
(2010) 05 P&H CK 0120
In the Punjab And Haryana At Chandigarh

Chemscraft Industries (Delhi)	Vs	APPELLANT
The State of Haryana		RESPONDENT

Date of Decision : 04-05-2010

Acts Referred:

Haryana General Sales Tax Act, 1973 — Section 42(1)

Citation : (2010) 31 VST 412

Hon'ble Judges : Mehinder Singh Sullar, J; Ashutosh Mohunta, J

Bench : Division Bench

Judgement

Mehinder Singh Sullar , J.—Succinctly, the facts, relevant for disposal of present reference petition, at the instance of M/s. Chemscraft Industries (for short "the assessee") and emanating from the record, are that the assessee was engaged in trading of chemicals. It submitted its return for the year 2000-2001 indicating R.D. sale of chemicals worth Rs. 23,09,230/- against Form ST-15A and claiming deduction on it on account of sales to registered dealers. During the course of scrutiny of the assessment case, it revealed that the chemicals sold by the assessee are liable to be taxed at the first stage of sale as per entry No. 49 of the list of goods under the provisions of the Haryana General Sales Tax Act, 1973 (for brevity "the Act"). Therefore, a show cause notice was issued to the assessee on the ground that it has wrongly claimed the deduction of the said amount during the year under assessment. In pursuance of the show cause notice, the assessee submitted the reply. The Assessing Authority, considering its reply, vacated/withdrew the notice and framed the final assessment, vide order dated 29.8.2002.

2. The Revisional Authority was of the view that the Assessing Authority has wrongly allowed the deduction on account of sales of chemicals to the registered dealers because the same are liable to be taxed at the first stage, as per entry No. 49 of the list of goods. Therefore, another show cause notice dated 21.1.2003 in this regard was issued. In the wake of this show cause notice, counsel for the assessee appeared, filed the reply and tried to explain that the

chemicals are taxable at the first stage only when these are sold to a dealer for use by him for manufacturing or processing of the textile subject to declaration form STD 4 duly filled and signed by him and since the firm had sold the chemicals to the manufacturers and exporters of Ready-made garments and registered trade dealers and not to the manufacturers of textile goods, so, the same are not liable to be taxed at first stage.

3. The explanation put forth by the assessee did not find favour and the Revisional Authority negated the claim of deduction and directed it (assessee) to pay the tax at the rate of 8% on turn over of Rs. 23,09,230/-, vide order dated 3.3.2003.

4. Aggrieved by the aforesaid order, the assessee filed the appeal, which was also dismissed by the Haryana Tax Tribunal, vide order dated 26.4.2006. However, in the wake of application moved by the assessee u/s 42(1) of the Act, the Tribunal referred the following question of law for opinion of this Court:

Whether the chemicals & enzyme chemicals used in softening the readymade garments fall under the ambit of Entry 49 of the Notification dated 5.6.1992 issued u/s 18 of the Haryana General Sales Tax Act?

5. We have heard the learned Counsel for the parties and have gone through the relevant record and legal provisions with their valuable help.

6. The main argument of the learned Counsel for the assessee that only those chemicals are excisable/leviable to tax at the first stage when these are sold to a dealer for use by him in manufacturing or dyeing process of the textile and as the assessee sold the chemicals to the manufacturers and exporters of readymade garments and registered trade dealer, therefore, the same are not taxable at the first stage, is neither tenable nor the observations of, Hon^{ble} Apex Court in case Pardeep Aggarbatti, Ludhiana Vs. State of Punjab and Others, , Madras High Court in case State of Tamil Nadu v. Indian Eyelets Industries [1984] 55 STC 354 and Gujarat High Court in case Gujarat Distributors Vs. The State of Gujarat, are at all applicable to the present controversy.

7. In Pardeep Aggarbatti's case (supra), entry 16 of Schedule A to the Punjab General Sales Tax Act, 1948, providing a rate of 10 per cent sales tax, stood as follows: "Cosmetics, perfumery and toilet goods, excluding tooth-paste, tooth-powder, kum-kum and soap" was under consideration. The question was whether the appellant was liable to pay sales tax under entry 16 on the sales of "dhoop" and agarbatti". The High Court held that "dhoop" and "agarbatti" were "perfumery" and were taxable under that entry. On appeal, the Hon^{ble} Supreme Court has held that "the word "perfumery" in entry 16 drew colour from the words "cosmetics" and "toilet goods" in that entry and, so read, the word "perfumery" could only refer to such articles of perfumery, as were used, as cosmetics and toilet goods. The word "perfumery" had, in that context, no application to "dhoop" and "agarbatti". It was observed that entries in the

Schedules to sales tax and excise statutes list some articles separately and some articles are grouped together. When they are grouped together, each word in the entry draws colour from the other words therein as per the principle of *noscitur a sociis*.

8. Sequel, in *Indian Eyelets Industries's case* (supra), while considering the entry 138 of First Schedule to Tamil Nadu General Sales Tax Act, it was noticed that "Fiksol-S.69, an all purpose adhesive used for binding various surfaces such as leather, rubber etc., though made of certain ingredients which are in the form of chemicals, cannot be treated to be a chemical by itself since the use of this adhesive for binding purposes cannot be said to produce any chemical effect or result in any chemical change. Therefore, it cannot be said to fall within the expression "dyes and chemicals" occurring in entry 138 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959".

9. Likewise, in *Gujarat Distributors's case* (supra), it was observed that "the use of the word "chemicals" along with the words "dyes" in entry 4 of Schedule C of the Bombay Sales Tax Act, 1959 would attract the principle of *noscitur a sociis* but the principle of *noscitur a sociis* could be applied only for the limited purpose of knowing the types of chemicals which are contemplated by the entry and in the commercial world, all chemicals are classified as (1) basic chemicals, (2) chemical products which are intermediary and which are used for producing other finished Articles, and (3) end-products which are ready for final consumption and "dye" is not a basic chemical but it is an intermediary chemical product which can be utilized as such."

10. Possibly, no one can dispute with regard to the aforesaid observations, but the same would not come to the rescue of the assessee, as in the instant case, entry No. 49 "dyes and chemicals" is very very clear, which depicted that all dyes and chemicals are excisable/leviable to tax, irrespective of their uses, at the first stage of sale after the amendment with effect from 5.6.1992.

11. Meaning thereby, if the intention of the State to levy tax on all types of dyes and chemicals at the first stage of sale as envisaged under Entry No. 49 is clear, implicit and there is no ambiguity in the language of the provisions, then it has to be literally construed and there is no need to look some where else to discover the intention or meaning, in view of the law laid down by the Hon'ble Apex Court in case *Lt.-Col. Prithi Pal Singh Bedi and Others Vs. Union of India (UOI) and Others*, .

12. The learned State Counsel has placed reliance on Full Bench judgment of Madhya Pradesh High Court in case *Sukhu Ram Tamrakar Vs. State of Madhya Pradesh and Others*, , in which entry 25, Part II, Schedule II of the Madhya Pradesh General Sales Tax Act, 1958 was considered and it was noticed that according to the common parlance, a "dye" is that article which can be used to impregnate tissue with colour or is able to fix itself or is being capable to fix on fibre. Merely because the colour-powder is to be diluted with water or any other

chemical is added for preparing an effective solution for dyeing a piece of cloth, or it is not sold in the form of a ready-made solution, it cannot be taken out of the category or "dyes". The words "dyeing", "dye" and "dyes" are commonly understood as denoting the ordinary process of colouring clothes and such other articles by using a colour-power. Even according to the meanings given in various dictionaries, the word "dye" includes a colouring material basically used for dyeing. It was also observed that "the words and expressions in the entries are to be construed in the context of the meaning as understood in popular commercial sense and it would not be possible to either curtail or widen their scope, either by relying on their technical meaning given in the books of Organic Chemistry or by rigidly following the dictionary meaning". The same view was reiterated in case Commissioner of Sales Tax Vs. Olpherts Private Ltd., .

13. No doubt, prior to the amendment, only those chemicals were taxable, which were sold to a dealer for use by him in manufacturing or processing of textile. However, subsequently, the rate and stage of tax structure was revised. New entry 49 (dyes and chemicals) was added and rate of tax on dyes and chemicals was re-fixed at the rate of 8% to be charged at the first stage. Moreover, the condition, (which made the dyes and chemicals taxable to be first stage only when it was to be sold to a dealer for use by him for manufacturing or processing of textile, subject to declaration form STD 4), was also omitted/removed. In other words, after the amendment, all types of dyes and chemicals are liable to be taxed at the first stage of sale, irrespective of their use in any manner, as the same have no internal-nexus in this relevant connection. Thus, the contrary arguments of the learned Counsel for the assessee "stricto sensu" deserve to be and are hereby repelled under the present set of circumstances.

14. In the light of the aforesaid reasons, it is held that as per existing provision, all types of dyes and chemicals as contemplated under Entry 49 are excisable/leviable to tax at the first stage of sale for all purposes irrespective of its use in any manner. Thus, the question raised in the present reference petition is accordingly answered against the assessee and in favour of the revenue.

15. For the reasons recorded above, the instant reference petition is declined.