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(1979) 08 RAJ CK 0012

In the Rajasthan High Court

Case No : Civil Sales Tax Case No. 11 of 1977

Commercial Taxes Officer — APPELLANT

Vs

Sita Ram Satishchandra and Co. — RESPONDENT

Date of Decision : 06-08-1979

Acts Referred:
Rajasthan Sales Tax Act, 1954 — Section 12A, 15(2)

Citation : (1979) WLN 771

Hon'ble Judges : C.M. Lodha, C.J;N.M. Kasliwal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

C.M. Lodha, C.J.—This is an application u/s 15(2) of the Rajasthan Sales Tax Act, 1954 (which will hereinafter be referred to as the Act) fey the Commercial Taxes Officer. Circle E. Jaipur, for directing the Board of Revenue to state a case and refer the question of law arising out of its order dated March 30, 1976, passed in Revision Case No. 112/75.

2. The non applicant M/s Sita Ram Satish Chandra & Co. made an application on April 16, 1973, u/s 12A of the Additional Commissioner, Commercial Taxes, Rajasthan, Jaipur, for determining the disputed question whether sale of cable-drums amounts to sale of ''packing material'' and falls within any one of the items mentioned under serial No. 1 in the Notification No F. (21) FD (CT) 713 dated March 27, 1971, so that the rate of tax mentioned therein viz. 3% may be charged from this non-applicant on the sale of cable drums. The Additional Commissioner, Commercial Taxes by his order dated December 5, 1974, held that cable-drum is not a packing material in terms of the aforesaid notification Aggrieved by the order of the Additional Commissioner the non-applicant No. 1 filed a revision application before the Board of Revenue, which, by its order dated March 30, 1976, accepted the revision, set aside the order of the Additional Commissioner end held that cable drums are ''packing material'' and, as such fall within the definition of the term given in the notification.

3. Dissatisfied with the order of the Board, the applicant, who is admittedly the assessing authority of the non applicant No. 1, filed a reference application u/s 15(1) of the Act land prayed that a case may be stated and the following question of law may be referred to this Court:

Whether under the facts and circumstances of the case, the Board of Revenue was justified in holding that the cable drums are packing material and covered by Notification No. F.5(21)FD(CT) 71-3 dated 27-3-71 and taxable at 3% instead of general rate i.e. 7%.

The Board of Revenue rejected the reference application vide its order dated September 20, 1976, holding that there was no ambiguity in the interpretation given by the Board. Hence, this application u/s 15(2) of the Act.

4. Packing material has been described in the notification as follows:

1. Packing material, that is to say-

(i) gunny bags and hession,

(ii) jute twine,

(iii) craft paper, and craft paper bags,

(iv) wooden boxes (khokhas) and tin boxes,

(v) empty tins and empty barrels,

(vi) empty bottles and corks,

(vii) polythene and alkathene packing materials,

(viii) bituminised packing material.

5. The Board held that the articles enumerated in item No. 1 are Only Illustrative and not exhaustive and, therefor, every packing material whether it is included in the list of article given In item No. 1 or act will be covered by the said notification and will be taxable at the rate of 3% only.

6. The learned Counsel for the Department has urged that the question arising out of the order of the Board is a question of law and therefore, the Board may be directed to state a case and refer the question to this Court. On the other hand, Mr. Ghiva, learned Counsel for the non applicant No. 1, has urged chat cable drum falls under item (iv) of S. No. 1 of the said notification as it is an empty barrel over which cable wires are rolled we may, how ever, point out that the Board has not specifically stated its order that cable drum is an empty barrel. The question whether the various items under item No. 1 in the notification are illustrative or exhaustive and whether cable drum falls under any of the stems (i) to (viii) of S. No. 1 in the said notification are questions of Saw.

7. Accordingly, we allow this application and direct the Board to state a case and refer the following question of law to his Court.

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Whether under the facts and circumstances of the case, the Board of Revenue was justified in holding that cable drums are packing material and covered by Notification No. F5(21) FD(CT) 71-3 dated March 27-1971, and taxable at 3% instead of general rate i.e. 7%.

There will be no order as to costs.

8. The learned Counsel for the non-applicant No. 1 urges that the Board may be directed to state the case at an early date as this question is involved in subsequent assessment years also. In the circumstances, we direct the Board to state the case to this Court within three months from the receipt of the record by them.

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