(1989) 04 MP CK 0030

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 48 of 1986

Chhaganlal H. Mittal APPELLANT

Vs

Commissioner of Sales Tax RESPONDENT

Date of Decision : 06-04-1989

Acts Referred:
Central Sales Tax Act, 1956 — Section 14(iv)
Madhya Pradesh General Sales Tax Act, 1958 — Section 44(1)

Citation : (1989) 74 STC 290

Hon'ble Judges : G.G.Sohani, Acting C.J.;S.D. Jha, J

Bench : Division Bench

Advocate : G.M. Chaphekar, for the Appellant; S.R. Joshi, Deputy Advocate-General, for the Respondent

Judgement

G.G. Sohani, Ag. C.J.

1. By this reference u/s 44(1) of the M.P. General Sales Tax Act, 1958 (hereinafter referred to as "the Act"), the Board of Revenue has referred the follo ing question of law to this Court for its opinion :

Whether, in the facts and circumstances of the case, the Tribunal as justified in holding that conversion of G.I. ires into G.I. barbed ires as a process of manufacture and G.I. barbed ires ere commercial commodity other than G.I. ires and ere not covered by item No. (xv) of Clause (iv) of Section 14 of the Central Sales Tax Act, 1956 ?

2. The material facts giving rise to this reference, briefly, are as follows :

The assessee is engaged in the manufacture of G.I. barbed ire. The assessee as assessed to tax under the Act for the period from 8th November, 1980 to 27th October, 1981. The turnover of the assessee on account of G.I. barbed ire as determined at Rs. 50,602. The sales made to the Government Departments amounted to Rs. 42,977 and the balance as assessed to tax at 10 per cent under entry 1 of Part VI of Schedule II to the Act. The contention of the assessee as that G.I. barbed ires ere covered by item No. (xv) of Clause (iv) of Section 14 of the Central Sales Tax Act, 1956 and hence, being declared goods, the rate of tax could not exceed 4 per cent, by virtue of Section 15 of the Central Sales Tax Act. This contention as rejected by the assessing authority. The appeal preferred by the assessee as dismissed. On further appeal, the Board of Revenue held that hen G.I. ire as converted into G.I. barbed ire, the process of manufacture as involved and a different commercial commodity came into existence, hich as not covered by any item of the declared goods u/s 14 of the Central Sales Tax Act. In this vie of the matter, the Board dismissed the appeal. Aggrieved by the order passed by the Board of Revenue, the assessee sought reference and it is at the instance of the assessee that the aforesaid question of law has been referred to this Court for its opinion.

3. Shri Chaphekar, learned counsel for the assessee, contended that G.I. barbed ire as covered by the entry "iron and steel" specified in Clause (iv) of Section 14 of the Central Sales Tax Act and thus fell under the category of declared goods, hich could not be subjected to tax exceeding 4 per cent, by virtue of Section 15 of the Central Sales Tax Act. In reply, it as contended by Shri S.R. Joshi, learned Deputy Advocate-General, that G.I. barbed ire being a different commercial commodity, hich as not covered by any item specified as "declared goods" in Section 14 of the Central Sales Tax Act, the provisions of Section 15 of the Central Sales Tax Act ere not attracted.

4. The short question for consideration is hether "G.I. barbed ire" is covered by any of the entries in Section 14 of the Central Sales Tax Act. The relevant entry is entry No. (iv) in Section 14 of the Central Sales Tax Act. That entry came up for consideration before the Supreme Court in State of Tamil Nadu v. Pyare Lal Malhotra [1976] 37 STC 319 and the Supreme Court held that the object of specification in Section 14 of the Central Sales Tax Act as to enumerate only those categories of items, each of hich as to serve as a ne starting point for a series of sales, hich ere to be classed as declared goods. e may usefully refer to the follo ing observations of the Supreme Court in [1976] 37 STC 319 (State of Tamil Nadu v. Pyare Lal Malhotra):

It is true that the question hether goods to be taxed have been subjected to a manufacturing process so as to produce a ne marketable commodity, is the decisive test in determining hether an excise duty is leviable or not on certain goods. No doubt, in the law dealing ith the sales tax, the taxable event is the sale and not the manufacture of goods. Nevertheless, if the question is hether a ne commercial commodity has come into existence or not, so that its sale is a ne taxable event, in the sales tax law, it may also become necessary to consider hether a manufacturing process, hich has altered the identity of the commercial commodity, has taken place. The law of sales tax is also concerned ith ''goods'' of various descriptions. It, therefore, becomes necessary to determine hen they ceased to be goods of one taxable description and become those of a commercially different category and description.

It appears to us that the position has been simplified by the amendment of the la, as indicated above, so that each of the categories falling under ''iron and steel'' constitutes a ne species of commercial commodity more clearly no. It follo s that hen one commercial commodity is transformed into another, it becomes a separate commodity for purposes of sales tax.

Now entry (xv) in Clause (iv) of Section 14 of the Central Sales Tax Act is " ire rods and ires-rolled, dra n, galvanised, aluminised, tinned or coated such as by copper". Conversion of G.I. ire into G.I. barbed ire involves a process of t isting and fixing sharp edges up ards and do n ards to act as an obstacle to trespassers. A ne commercial commodity distinct from "G.I. ires" comes into existence and in our opinion, therefore, the Tribunal as justified in holding that G.I. barbed ires ere not covered by item No. (xv) of Clause (iv) of Section 14 of the Central Sales Tax Act.

5. Our answer to the question referred to this Court is, therefore, in the affirmative and against the assessee. In the circumstances of the case, parties shall bear their o n costs of this reference.

