(1981) 02 MP CK 0013

In the Madhya Pradesh High Court

Case No : M.C.C. No. 110 of 1979

Commissioner of Sales Tax APPELLANT

Vs

Mittal and Sons RESPONDENT

Date of Decision : 05-02-1981

Acts Referred:
Madhya Pradesh General Sales Tax Act, 1958 — Section 44

Citation : (1982) 49 STC 263

Hon'ble Judges : R.K. Vijayvargiya, J;G.G.Sohani, J

Bench : Division Bench

Advocate : S. Kulshrestha, for the Appellant; K.L. Sethi, for the Respondent

Judgement

G.G. Sohani, J.—By this reference u/s 44 of the M. P. General Sales Tax Act, 1958, the Board of Revenue has referred the following question of law to this Court for its opinion :

Whether, under the facts and circumstances of the case, ''nalidar coal is coal and governed by item No. 2 of Part I of Schedule II ?

2. The material facts giving rise to this reference are that the assessee is a dealer in "nalidar coal", charcoal and fuel and was assessed to tax for the year 1962-63. It was contended on behalf of the assessee that "nalidar coal" was coal" and should be taxed accordingly. This contention was ultimately upheld by the Board. Hence, at the instance of the department, the Board has referred the aforesaid question of law to this Court.

3. The question as to whether "nalidar coal" is "coal" for the purpose of determining the rate of tax came up for consideration before a Division Bench of this Court in Commissioner of Sales Tax v. Punjab Coal and Kutti Farm (Misc. Civil Case No. 122 of 1977 decided on 6th October, 1980-Indore) [1981] 47 STC 351 (MP). It has been held in that case that "nalidar coal" is "coal". We see no reason to take a view different from that taken in Commissioner of Sales Tax v. Punjab Coal and Kutti Farm (Misc. Civil Case No. 122 of 1977) [1981] 47 STC 351 (MP).

4. Our answer to the question referred to us, therefore, is in the affirmative and against the department. In the circumstances of the case parties shall bear their own costs in this reference.