(1985) 10 RAJ CK 0041

In the Rajasthan High Court

Case No : Civil Sales Tax Reference No. 26 of 1980

Assistant Commercial Taxes Officer — APPELLANT

Vs

Bisoda Salt Works — RESPONDENT

Date of Decision : 03-10-1985

Acts Referred:
Central Sales Tax Act, 1956 — Section 9

Citation : (1986) 62 STC 222

Hon'ble Judges : S.K. Mal Lodha, J;Kanta Bhatnagar, J

Bench : Division Bench

Advocate : K.C. Bhandari, for the Appellant;

Final Decision : Dismissed

Judgement

S.K. Mal Lodha, J.—The Board of Revenue for Rajasthan, Ajmer ("the Board"), has referred the following question of law for the opinion to this Court in pursuance of the order dated 5th July, 1979, passed in Assistant Commercial Taxes Officer, ''C Ward, Makrana v. Bisoda Salt Works, Nawa (District Nagaur) (D. B. Civil Sales Tax Case No. 73 of 1978 decided on 5th July, 1979):

Whether in the facts and circumstances of the case, Central sales tax is leviable on gunny bags in which salt is sold by the assessee ?

2. The assessee, M/s. Bisoda Salt Works, Nawa (District Nagaur), is non-petitioner No. 1. It is a partnership firm. It carries business of salt. The salt was sold by the dealer-assessee after packing it in gunny bags in the course of inter-State trade and commerce. The assessing authority assessed the sale of gunny bags for the period 1966-67 at Rs. 52,000 and levied Central sales tax at 2 per cent on the sales, amounting to Rs. 1,270.75 up to 30th June, 1966, and at 3 per cent thereafter. The appeal was filed by the dealer-assessee. By the order (exhibit 2) dated 19th November, 1979, the appeal was dismissed. A revision was filed by the dealer-assessee to the Board. The learned single Member of the Board, by his order (exhibit 3) dated 10th December, 1976, allowed the revision

observing that when the goods themselves are exempt, then sale of packing material when not separately charged for, will also be exempt from tax, during the period 10th November, 1964, to 9th June, 1969, in view of the saving clause of Section 10 of the Central Sales Tax (Amendment) Act, 1969. The assessing authority filed a special appeal. The Division Bench of the Board relied upon Sambhar Salts Ltd., Sambhar Lake v. Commercial Taxes Officer, Special Circle-II, Jaipur 1976 RRD 84 and held that the view taken by the learned single Member of the Board is correct. It, therefore, dismissed the appeal. The reference application filed u/s 15(1) of the Rajasthan Sales Tax Act, 1954 (No. 29 of 1954) (for short "the Act"), was dismissed by the Board on 11th May, 1978. Thereafter an application u/s 15(2) of the Act read with Section 9(2) of the Central Sales Tax Act, 1956, was filed for directing the Board of Revenue to state the case and refer the question of law arising out of its order dated 9th August, 1977, passed in D. B. Civil Special Appeal No. 1 of 1977. This Court by its order dated 5th July, 1979, directed the Board to refer the aforesaid question for the opinion of this Court. This reference application was pending on 1st May, 1985, when the Rajasthan Sales Tax (Amendment) Act, 1984 (No. 20 of 1984) ("the Amendment Act"), came into force. By virtue of Section 13(10) of the Amendment Act, as this reference was pending on 1st May, 1985, it was treated and heard as revision u/s 15 of the Act, as substituted by the Amendment Act.

3. We have heard Mr. K. C. Bhandari, learned counsel for the sales tax department, as nobody has appeared on behalf of the dealer-assessee.

4. It is not disputed by the learned counsel for the sales tax department that the following proviso to Section 5 of the Act which has come into force from 24th July, 1967, is not applicable to the case of the dealer-assessee :

Provided also that when any goods are sold, packed in any materials, the tax shall be leviable on the sale of such packing materials (when not separately charged for) at the same rate (if any) as is applicable to the sale of the goods themselves.

5. It has been found by the learned single Member of the Board in his order (exhibit 3) dated 10th December, 1976, that if the goods are exempt from the payment of sales tax, then, the sale of packing material, if it is not separately charged for will also be exempt from payment of sales tax. It is not in dispute that salt as such is exempt from payment of sales tax. While effecting sale of salt, it was packed in gunny bags which constitute its packing material. In Commercial Taxes Officer (Revision), Ajmer v. Ganeshmal Roopchand (D. B. Civil Sales Tax Case No. 61 of 1980 decided on 2nd August, 1985) (printed at page 225 infra) the Division Bench of this Court, to which one of us (S. K. Mal Lodha, J.) was a party, after considering Sambhar Salts Ltd., Sambhar Lake''s case 1976 RRD 84, held that as there was no sale of "bardana" by the dealer when it effected the sale of salt packed in gunny bags (bardana), it cannot be said that the dealer-assessee sold the "bardana" in the course of inter-State trade and commerce and thus, salt packed in the bardana and sold, is exempt from the

payment of sales tax.

6. In view of the two basic premises, viz., that the abovementioned proviso to Section 5 of the Act is not applicable and further that the salt which was sold in gunny bags was exempt from payment of the sales tax, no separate sales tax can be levied on the gunny bags in which the salt was packed. The view taken by the learned single Member of the Board and affirmed by the Division Bench of the Board is correct. We are of opinion that no sales tax is payable on the gunny bags in respect of the relevant period when the salt was sold by the dealer-assessee passed in them.

7. In this view of the matter, the reference application which has been treated and heard as revision u/s 15 of the Act is substituted by the Amendment Act, has no force and it is accordingly dismissed.

8. As nobody has appeared on behalf of the dealer-assessee, there will be no order as to costs.

