(1975) 11 BOM CK 0021

In the Bombay High Court

Case No : Sales Tax Reference No. 59 of 1969

Commissioner of Sales Tax APPELLANT

Vs

Maharashtra Litho Press RESPONDENT

Date of Decision : 19-11-1975

Acts Referred:
Bombay Sales Tax Act, 1959 — Section 61(1)

Citation : (1976) 37 STC 298

Hon'ble Judges : M.H. Kania, J;D.P. Madon, J

Bench : Division Bench

Advocate : M.H. Shah, for the Appellant; B.C. Joshi and P.C. Joshi, for the Respondent

Judgement

Kania, J.—This is a reference u/s 61(1) of the Bombay Sales Tax Act, 1959 (hereinafter referred to as "the said Act"). The question referred to us for our consideration is as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the butter paper adapted for use as printing material by the respondents is covered by entry No. 24 of Schedule C to the Bombay Sales Tax Act, 1959 ?"

2. The facts giving rise to this reference are as follows : The respondents, who are the assessees, are running a press where they do two types of printing, one being litho printing and the other being transfer printing. The process of transfer printing is as follows : The printing press makes printings of letters on butter paper. These printings are called gold leaf transfers. They are sold to the textile mills, who, in their turn, by a process of heating transfer these letters on to the cloth. The assessees made purchases of butter paper for this purpose and the question was whether the assessees were entitled to claim a set-off as provided under rule 41 of the Bombay Sales Tax Rules, 1959.

3. It is common ground that if the butter paper purchased as aforesaid was

covered by entry No. 6 of Schedule C to the said Act, as it then stood, the assessees would not be entitled to a set-off as claimed by them, whereas if it was covered by entry No. 24 of the said Schedule C they would be so entitled. For the assessment periods 1st January, 1960, to 31st March, 1960, 1st April, 1960, to 31st March, 1961, 1st April, 1961, to 31st March, 1962, and 1st April, 1962, to 31st March, 1963, it has been held by the Tribunal that the butter paper purchased as aforesaid was cover by entry No. 24 of the said Schedule C to the said Act and hence the assessees were entitled to a set-off. It is this finding which is being disputed before us in this reference, which has been made at the instance of the department.

4. In order to appreciate the contentions raised before us, it would not be out of place to set out entries Nos. 6 and 24 of Schedule C to the said Act, as they stood at the relevant time. The description of goods in entry No. 6 read thus :

"Gunny bags and hessian; jute twine; and brown paper and other paper adapted for use in packing goods."

5. The description of goods in entry No. 24 read thus :

"Paper, including newsprint but excluding paper specified in entry No. 6 in this schedule."

6. Mr. Shah, the learned counsel for the department, has urged that the Tribunal was in error in coming to the conclusion that the word "adapted" in entry No. 6 should be governed by the use to which a purchasing dealer intends to put the paper purchased by him or the adaptation of it made by him. It was submitted by him that on a reading of entry No. 6 it was the normal use of the butter paper at the time of purchase which should be relevant in determining whether the item fell in entry No. 6 or entry No. 24. In our view, it is not necessary for us to go into this contention of Mr. Shah at all, because in order to succeed to applicant must, in any event, establish that at the time when the purchases were made, the normal use of butter paper was for packing goods. There is no finding of the Tribunal that such is the normal use of butter paper. All that the Tribunal has stated is that butter paper could be used for packing soft and delicate things. It is common knowledge that butter paper can be used for purposes other than packing of goods, viz., in electrical laminations, in photograph albums, in making stickers and so on. In view of the absence of a finding that the normal use of butter paper is for packing of goods and there being no common knowledge that such is the normal use of butter paper, we are of the view that the Tribunal was right in coming to the conclusion that the butter paper purchased by the assessees was covered by entry No. 24.

7. In the result, the question referred to us must be answered in the affirmative. The applicant to pay to the respondents the costs of this reference fixed at Rs. 250.

8. Reference answered in the affirmative.