(2015) 01 MP CK 0104

In the Madhya Pradesh High Court

Case No : Sales Tax Reference No. 4 of 2001

Commissioner of Sales Tax		APPELLANT
	Vs	
Crockery Centre		RESPONDENT

Date of Decision : 22-01-2015

Acts Referred:

Citation : (2015) 01 MP CK 0104

Hon'ble Judges : Rajendra Menon, J;S.K. Gangele, J

Bench : Division Bench

Advocate : Rahul Jain, Learned Deputy Advocate General, for the Appellant

Final Decision : Disposed off

Judgement

1. As the matter is pending since 2001 on a reference made by the Board of Revenue under Section 44 of the M.P. General Sales Tax Act, we propose to deal with the matter, as the matter is pending for more than 10 years, particularly when the question of law involved in the matter stands concluded by decision of the Supreme Court.

2. Assessee respondent was assessed for payment of tax and duty under provision of M.P. General Sales Tax Act, 1958. The assessee is involved in the business of sales and purchase of crockery and various items made of glass and glassware.

3. In accordance to the provisions of a notification No. A-3-13-1986 (17) ST-V dated 6.3.86 issued under Section 12 of M.P. General Sales Tax Act, 1958 assessee was directed to pay tax and duty @ 14% based on the entry contained at Sr. No. 1 to Schedule II part II entry No. 36, which reads as under:

"All types of crockery, goods made of china and tamchina, goods made of glass and glassware but excluding glass chimneys of hurricane lanterns and kerosene lamps :-14%."

4. However, on the ground that the business activities of the assessee comes

under the entry No. 24 Schedule II part III, which reads as under:--

"Utensils other than those specified in entry 6 of part V; 12%. Utensils of all kinds other than utensils of gold and silver: 6%"

and, therefore, duty @ 6% is only liable to be paid, the assessee objected the recovery of tax @ 14%.

5. When the department rejected the contention of assessee, matter went to the Board of Revenue in a proceeding held before it under the General Sales Tax Act at the instance of the assessee, and the Board having held that the glass and glassware goods sold by the assessee comes in the category of utensils of all kind and having held that assessee is only entitled to pay tax @ 6%, this reference has been made and the points referred, reads as under:

"1. Whether under the facts and circumstances of the case the tribunal was justified to hold that crockery, glassware and plastic goods are covered under the terms ''utensils'' and thus taxable @ 6% under notification No. A-3-13-1986 (17) ST-V dt. 6-3-86 issued u/s. 12 of M.P. G.S.T. Act, 1958.

2. Whether the tribunal was justified to decide the above point where as separate entry No. 36 under Schedule II part II for crockery and glassware entry No. 4 Schedule II part III for plastic goods and entry No. 24 Schedule II part III for all kinds of utensils have been separately been made under the Act and notification have been issued with reference to utensils only."

6. Shri Rahul Jain, learned Deputy Advocate General invites our attention to the specific entries available i.e., entry No. 36 and points out that as the assessee is dealing with the business of a specific item, namely crockery and goods made of glass and glassware and when entry No. 36 deals with this specific goods relating to business of assessee then applying the residuary entry contained in entry No. 24 pertaining to utensils of all kind was not proper. It is stated by Shri Rahul Jain, learned Deputy Advocate General that it is a well settled principle of law that when the particular entry is applicable in the case of a particular good or item to be taxed then applying the residuary entry in such case is not permissible. In support of his contention, he invites our attention to the judgment rendered by a Division Bench of this Court in the case of Commissioner of Sales Tax Vs. Blue Spot, (1981) ILR (MP) 889 : (1979) 24 MPLJ 430 : (1979) MPLJ 430 : (1979) 43 STC 376 and a judgment of the Supreme Court in the case of Commercial Taxes Officer Vs. Jalani Enterprises, (2011) 186 ECR 130 : (2011) 266 ELT 289 : (2011) 4 JT 507 : (2011) 3 SCALE 609 : (2011) 4 SCC 386 : (2011) 39 VST 421 : (2012) AIRSCW 536 .

7. It is argued by Shri Rahul Jain, learned counsel that in the light of specific entry available in this case once it is clear that assessee was indulging in sales and purchase of crockery and goods made of glass and glassware then the Board of Revenue committed an error in applying a residuary clause for the purpose of taxing in the case in question.

8. Having heard learned counsel for the State Government and on a perusal of the record it is seen that in the case of Blue Spot (supra) in para 5 the principle of law with regard to applying a particular entry to a specific good and the circumstances under which a residuary clause can be applied for the purpose of taxing of good has been considered and it is held by learned Bench in the said judgment authored by Hon''ble Justice J.S. Verma (as he then was) that it is a well settled principle of law 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. It is held by the Bench in the said case that unless the applicability of a specific entry is not ruled out the residuary entry would not be attracted.

9. This principle is again approved by the Hon''ble Supreme Court in the case of Jalani Enterprises (supra) in para 17, it is laid down by the Supreme Court that it is a settled law that once a particular goods or material is covered by way of specific entry then it is not permissible to travel to the residuary entry. It is held that if the product in question can be classified as good under a specific entry, then there is no reason to take resort of the residuary entry. If the aforesaid principle is applied in the facts and circumstances of the present case, it would be seen that all goods made of glass and glassware is specifically provided and covered in entry No. 36 to Schedule II part II and the notification dated 6.3.86, then bringing the aforesaid goods and classifying it in a residuary clause dealing with utensils of all kind was not permissible and in doing so, the Board of Revenue has committed an error of law. This is a case where the assessee is dealing with the goods made of glass and glassware and when these goods are subject to duty under specific entry, that is entry No. 36 then treating the goods to be utensils of all kind and then bringing it under entry No. 24 which is nothing but a residuary entry is not permissible.

10. Accordingly, we answer the question referred to us by holding that once the entry in question pertaining to goods and crockery made of glass and glassware are specified in entry No. 36, then the revenue is liable to tax the goods under this category and the residuary clause in item No. 24 pertaining to the utensils of all kind cannot be applied to the item in question.

11. Accordingly answered the question in reference in the manner hereinabove, the reference is disposed of.