(1987) 03 RAJ CK 0050

In the Rajasthan High Court

Case No : S.T. Revision No. 52 of 1987

Commercial Taxes Officer APPELLANT

Vs

Shiv Ratan Mohta RESPONDENT

Date of Decision : 02-03-1987

Acts Referred:
Rajasthan Sales Tax Act, 1954 — Section 15

Citation : (1987) 67 STC 407

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

Bench : Single Bench

Advocate : G.S. Bapna, for the Appellant; R.C. Ghiya, for the Respondent

Final Decision : Allowed

Judgement

J.S. Verma, C.J.—This is a revision against the order of the Board of Revenue dated 22nd September, 1972 by virtue of newly substituted Section 15 of the Rajasthan Sales Tax Act, 1954 as amended by the Amendment Act, 1984.

2. The only point for decision is, whether the aluminium paint used for painting the electric poles which are required for distribution of electric power is entitled to the concessional rate of sales tax at 3 per cent as claimed by the assessee instead of the rate of 10 per cent applicable to entry No. 63 relied on by the department. Entry No. 63 reads as under:

63. Dyes, paints and varnishes, glue, polish, paint brush, sandpaper, turpentine oil, enamels and white oil.

3. Reliance was placed by the assessee on the concessional rate by virtue of a notification which reads as under :

S. No. 63C: F. 5(110)FD/RT/63 dated 15th July, 1963.-In exercise of the powers conferred by the second proviso to Section 5 of the Rajasthan Sales Tax Act, 1954 (Rajasthan Act 29 of 1954), the State Government, being of the opinion that it is expedient in the public interest to do so, hereby provides that the rate of sales tax payable on all plants, equipments and their accessories (including service meters) required for generation or distribution of electric power shall with immediate effect, be 3 per cent on the taxble turnover.

4. It is obvious that entry No. 63 relates to paints of all kinds without any reference to its use and, therefore, the point even in the present case would fall within entry No. 63 unless it can be brought within the ambit of the aforesaid notification dated 15th July, 1963 providing for the concessional rate of 3 per cent. The Tribunal relied on a certificate issued by the Executive Engineer saying that the paint was required for painting the poles used for distribution of electric power, and merely on that basis it was held that the paint itself and not the pole was also an accessory required for distribution of electric power. In my opinion, this reasoning cannot be sustained, as it is obviously fallacious. Even if the electric pole used for carrying the transmission lines of electric power be treated as an accessory for distribution of electric power, the paint used for painting those electric poles cannot fall within the ambit of an accessory required for distribution of electric power. That function of the pole can be discharged even without the aid of the paint thereon, and, therefore, the paint by itself cannot be such an accessory. Since the aforesaid entry No. 63 is the specific entry relating to paints, and the concessional rate provided by the aforesaid notification is not applicable to it in the present case, the view taken by the Tribunal is contrary to law and must be set aside.

5. Consequently, the revision is allowed and the impugned order of the Board of Revenue is set aside and it is held that the paint in the present case is taxable under the aforesaid entry No. 63, and is, therefore, exigible to sales tax at the rate of 10 per cent instead of 3 per cent. No order as to costs.