
(1978) 08 MP CK 0026

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 73 of 1973

Commissioner of Sales Tax

APPELLANT

Vs

Blue Spot

RESPONDENT

Date of Decision : 05-08-1978

Acts Referred:

Madhya Pradesh General Sales Tax Act, 1958 — Entry 26, 44(1)

Citation : (1981) ILR (MP) 889 : (1979) 24 MPLJ 430 : (1979) MPLJ 430 : (1979) 43 STC 376

Hon'ble Judges : G.P. Singh, C.J.; J.S. Verma, J

Bench : Division Bench

Advocate : K.K. Adhikari, for the Appellant; None, for the Respondent

Judgement

J.S. Verma, J.

This is a reference u/s 44(1) of the Madhya Pradesh General Sales Tax Act, 1958 (hereinafter called the Act), referring to this Court for its decision the following questions, viz.:

(1) Whether the ceramic sold by the assessee falls under entry 26 of Part II of Schedule II of the M. P. General Sales Tax Act, 1958 ; and

(2) If it does not fall under the aforesaid entry 26, whether, in the facts and circumstances of the case, the assessee is entitled to be taxed only under the residuary entry, No., entry No. 1, Part VI of Schedule II.

At the end of the statement of case, the Tribunal, after referring the aforesaid two questions, has added that even though on behalf of the department it was never contended that entry 55, Part II of Schedule II, is attracted to the present case on account of which the question of applicability of entry 55 does not arise out of the Tribunal's order and it cannot govern the decision of the present case, yet if the High Court is pleased to decide that such goods are taxable under entry 55, the decision will apply to future assessment and it will also cover other cases, if any. It is sufficient to say that the question about the applicability of entry 55

admittedly does not arise out of the Tribunal's order on account of which that question has not been referred by the Tribunal and, consequently, there is no occasion for us to decide the same. Our decision is, therefore, confined only to the two aforesaid questions referred for our decision by the Tribunal.

The dealer sells, inter alia, jars (jarni), which are baked in furnaces and have a glazed enamel-like coating and are brittle in character being made either of clay, sandstone or other minerals as base. The assessee claimed that there being no specific entry to cover these goods, they were exigible to sales tax under the residuary entry, i.e., entry 1 of Part VI of Schedule II. On the other hand, the Sales Tax Officer who made the initial assessment as also the Appellate Assistant Commissioner took the view that these goods, i.e., jars (jarni) were exigible to sales tax at the rate of 7 per cent according to entry 26, Part II of Schedule II of the Act. The assessee's appeal to the Board of Revenue, however, succeeded and the Tribunal held that the goods were exigible to sales tax at the lesser rate of 5 per cent in accordance with the residuary entry, i.e., entry 1, Part VI of Schedule II to the Act. The Commissioner of Sales Tax then applied for and was granted this reference by the Tribunal. The relevant period of assessment is 1st April, 1963, to 31st March, 1964.

The two entries, with which we are concerned, read as follows:

SCHEDULE II Part II S. No. Description of goods Rate of tax 26. All types of crockery and goods made of glass and glasswares. 7 Part VI I. All other goods not included in 5 Schedule I or any other part of this schedule.

It is obvious that the residuary entry, i.e., entry 1, Part VI of Schedule II, would be attracted only if there is no other entry applicable to such goods. The only other entry with which we are concerned in the present case is the above-quoted entry 26, Part II of Schedule II. The description of goods in entry 26 can be conveniently divided into two parts, viz.,

"all types of crockery" and "goods made of glass and glasswares". The question in the present case is whether the description of goods "all types of crockery" is wide enough to include within its ambit the goods in question, viz., jars (jarni). The Tribunal has taken the view that the word "crockery" is commonly understood merely as tableware made of clay or porcelain, such as plates, cups, kettles, etc., which does not include kitchen-ware, such as jars (jarni). It is mainly for this reason that the Tribunal has held entry 26 to be inapplicable and accordingly applied the residuary entry 1, Part VI of Schedule II. The question is whether this view of the Tribunal is correct.

It is settled that a residuary entry must be applied only as a last resort when the applicability of any other entry in the schedule is definitely ruled out. For this reason, unless the applicability of the aforesaid entry 26 can be ruled out, the residuary entry would not be attracted. It is, therefore, to be seen whether the description of goods "all types of crockery" is wide enough to include jars (jarni). This question, in turn, depends for decision on the meaning of the word

"crockery". If the meaning of the word "crockery" is wide enough to include jars (jarni), then the additional words "all types" preceding the word "crockery" in the description of goods contained in entry 26 lend reassurance that such goods also were intended to be included within the ambit of entry 26.

The ordinary meaning of the word "crockery" as commonly understood and given in different dictionaries is as under :

Shorter Oxford English Dictionary, Third Edition: "earthenware vessels.

Webster's Third New International Dictionary, 1967 Edn. : "Vessels formed of fired clay, esp. for domestic use : Earthenware.

Webster's New World Dictionary, Second College Edition : "earthenware pots, jars, dishes, etc.

The Random House Dictionary of the English Language (The Unabridged Edition): "crocks collectively; earthenware." "6. crock=an earthen pot, jar or other container.

Collins's New National Dictionary : "Vessels and dishes of all kinds, generally made of earthenware.

Chambers's Twentieth Century Dictionary (Revised Edn.) : "earthenware ; vessels of baked clay.

The Reader's Digest Great Encyclopaedic Dictionary (Second Edition) : "Earthenware vessels, esp. for domestic use.

Thus, the ordinary dictionary meaning of the word "crockery" is sufficiently wide to include "all kinds of earthenware vessels of baked clay, for domestic use". It is also significant that the word "crock" from which "crockery" is derived, means "earthenware pot, jar, etc.," according to these dictionaries. The result is that the ordinary dictionary meaning of "crockery" is wide enough to include "an earthenware jar of baked clay", which is the goods in question before us.

There is nothing in any of these dictionary meanings of the word "crockery" to suggest that the use of the word "crockery" is confined only to tableware and does not extend also to kitchenware. There is also no evidence in the present case to indicate that the word "crockery", as understood amongst dealers of such goods, does not include jars (jarni), with which we are concerned. The assumption of the Tribunal that the meaning of the word "crockery" occurring in entry 26 must be confined to tableware alone is, therefore, without any foundation. On the contrary, the use of the words "all types" preceding "crockery" in entry 26 clearly indicates that the widest possible meaning has to be given to the word "crockery" in this entry.

In Encyclopaedia Britannica (15th Edn.), Volume 14, at page 892, under the heading "pottery", it is stated :

Pottery in its widest sense includes all objects made from clay and hardened by

fire : earthenware, stoneware, and porcelain.

Thereafter "kinds of pottery" are described which include "earthenware". The common feature of all kinds of pottery is stated as under:

Clay, the basic material of pottery, has two distinctive characteristics: it is plastic (i. e., it can be moulded and will retain the shape imposed upon it) ; and it hardens on firing to form a brittle but otherwise virtually indestructible material that is not attacked by any of the agents that corrode metals or organic materials.

Earthenware" is described as the first kind of pottery, and jars made of fired clay are shown to be included within the description of pottery. This meaning and description of pottery also reinforces the above conclusion reached on the basis of the ordinary dictionary meaning of the word "crockery".

We are, therefore, of the opinion that the Tribunal was wrong in holding that jars (jarni) of the above type do not fall within the description of goods "all types of crockery" and accordingly within the ambit of entry 26, Part II of Schedule II of the Act. The first question referred to us is answered in the affirmative, in favour of the department and against the dealer. In view of our answer to the first question, the second question does not arise.

The reference is answered accordingly. Since none has appeared for the dealer, there shall be no order as to costs.