

(1988) 07 RAJ CK 0026

In the Rajasthan High Court

Case No : Sales Tax Revision No. 156 of 1988

Assistant Commercial Taxes Officer

APPELLANT

Vs

National Motors

RESPONDENT

Date of Decision : 08-07-1988

Acts Referred:

Rajasthan Sales Tax Act, 1954 — Section 15

Citation : (1989) 73 STC 163

Hon'ble Judges : S.C. Agrawal, J

Bench : Single Bench

Advocate : G.S. Bapna, for the Appellant; V.K. Singhal, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Agrawal, J.—This is a revision u/s 15 of the Rajasthan Sales Tax Act, 1954 read with Section 13(10) of the Rajasthan Sales Tax (Amendment) Act, 1984. Earlier there was a reference to this Court by the Board of Revenue for Rajasthan (hereinafter referred to as "the Board of Revenue") whereby the following two questions of law were referred for consideration of this Court:

(1) Whether, on the facts and in the circumstances of the case, the "aluminium pipes" are taxable at 10 per cent vide entry No. 41 of the Notification No. F. 5 (16)FD(CT)/69-2 dated 8th March, 1969 or at the general rate of 7 per cent vide residuary entry No. 79 of the said notification ?

(2) Whether the Revenue is entitled to split the sale consideration of sprinkler into that of sprinkler and aluminium pipes ?

2. The facts, briefly stated are as under :

The assessee, M/s. National Motors, Jaipur, is a dealer in agricultural implements including sprinklers used for irrigation and aluminium pipes and is carrying on business at Jaipur. In respect of the assessment of sales tax for the year 1970-71, the Assistant Commercial Taxes Officer, Anti-Evasion, Jaipur, acting as

the assessing authority, found that the assessee had included sales of sprinklers worth Rs. 1,54,520 in his account in the category of goods taxable at 7 per cent. According to the Assistant Commercial Taxes Officer, the above sale figure included sales of aluminium pipes also and tax at 10 per cent was leviable on all types of pipes and pipe fittings in view of entry No. 41 of the Notification No. F. 5 (16)FD(CT)/69-2 dated 8th March, 1969. The Assistant Commercial Taxes Officer, therefore, taxed the sales of aluminium pipes worth Rs. 77,260 at 10 per cent. The Deputy Commissioner (Appeals-I), Commercial Taxes, Jaipur, affirmed the said order of the Assistant Commercial Taxes Officer and rejected the appeal of the assessee. On revision, the Board of Revenue by its order dated 29th July, 1974, held that the sales of aluminium pipes estimated at Rs. 77,260 would be taxable at 7 per cent only and not at 10 per cent. Thereafter the Assistant Commercial Taxes Officer, Anti-Evasion, submitted an application before the Board of Revenue for making a reference to this Court u/s 15(1) of the Rajasthan Sales Tax Act, 1954 (hereinafter referred to as "the Act") and by order dated 28th April, 1980 the Board of Revenue referred two questions mentioned above for the opinion of this Court.

3. I have heard Shri G.S. Bapna, the learned counsel for the applicant and Shri V.K. Singhal, the learned counsel for the assessee.

4. In so far as the first question! is concerned, it is necessary to consider whether the aluminium pipes fall within the ambit of entry No. 41 of the notification dated 8th March, 1969 and are taxable at 10 per cent, as claimed by Shri Bapna, or they fall within the residuary entry No. 79 of the said notification and are taxable at 7 per cent, as submitted by Shri Singhal and as found by the Board of Revenue.

5. Entry No. 41 of the notification dated 8th March, 1969 reads as under:

All types of sanitary goods and fittings and all types of pipes and pipe fittings.

6. Prior to the notification dated 8th March, 1969 there were notifications dated 2nd November, 1965 and 29th May, 1967 providing for levy of sales tax. Entry No. 77 of the notification dated 2nd November, 1965 and entry No. 63 of the notification dated 29th May, 1967 were in the same terms as entry No. 41 referred to above of the notification dated 8th March, 1969. This entry has come up for consideration before this Court in *State of Rajasthan v. Oriental Agencies* [1987] 64 STC 135. In that case the question was as to whether rubber hose pipe was covered by the words "all types of pipes and pipe fittings" in this entry. This Court held that the expression "all types of pipes and pipe fittings" in the aforesaid entry receive colour from the words preceding this expression in the said entry, namely, "all types of sanitary goods and fittings" and has to be construed as embracing pipes and pipe fittings used for sanitary purposes. This Court held that rubber hose pipe is not normally used for sanitary purposes and, therefore, rubber hose pipe would not fall within the ambit of the expression "all types of pipes and pipe fittings" as contained in the aforesaid entry. In taking the

said view this Court has placed reliance on the decisions of the Madhya Pradesh High Court in Commissioner of Sales Tax, Madhya Pradesh v. Truel Tubes [1980] 46 STC 473, Commissioner of Sales Tax v. IISCO Stanton Pipe and Foundry Co. Ltd. [1982] 50 STC 207 and Commissioner of Sales Tax, M.P. v. Mandsaur Cement Pipe Factory [1983] 54 STC 112 and the decision of the Kerala High Court in Deputy Commissioner, Ernakulam v. Equipment Agencies [1981] 47 STC 68. This Court pointed out that entry No. 56 of Schedule II to the Madhya Pradesh General Sales Tax Act, 1958 was in the same terms as entry No. 77 of the notification dated 2nd November, 1965 in Rajasthan referred to above and that the Madhya Pradesh High Court in Commissioner of Sales Tax v. Truel Tubes [1980] 46 STC 473 has held that the said entry would not include conduit pipes which are used for the purposes of casting of electrical wiring and in Commissioner of Sales Tax v. IISCO Stanton Pipe and Foundry Co. Ltd. [1982] 50 STC 207 it was held by the Madhya Pradesh High Court that cast-iron pipes were not included within, the expression "all types of pipes and pipe fittings" in the said entry. In Commissioner of Sales Tax, M.P. v. Mandsaur Cement Pipe Factory [1983] 54 STC 112 it was held by the Madhya Pradesh High Court that cement pipes were not included within the said entry. In Deputy Commissioner, Ernakulam v. Equipment Agencies [1981] 47 STC 68 the Kerala High Court was considering entry No. 26A of the First Schedule to the Kerala General Sales Tax Act, which used the expression "water supply and sanitary fittings". It was held that polythene pipes were not covered by the said entry.

7. Shri Singhal has placed before me the decision of the Orissa High Court in Orissa Ceramic Industries v. State of Orissa [1984] 56 STC 44. In that case the Orissa High Court was construing entry No. 7-B of the Schedule of the taxable goods to the Orissa Sales Tax Act, 1947 which is in the same terms as entry No. 41 of the notification dated 8th March, 1969. The Orissa High Court has held that the words "all types of pipes and pipe fittings" in the said entry must be construed as embracing pipes used for sanitary purposes and that if the stoneware pipes manufactured by the assessee were used for sanitary purposes in that event only the entry No. 7-B referred to above would be attracted.

8. In the present case, it is not the case of the petitioner that the aluminium pipes which were sold by the assessee along with the sprinklers were used for sanitary purposes. In the circumstances, I am of the view that the Board of Revenue has rightly held that the sale of aluminium pipes by the assessee did not fall within the ambit of entry No. 41 of the notification dated 8th March, 1969 but was covered by the residuary entry No. 79 and, therefore, it was taxable at 7 per cent and not at 10 per cent.

9. Question No. (1) must, therefore, be decided against the Revenue and in favour of the assessee.

10. In view of the decision on question No. (1), question No. (2) does not arise for consideration because even if the sale consideration for sprinkler is split up into the sprinkler and aluminium pipes it would not make any difference because

the rate of tax for both is the same, namely, 7 per cent, under the residuary entry.

11. In the circumstances, the revision is dismissed but without any order as to costs.