
(1967) 04 MP CK 0007

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 359 of 1965

Commissioner of Sales Tax

APPELLANT

Vs

Anil Iron Works

RESPONDENT

Date of Decision : 03-04-1967

Acts Referred:

Madhya Pradesh General Sales Tax Act, 1958 — Section 10

Citation : (1969) J LJ 49 : (1968) 13 MPLJ 909 : (1968) MPLJ 909 : (1968) 21 STC 496

Hon'ble Judges : S.P. Bahrgava, J; R.J. Bhawe, J

Bench : Division Bench

Judgement

At the instance of the Commissioner of Sales Tax, Madhya Pradesh, the Sales Tax Tribunal (Board of Revenue) has referred the following question for our decision :

Whether or not item No. 1 hoes (all kinds) in S.R.D's Notification No. 736-3694-V-SR dated the 1st April, 1959, covers the implement commonly known as "phawada" in Hindi and is thus an agricultural implement which is exempt from sales tax under entry No. 1 of Schedule I of the M.P. General Sales Tax Act, 1958 ?

The non-applicant-firm manufactures certain implements popularly known in this part of the country as "Bombay type of phawadas". This implement is made out of a square or oblong iron plate with an eye at the top through which a wooden handle is inserted. The phawadas are generally used by building contractors and by road builders for collecting earth or other material as also for mixing sand, cement, lime etc. with boulders or gitti. These implements are also used in mines for collecting ore that is dug out as well as for collecting earth. These implements no doubt can also be used in agricultural operations, though they can be used for the limited purposes of bunding the fields and cutting the embankments.

Section 10 of the M.P. General Sales Tax Act provides that no tax shall be payable on the sales or purchases of goods specified in the second column of Schedule I

subject to the conditions and exceptions, if any, set out in the corresponding entry in the third column thereof. Item No. 1 of the First Schedule reads :

-----	S.	No.
Description of goods. Conditions and exceptions subject to which exemption has been allowed. -----		
1. Agricultural implements worked or operated exclusively by human or animal agency specified by the State Government by notification in the Official Gazette. -----		

The State Government by Notification No. 736-3694-V-SR dated 1st April, 1959, published a list of exempted articles under item No. 1 of the First Schedule. Serial No. 1 of the notification mentions "hoes (all kinds).

The contention of the assessee before the taxing authorities was that the phawadas manufactured by the assessee are nothing but "hoes" and as such the sale of the said implements was exempt from sales tax. The Sales Tax Authorities held that the phawadas in question are nothing but "spades" and are not "hoes" and therefore they are not exempt from sales tax. The Tribunal, on the other hand, following a Bench decision of that Court held that phawada is an instrument known in English as a "hoe" and is exempt from sales tax. In these circumstances, the question referred to above, has been submitted for our decision.

"Hoe" is defined in the Shorter Oxford Dictionary as "a tool used chiefly for breaking up or loosening the surface of the ground, hoeing up weeds, covering plants with soil etc. It consists of a thin iron blade fixed transversely at the end of a long handle." Similar definitions are to be found in other dictionaries also with a little variation here and there. The "spade", on the other hand, is defined as "a broad-bladed digging tool". The phawada is definitely not a digging tool as a "kudali" is. The only question is whether it is a "hoe", and, if so, whether it is an "agricultural implement" within entry No. 1 of the First Schedule to the Sales Tax Act.

We have already given the description of the "Bombay type of phawadas" manufactured by the assessee. The only difference we can find is that the English "hoe" has a thin and perhaps a narrow iron blade fixed transversely at the end of a handle; while in the case of a phawada the blade is rather broad and is not thin, though it is not also very thick and the blade is not fixed at the end of the handle, but one end of the handle is inserted through the "eye" at the head of the blade. In all other respects, the phawada resembles the English "hoe". The difference, in our opinion, is not in material particulars and the phawada in question can very well be described as a "hoe". In our opinion, the Sales Tax Tribunal was right in holding that the phawada can be described as a "hoe". This is particularly so when "hoe" of every kind is included in item No. 1 of the notification.

The next question that arises is as to whether the phawada in question can be

described as an "agricultural implement". It appears to us that the Sales Tax Tribunal fell into error in assuming that as soon as it was decided that a phawada could be described as a "hoe", it necessarily followed that the phawada was an "agricultural implement". We have already pointed out that item No. 1 of the First Schedule exempts "agricultural implements" alone from sales tax. The function of the State Government is only to specify such implements. When the State Government specifies "hoe" as one such implement, the implement must also satisfy the test of its being an "agricultural implement".

In Schedule II, Part II, item No. 44 refers to "all machineries or machines worked by electricity, diesel or petrol and spare parts and accessories thereof, excepting agricultural machinery and implements and parts thereof." Under this entry if the machinery or the machine is not an "agricultural machinery", the tax is to be paid at 7 per cent.; while if it is an "agricultural machinery" the tax payable is at 4 per cent. A question came up before this Court as to whether a "trattor" was an "agricultural machinery". In *Agrawal Brothers Vs. The Commissioner of Sales Tax*, this Court held :

A tractor is no doubt a machine worked by diesel or petrol. It is a self-propelled vehicle for hauling other vehicles, farm machines, planes etc. It is used on highways, in factories, at air-fields and also on agricultural land as a source of power and motive force. On agricultural land it is used along with agricultural implements such as harrows, ploughs, tillers, blade-terracer, seed-drills etc. But a tractor, which is nothing but a self-propelled vehicle capable of pulling a load, does not acquire the character of "agricultural machinery, or implement" merely because when used on agricultural land it "drives" certain agricultural implements.

From this decision it is clear that it is not enough that the implement may be used also for the purposes of agriculture. What is required to be proved is that in general parlance it must be known as an "agricultural implement". This Court has further emphasised in that decision that unless it was proved that the tractors sold by the assessee were farm tractors and could be used only for the purposes of agriculture, they could not be treated as "agricultural machinery". The Bombay High Court, while considering the question as to whether a "tractor" was an "agricultural machinery", in *Pashabhai Patel & Co. (P.) Ltd. v. Collector of Sales Tax* [1964] 15 S.T.C. 32 observed as under :

It is true that the entry does not say "machinery used for the purposes of agriculture" and, therefore, actual use of the machinery for agricultural purpose need not be established, but then the person claiming that a particular machinery is an agricultural machinery must establish as a fact that the machinery conforms to the description of agricultural machinery. In other words, the dealer must establish that in the commercial world that particular type of machinery is understood as agricultural machinery. It has to be established that the particular type of machinery is generally and commonly used for the purpose of agriculture.

Their Lordships further proceed to say,

It would be seen that the use of tractors is for many other purposes than agriculture. In short, a tractor is used wherever a large percentage of available power is required to be used and in that sense a tractor may also be used for the purpose of agriculture when for the particular purpose large percentage of power is required to be used. In other words, a tractor may be brought in use for large scale agriculture, but the evidence discussed by the Tribunal and to which we have made a reference in brief, shows that the principal and primary use of a tractor is not for agriculture."

From this decision also it would appear that the burden is on the assessee to show that the implement for which he is claiming exemption is an "agricultural implement" which is generally and commonly used for the purposes of agriculture. That the implement can also be used for agricultural purposes is not sufficient. It must be shown that the principal and primary use of the implement is for agriculture. If the said tests are applied to the present case, what do we find? We have already pointed out that the phawada is more freely used by building contractors, miners, and by the Public Works Department. Its main use is for collecting material and for mixing sand, cement, lime etc. with boulders and gitti. It is no doubt true that the phawada can also be used for cutting embankments or scrapping them. In any case, the phawada is not used for breaking or loosening earth for agricultural operations or for weeding out plants or for hoeing of the weeds. The phawada cannot, therefore, be described as an implement which is principally and primarily used for agricultural purposes. Unfortunately, in this particular case, the Sales Tax Tribunal has not recorded its finding on this aspect of the matter. Our answer to the question referred for our decision therefore is that a phawada is included within the English expression "hoe". But from that it does not necessarily follow that it is also an "agricultural implement" exempt from sales tax under entry No. 1 of Schedule I of the M.P. General Sales Tax Act, 1958, and that it is for the Sales Tax Authorities to decide that question after considering appropriate evidence.

The reference is answered accordingly. The non-applicant shall pay the costs of the Commissioner of Sales Tax, M.P. Hearing fee Rs. 100.