(1987) 08 MP CK 0016

In the Madhya Pradesh High Court

Case No : M.C.C. No. 398 of 1983

Commissioner of Sales Tax APPELLANT

Vs

Modern Hardware RESPONDENT

Date of Decision : 04-08-1987

Acts Referred:
Madhya Pradesh General Sales Tax Act, 1958 — Entry 56(ii), 44(1)

Citation : (1987) 67 STC 405

Hon'ble Judges : N.D. Oza, C.J;K.K. Adhikari, J

Bench : Division Bench

Advocate : S.K. Dixit, Deputy A.G, for the Appellant;

Judgement

N.D. Ojha, C.J.—This judgment shall also govern the disposal of M. C. C. No. 399 of 1983.

2. The Tribuual constituted under the M. P. General Sales Tax Act, 1958 (hereinafter referred to as the Act), has referred the following question to this Court for its opinion u/s 44(1) of the Act in each of these two cases :

Whether, the Board was justified in concluding that hose pipes and fittings were covered by entry No. 1 of Part VI to Schedule II and not under entry No. 56(ii) of Part II of Schedule II of the Madhya Pradesh General Sales Tax Act ?

3. Entry No. 1 of Part VI to Schedule II of the Act is a residuary entry. It provides the rate of tax in respect of "All other goods not included in Schedule I or any other part of this Schedule". It is thus apparent that this entry would apply only if the goods sought to be taxed are not included either in Schedule I or any other part of this Schedule II. The goods in the instant case are hose pipes and fittings. Entry 66(ii) of Part II of Schedule II, on the other hand, reads as hereunder :

All types of pipes including those made of polythene, rubber, cement, canvas and aluminium and their fittings, but excluding those covered by entry 5(xi) of Part I.

Entry 6(xi) of Part I, on the other hand, reads as hereunder :

Steel tubes, both welded and seamless, of all diameters and lengths, including tube fittings.

4. The question referred to us is in regard to hose pipes and fittings. Hose pipes, in our opinion, obviously cannot be steel tubes which are the subject-matter of entry 5(xi) of Part I. The term "hose" according to Shorter Oxford English Dictionary has, inter alia, the following meaning :

A flexible tube or pipe for conveying water or other liquid where it is wanted.

5. Steel pipe obviously cannot be a flexible tube or pipe. In our opinion, hose pipes including their fittings would obviously fall within entry 66(ii) of Part II of Schedule II of the Act. This being so, the residuary entry, namely, entry No. 1 of Part VI of Schedule II, would not be attracted.

6. In the result, our answer to the question referred to us in each of these two cases is that the Board was not justified in concluding that hose pipes and fittings were covered by entry No. 1 of Part VI to Schedule II and not under entry 66(ii) of Part II of Schedule II of the Act. In other words, our answer to the question referred to us is in the negative in favour of the department and against the assessee. In the circumstances of the case, however there shall be no order as to costs.

