(1982) 09 MP CK 0019

In the Madhya Pradesh High Court

Case No : M.C.C. No. 238 of 1980

Commissioner of Sales Tax APPELLANT

Vs

Bharat Stores RESPONDENT

Date of Decision : 22-09-1982

Acts Referred:
Madhya Pradesh General Sales Tax Act, 1958 — Entry 56, 44(1)

Citation : (1983) 53 STC 100

Hon'ble Judges : K.N. Shukla, J;G.C. Sohani, J

Bench : Division Bench

Advocate : S. Kulshrestha, for the Appellant; Mandoura, for the Respondent

Judgement

K.N. Shukla, J.—This is a reference by the Board of Revenue, Madhya Pradesh, u/s 44(1) of the Madhya Pradesh General Sales Tax Act, for our opinion on the following questions of law :

(1) Whether, in the facts and circumstances of the case, G.I. pipes, hose pipes and rubber pipes are taxable ?

(2) Whether the Tribunal was justified in holding that reopening u/s 19(1) was not warranted ?

2. Brief facts, as stated by the Board of Revenue, are as follows : The assessee deals in hardware goods, including G.I. pipes, hose and rubber pipes. For the accounting years 1965-66 and 1966-67 pipes and pipe fittings were assessed to tax at 7 per cent under entry 1, Part VI, of Schedule II, appended to the M.P. General Sales Tax Act. The assessing authority had noted that these pipes did not fall under the category of sanitary pipes and pipe fittings.

3. The case was reopened by the assessing authority u/s 19(1) of the Act on the ground that the sale had been under-assessed or had escaped assessment or had been assessed at a lower rate. After reopening the case the assessing authority passed the order holding that the pipes and pipe fittings in question

were liable to be taxed at higher rate, i. e., at 10 per cent or 11 per cent under entry 56 of Part II of Schedule II.

4. The assessee filed appeals against the reassessment orders before the Appellate Assistant Commissioner, who rejected the appeals. Second appeals against the orders were preferred before the Board of Revenue and the Board allowed the appeals holding that the pipes in question did not fall within the items mentioned as sanitary goods and fittings and they could not be assessed as per entry 56 of Part II of Schedule II to the Act. The Board also held that the case could not be reopened u/s 19(1) of the Act on the facts and circumstances of the case as the successor of the officer, who had made the original assessment, was not competent to revise that assessment while acting u/s 19(1) of the Act. At the instance of the Commissioner of Sales Tax, the aforesaid questions have been referred to us for our decision

5. Question No. (1) is covered by the various decisions of this Court : Commissioner of Sales Tax, M.P. v. M.P. Asbestos Cement and Pipe Co. 1981 VKN (14) 382 and Commissioner of Sales Tax, M.P. v. Truel Tubes 1981 VKN (14) 38 . This High Court in both the above decisions followed the Supreme Court decision in State of U.P. and Others Vs. Indian Hume Pipe Co. Ltd., . Following.these decisions we hold that the Board of Revenue rightly held that on the facts and circumstances of the case G.I. pipes, hose pipes and rubber pipes were not taxable under entry 56 of Part II of Schedule II to the Act.

6. In view of our decision on question No. (1), it is not necessary to answer question No. (2) and we, therefore, decline to answer the case. There will be no order as to costs.a

