
(1996) 05 MP CK 0042

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 119 of 1990

Commissioner of Sales Tax

APPELLANT

Vs

Filter Co.

RESPONDENT

Date of Decision : 16-05-1996

Acts Referred:

Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 —
Section 13

Citation : (2003) 133 STC 253

Hon'ble Judges : Sarvashri A.K. Mathur, C.J;N.K. Jain, J

Bench : Division Bench

Advocate : Surjit Singh, for the Appellant; S.C. Goel, for the Respondent

Judgement

N.K. Jain, J.—At the instance of the department, the M.P. Board of Revenue (hereinafter referred to as "the Tribunal"), has u/s 44(1) of the M.P. General Sales Tax Act, 1958 (for short, "the Act") read with Section 13 of the M.P. Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 (for short, "the Entry Tax Act"), referred following question of law for the opinion of this Court, arising out of its order dated January 13, 1988 passed in Appeal No. 93-IV/85 :

"Whether under the facts and circumstances of the case, the Board of Revenue, was justified in holding that the "wool waste" is included in entry 39, Schedule I ?"

2. The non-applicant assessee deals in manufacture and sale of woollen felts and components made up of wool waste. During the assessment year 1980-81, the non-applicant was assessed at Rs. 15,42,344 the total value of the goods purchased by him during the year. The assessee claimed deletion of Rs. 12,44,826 which, according to him, was the amount spent in purchasing tax-free goods like burs, noils and viscose, etc. The assessing officer disallowed the claim on the ground that neither of the aforesaid articles fell within the purview of "raw wool" and was, therefore, not covered by the entry 39 of Schedule I of the Act. He accordingly assessed the non-applicant for payment of entry tax 0.5 per cent

on the entire amount for which the goods were purchased. First appeal preferred by the assessee against the order of the assessing officer was dismissed by the Deputy Commissioner (Appeals) vide his order dated March 4, 1985. In second appeal, learned single Member of the Tribunal made a reference to the Division Bench of the Tribunal seeking answer to the following question :

"Whether the "raw wool waste" used by the appellant as raw material was covered by entry 39 of Schedule I to the Madhya Pradesh General Sales Tax Act, 1958 (hereinafter called "the Act") which reads as follows : "39--raw wool except knitting wool"".

The Division Bench of the Tribunal vide its order dated February 11, 1987 answered the reference in the following terms :

"We are, therefore, unanimously of the view that the "wool waste" being used by the appellant, as long as it does not contain synthetic material like viscose, etc., is covered under entry 39 of Schedule I to the Act."

3. The Tribunal accordingly by its order dated January 13, 1988 allowed the assessee's appeal and remanded the case back to assessing officer for making assessment afresh in terms of the Tribunal's order dated February 11, 1987.

4. Dissatisfied with the decision of the Tribunal in second appeal, the applicant-department made application u/s 44(1) of the Act seeking reference to this Court. This is how the matter has come up before this Court for its opinion on the above noted question.

5. We have heard Shri Surjit Singh, learned Government Advocate for the applicant-department and Shri S.C. Goyal, learned counsel for the non-applicant/assessee.

6. Learned Government Advocate contended that the entry 39 when construed strictly does not leave any room for construing "wool waste" as "raw wool". He pointed out that all other "woollen articles" not covered by the entry 39 are included in another entry No. 11 of Part III of Schedule II of the Act which, according to the learned counsel, is indicative of the legislative intent to exclude all other woollen goods including wool waste from entry 39.

As against it, Shri Goyal, learned counsel for the assessee strenuously argued that "wool waste" is nothing but "raw wool". He, with reference to some notes on "wool waste" (vide "Wool Note Book Vol. II, Part-I by Werner Von Bergen"), tried to explain that "raw wool" in the process of refinement and cleaning gives rise to various products like burs and noils, etc., which are sold by wool-top manufacturers to woollen yarn spinners either in their original names or as "wool waste" and are used as admixture in the production of felt clothes and other woollen articles. The waste wool, therefore, the learned counsel maintained, is nothing but "raw wool" in "impure" form. He relied upon a Supreme Court decision in the case of Commissioner of Sales Tax v. Prag Ice and Oil Mills [1991] 80 STC 403 wherein it is held :

"The respondent manufactured vegetable ghee from groundnut oil. The groundnut oil was mixed with acids and chemicals in order to purify and refine it. The residue, after removal of the refined portion, was sold to manufacturers of soap. The respondent contended that the residue was still groundnut oil taxable as such. The Sales Tax Officer and the appellate authority rejected the contention on the ground that it was oil of a different character since it was not edible. The revisional authority came to the conclusion that the residue, in its nature and character, was groundnut oil with greater impurities. On a reference, the High Court, following *Tungabhadra Industries Ltd. Vs. The Commercial Tax Officer, Kurnool*, : held that the residue, after going through the process of acids and chemicals, continued and remained to be groundnut oil and was taxable as such at one per cent. On appeal to the Supreme Court :

Held, affirming the decision of the High Court, that the reasoning and conclusions reached by the High Court were correct."

3. We have given our anxious thought to the rival contentions. We, however, do not feel persuaded by the arguments advanced on behalf of the assessee.

4. It is well-settled that the taxing statute is to be strictly construed. Justice G.P. Singh in his famous book "Principles of Statutory Interpretation" has in Chapter 10 quoted with approval familiar words of LORD WENSLEYDALE :

".....the subject is not to be taxed without clear words for that purpose ; and also that every Act of Parliament must be read according to the natural construction of its words."

The learned author has also reproduced a classic passage of Lord Cairns :

"If the person sought to be taxed comes within the letter of the law he must be taxed ; however great, the hardship may appear to the judicial mind to be. On the other hand, if the crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable construction, certainly, such a construction is not admissible in a taxing statute, where you can simply adhere to the words of the statute."

Dealing with the exemptions the learned author in the same chapter states :

"As regards construction of exemptions there are two opinions. According to one view, an exemption in case of ambiguity should be liberally construed in favour of the subject confining the operation of the duty, but according to the other view, exemptions from taxation have a tendency to increase the burden on other members of society, and should, therefore, be deprecated and construed in case of doubt against the subject". There can, however, be no doubt that exemptions made with a beneficent object, e.g., to give incentive to co-operative movement have to be liberally construed. Similarly when a provision is made permitting concessional rates of tax for the purpose of encouraging an industrial activity, the

provision has to be liberally construed. So if the object of an exemption notification is to encourage the use of indigenous rice bran oil and to discourage the use of edible oils in soap manufacture, a narrow construction of the notification which defeats this object cannot be accepted and preference has to be given to a wider construction which promotes the object. As exemption provision cannot be denied full effect by a circuitous process of interpretation. But exemptions which lift the restriction of taxability imposed by an enactment are taxing in nature and are subject to the rule of strict construction. Whatever approach may be adopted in case of a real ambiguity, it is clear that there is no justification for the view that if a word of exemption is not defined it must be given its widest meaning and the correct rule in construing words of exemption as in construing other words is to find out the sense of the words in their context by reading the statute as a whole and by bearing in mind the purposes of the statute and the consequences flowing from rival interpretations."

5. It will be useful here to read entry 39 of Schedule I and also entry 11 of Part III of Schedule II of the Act which are as follows :

"39. Raw wool except knitting wool.

11. All kinds of woollen goods including knitting wool excepting those covered by entries 6 and 39 of Schedule I".

6. Reading the two entries together makes the legislative intent very clear. While it intended to tax every woollen goods, it in its wisdom thought it proper to exempt "raw wool" with an exception of knitting wool only. So, notwithstanding the fact that "wool waste" may have all the characteristics of wool, the same cannot be categorised as "raw wool" for the purpose of entry 39. In fact, entry 11 excludes any such construction. Had the Legislature intended to include "wool waste" in the term "raw wool", the entry 39 would then read : "Raw wool including wool waste but excluding knitting wool". The assessee has, therefore, to be taxed within the letter of the law.

7. The word "raw" as per Oxford English Reference Dictionary means : In the natural state not processed or manufactured ; not analysed or processed ; new to an activity. Wool waste is obviously not something wholly new or which has not undergone any process. As per assessee's own showing it is an admixture of the bye-products of the raw wool after the latter has undergone some kind of process be it a refinement or something else. It cannot be, therefore, termed as raw wool.

8. From the foregoing discussion it, therefore, inevitably follows that our answer to the question has to be in negative, i.e., against the assessee and in favour of the department. We answer the reference accordingly but without any order as to costs.

9. A copy of this order be transmitted to the Board of Revenue.