscosity of paint before the paint is applied on hard surface, like a wall or wood or metal, by brush, or spray gun. In other words, the submission was that it is never used as a paint, nor it can ever be used as a paint because its chemical composition is entirely different than that of paint. It is on these distinguishable factors in these two, i.e., Thinner and paints. Learned Counsel urged that there can be no difficulty in holding that the commodity "Thinner" can not 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.

In reply, learned Counsel for State defended the impugned order and the view taken by the Commissioner and urged for its upholding. According to learned Counsel both Thinner and Turpentine oil are one and alike for all practical purpose and have same object. It was urged that even though the word Thinner is not mentioned in the Entry 20 of Part II of Schedule II would not in itself be a ground to tax it in residuary entry because it is having the same use which a turpentine oil has. This in substance was the submission of learned Counsel for State while defending the impugned order of Commissioner.

Having heard the learned Counsel for the parties and having perused the record of the case, I find no substance in the submission of learned Counsel for petitioner and hence, inclined to dismiss the writ thereby upholding the order passed by Commissioner though on slightly different grounds.

In order to decide the issue, the relevant entry of Schedule II, i.e., Entry 20 of Part II and Entry I of Part IV need reproduction. They read as under:--

Part II

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

Part VI

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

Perusal of Entry 20 would clearly show that alongwith paints, the legislature has also included in the same entry, yet another commodity by name "Turpentine Oil". If one sees the dictionary meaning of word Thinner and Turpentine Oil, then it clearly appears that both these commodities are used for one purpose and have one object - namely for making the paint Thinner. It is useful to reproduce the meaning of these two commodities from Oxford Advanced Learner's Dictionary Fifth Edition from its pages 1240 and 1287. They read as under :--

"(1) Thinner.-- Any of various substances added to paint, to make it less thick.

(2) Turpentine.--A strong-smelling colourless liquid used especially for making paint thinner and for cleaning paint from brushes."

Mere perusal of aforequoted meaning of two commodities would make it manifest that both these commodities are used for making the Paint thin. Now, when the object of two commodities are one and the same, when both are used for one purpose-- namely for making the paint thin, then merely because the commodity Thinner is not mentioned in the Entry would not by itself exclude the same from the rigour of that entry. Once, the name of one commodity as in this case "Turpentine Oil" is specified then, it is not necessary to include each and every commodity having the same object and purposely their distinct name in the entry. By insertion of "Turpentine Oil", in the Entry, the legislative intent becomes clear that legislature intends to tax not only a commodity which is specified in Entry but all commodities alike Turpentine Oil. It is on this basis, I am inclined to hold that Thinner though not specified in Entry 20 of Part II of Schedule II but it is liable to be taxed like "Turpentine Oil" as per rates specified in Entry 20 (supra).

Learned Counsel for the petitioner placed heavy reliance on the decision reported in 22 STC 90. 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 39 of Schedule C to Bombay Sales Tax, 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 can not be regarded 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., "Thinner" is not one of the constituents for manufacture of Paint but it is used as a different commodity than paint and is used for making the paint thin. It is also in the liquid form alike the turpentine which is also used in making the paint thin. It can, therefore, safely be said that the Thinner has an attribute of a Turpentine and hence, taxable as Turpentine.

Submission of learned Counsel for the petitioner was that the very fact that the word "Thinner" 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 IV 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 the residuary entry is enacted.

I do not agree to this proposition. Indeed, if the submission of learned Counsel for the petitioner is accepted then it will result in 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 thousands if not in lakhs. Here the craftsmanship of interpretation of statute for a particular word steps in which requires 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 on interpretation, I have come to the conclusion that the word "Thinner" can be taxed as Turpentine Oil within the meaning of Entry 20 of Part II of Schedule II.

In view of the aforesaid discussion, I do not find any merit in the writ. As a consequence the order passed by the Commissioner is upheld though on different reasoning and it is held that "Thinner" is taxable under Entry 20 of Part II of Schedule II, of M.P.G.S.T. Act (since repealed).

Petition, thus, fails and is accordingly dismissed. No cost.