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(2002) 04 RAJ CK 0033

In the Rajasthan High Court

Case No : Sales Tax Revision No. 126 of 1999

Assistant Commercial Tax Officer — APPELLANT

Vs

Ganapati Trading Co. — RESPONDENT

Date of Decision : 23-04-2002

Acts Referred:
Rajasthan Sales Tax Act, 1954 — Section 5(1)

Citation : (2004) 134 STC 53

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Advocate : Vivek Singh, for the Appellant; P.K. Kasliwal, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh Balia, J.—This case relates to levy of tax on the packing material contained in which principal goods were sold as one single sale transaction. The tax has been imposed separately on the principal commodity and the packing material by assuming an implied sale of packing material independent of principal commodity by invoking Sub-section (1) of last proviso to Section 5 of the Rajasthan Sales Tax Act, 1954.

2. The assessee raised an objection about levying of tax on such deemed sale by invoking the said proviso which is only a part of the rate structure and not a part of charging tax for levying tax by assuming the sales of packing material to exist which in fact have not taken place independent of the principal commodity.

3. Ultimately, the Tax Board has found in favour of the assessee that tax cannot be levied separately on packing material solely by invoking the last proviso to Section 5(1) by treating it to be a deemed separate sale of the commodity independent of the principal commodity. The issue now finally stands decided by a division Bench of this Court in Udaipur Distillery Co. Ltd. Vs. Rajasthan Taxation Tribunal and Others,

4. In the aforesaid case, the court has held that unless the Revenue authorities

decide as a fact that sale of packing material has taken place independently of the principal material by establishing that the transfer of property in the packing material has taken place for consideration referable to the transfer of property in packing material, no tax can be levied where there is a single transaction for one sale price by splitting up the sale price by splitting different items of expenses which go to. make the sale price of the commodity as one single unit.

5. The court has also found on analysing the proviso to Section 5(1) that it merely provides the rate structure for computing the tax chargeable on taxable turnover. Merely because different rates have been prescribed for packing material in cases where the goods sold in packed condition are exempt from tax, does not give rise to any such legal fiction to assume that where there is a single price charged for the commodity sold in packed condition, invariably there is a sale of packing material independent to the sale of the principal commodity. It has to be established as a fact before invoking rates to be applied under last proviso to Section 5(1) of the Act or proviso thereto that there is a sale of the commodity sought to be taxed in accordance with the well-established norms and one of such norms in all circumstances is the transfer of property in goods whether the principal or packing material must be for a consideration referred to such commodity alone. The intendment of the parties to transfer the property in packing material independent of goods packed therein for a price must be shown to exist and if it is transferred under compulsion without there being a voluntary agreement, it must be shown that the transfer is of packing material independent of it.

6. In view of the aforesaid judgment of this Court, the revision must fail as in the present case a tax has been levied only by invoking last proviso to Sub-section (1) of Section 5 without establishing the fact necessary for establishing the sale of packing material independent of the sale of the principal commodity.

Accordingly, this revision fails and is hereby dismissed.

