(1987) 02 RAJ CK 0050

In the Rajasthan High Court

Case No : S.T. Revision No. 38 of 1987 .S.T. Ref. (old) No. 69 of 1979

Commercial Taxes Officer APPELLANT

Vs

Mangi Ram Hari Ram RESPONDENT

Date of Decision : 03-02-1987

Acts Referred:
Rajasthan Sales Tax Act, 1964 — Section 6(1)

Citation : (1987) 67 STC 283

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

Bench : Single Bench

Advocate : K.K. Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

J.S. Verma, C.J.—This was a reference which is now heard as a revision u/s 15 of the Rajasthan Sales Tax Act, 1954, as amended by the Amendment Act of 1984.

2. The question of law referred for the decision of this Court, is the following:

Whether, on the facts and circumstances of the case, the Board of Revenue was justified in holding that the containers were not taxable without considering whether there was implied sale or not ?

3. The assessee was a dealer carrying on business of manufacture and sale of snuff. For the year 1968-69, the assessing authority found that the assessee sold snuff packed in tin containers as inter-State sales, to the extent of Rs. 3,38,871.56 out of which, the value of the tin containers amounted to Rs. 48,264.93 as revealed from the account books. In the sale transaction of snuff, no separate charge was recovered for the tin containers, and the goods sold, namely, snuff, was exempt from sales tax. The assessing authority held that the transaction included implied sale of the packing material, and was therefore, exigible to sales tax, even though, the goods sold, namely, snuff, was exempt from tax. The assessee''s appeal to the Deputy Commissioner (Appeals) was allowed taking the view that there was no express or implied sale of the

containers in which, the snuff sold had been packed. The department being aggrieved by this decision, went to the Board of Revenue, which held that the goods sold, namely, snuff, being exempt from tax, its packing material, i.e., tin containers, for which, no separate charge was levied, were also exempt from tax in accordance with the last proviso to Sub-section (1) of Section 5 of the Rajasthan Sales Tax Act, 1964. The revision of the department was accordingly dismissed. This has given rise to a reference of the above question of law, for its decision by this Court in accordance with the earlier existing provision '' in the Act, and according to the newly substituted Section 16 of the Act, it has now been heard as a revision.

4. The facts found by the Board of Revenue and about which there is no controversy, clearly indicate that the sale transaction related only to snuff, and the tin containers in which, snuff sold, were not separately charged for. It is also clear that a container was necessary for effecting the sale of snuff, which could not be carried otherwise. In such a situation, the requirement of the last proviso to Sub-section (1) of Section 6 of the Act, was clearly satisfied as held by the Tribunal. I find support for this view from a Division Bench of this Court in Commercial Taxes Officer v. Moalchand Jainarain (1985) 15 STL (Raj) 257. This conclusion alone is sufficient to hold that there is no ground for interference in this revision.

5. Consequently, the revision fails and is hereby dismissed. Since none has appeared for the non-petitioner to oppose, there will be no order as to costs.

