
(1985) 08 MP CK 0019

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 121 of 1982

Commissioner of Sales Tax

APPELLANT

Vs

Olpherts Private Ltd.

RESPONDENT

Date of Decision : 09-08-1985

Acts Referred:

Madhya Pradesh General Sales Tax Act, 1958 — Section 44(1)

Citation : (1985) 30 MPLJ 726 : (1985) MPLJ 726 : (1986) 63 STC 401

Hon'ble Judges : K.K. Adhikari, J;J.S. Verma, J

Bench : Division Bench

Advocate : S.L. Saxena, for the Appellant; H.S. Shrivastava, for the Respondent

Judgement

K.K. Adhikari, J.

The order in this reference shall also govern the disposal of Miscellaneous Civil Case No. 120 of 1982 (Commissioner of Sales Tax, Madhya Pradesh v. Olpherts Private Limited, Katni).

These are two references u/s 44(1) of the Madhya Pradesh General Sales Tax Act, 1958 (hereinafter referred to as the "Act of 1958"), at the instance of the department in which the following question of law has been referred for decision of this Court:

Whether under the facts and circumstances of the case, the materials sold by the assessee, which are used as colouring agent, are covered under entry No. 25 of Part II of Schedule II of the Act?

The material facts are these: The dealer/assessee is a company dealing in manufacture and sale of red oxide of iron. It was assessed to sales tax under the Act of 1958, for the two periods, namely, from 1st July, 1966, to 30th June, 1967, and 1st July, 1967, to 30th June, 1968. The sale of red oxide of iron was taxed at the rates specified under entry No. 25 of Part II of Schedule II. The contention of the dealer/assessee was that the red oxide of iron was a natural

dry pigment. This contention was rejected by the assessing authority observing:

According to him it is sale of natural dry pigment but the same is not true because it is observed that he imports P.G. red oxide in large quantities to the tune of Rs. 1,53,147.16 and the same is mixed in white stone and sold as red oxide (hirmichi) which is used as dye for colouring cement and plaster. Hence is taxable vide entry 25, Part II, Schedule II.

Being aggrieved, the dealer/assessee preferred first appeal against the order of assessment before the Appellate Assistant Commissioner of Sales Tax, wherein it was contended on behalf of the dealer/assessee that the red oxide occurs naturally in the earth in crude state which is dried and powdered without any addition or adulteration and the said powder is sold and, therefore, is not a "dye" so as to be taxed under entry No. 25 of Part II of Schedule II of the Act of 1958. The first appellate authority rejected this contention and held that the red oxide of iron is used as a "dye" for colouring cement and plaster and, therefore, is a colouring agent and hence, has rightly been taxed by the assessing authority under the aforesaid entry. The appeal was thus rejected. The dealer/assessee, however, preferred a second appeal before the Tribunal (Board of Revenue). The Tribunal allowed the appeal of the dealer/assessee holding inter alia that the question whether this was a natural pigment or synthetic organic compound was not relevant for deciding the issue whether the red oxide of iron sold by the dealer/assessee was a "dye" or not. According to the Tribunal, the question was whether the red oxide of iron procured from the natural sources and powdered and sold thereafter are colouring material for cement and, therefore, could be classed as a "dye". The Tribunal came to the conclusion that the red oxide of iron was not a "dye" and, therefore, is not covered under entry No. 25 of Part II of Schedule II of the Act of 1958. The Tribunal observed as follows:

If there is some material which a user himself has only to mix in water or some other commonly available liquid like oil to use it as a paint, I would consider it as taxable under entry No. 25. But the learned Counsel for the appellant urged that the material sold by the appellant is not so usable; the paints factories who purchased the material from the appellant used it for manufacturing paints for sale. Nothing to the contrary was urged on behalf of the sales tax department.

The department, thereafter, sought references to this Court on the above question of law which is common to both the references and this is how the matter has come up for decision before this Court.

Entry No. 25 of Part II of Schedule II of the Act of 1958 at the relevant time was as under:

Dyes, paints, varnishes, lacquers, enamels, glue, paint-brush, sandpaper, turpentine oil and bale oil and polish other than boot polish.

The question referred to this Court for its decision depends on interpretation and meaning of the word "dye". It is a settled principle that the names of articles,

sales and purchases of which are liable to be taxed, which are given in the statute unless defined in the statute, have to be construed not in a technical sense but have to be understood in common parlance. According to the Concise Oxford Dictionary, the meaning of the word "dye" is, when used as noun, the colour produced by dyeing, tinge, hue; the matter used for dyeing, colouring-matter in solution and when used as a verb, it means the colour, stain, tinge; impregnate (tissue) with colouring matter (while material is in raw state, giving more permanent result). Webster's New World Dictionary states that "dye" means any substance used to give colour to fabric, thread, etc., colouring matter or a solution containing it. Corpus Juris Secundum defines "dye" as a colouring matter in solution and as a verb, to impregnate with colouring matter held in solution. In Chambers 20th Century Dictionary, the meaning attributed to the word "dye" is to give a new colour to. The words "dye", "dyer" and "dyeing" are commonly understood as (denoting) the ordinary process of colouring articles by using a colour powder. It has been found by the assessing authority and it is not disputed that the red oxide of iron is used as colouring agent for cement and plaster. Thus, it being a finding of fact, in our opinion, the material red oxide of iron manufactured and sold by the dealer/assessee for imparting colour to cement and plaster, therefore, is a colour powder which imparts colour. In a Full Bench decision of this Court in Sukhu Ram Tamrakar v. State of M.P. [1978] 41 STC 376 (FB), wherein the meaning of the word "dyes" was considered as occurring in entry No. 25 of Part II of Schedule II of the Act of 1958 this Court laid down:

According to the common parlance, a "dye" is that article which can be used to impregnate tissue with colour or is able to fix itself or is being capable to fix on fibre. Merely because the colour-powder is to be diluted with water or any other chemical is added for preparing an effective solution for dyeing a piece of cloth, it cannot be taken out of the category of "dyes" on the ground that it was not sold in the form of a ready-made solution. The words "dyeing", "dyer" and "dyes" are commonly understood as denoting the ordinary process of colouring clothes and such other articles by using a colour-powder.

This Full Bench decision clearly is applicable to the red oxide of iron, which is a powder, manufactured and sold by the dealer/assessee for colouring cement and plaster. The learned Counsel for the dealer/assessee, however, contended that the Supreme Court in Commissioner of Sales Tax, U.P. Vs. S.R. Brothers, Kanpur, , while dealing with entry No. 10 of the U.P. Sales Tax Act, which was as follows:

Dyes and colours and compositions thereof has laid down that the words "dyes and colours" used in entry No. 10 and the words "scents and perfumes" used in entry No. 37 have to be construed in their common context and in the sense, as ordinarily understood and attributed to these words by the people usually conversant and dealing with any such goods. It has been further laid down that the words "dyes and colours" would not include food colours and syrup essences

which are edible goods and cannot come within the entry "dyes and colours and compositions thereof" as they do not, prima facie, connote that they are edible goods. The distinction was sought to be made on edible and non-edible colours. This case, however, is clearly distinguishable on facts. It has been already noted that the red oxide of iron manufactured and sold by the dealer/assessee is used for colouring cement and plaster. The learned Counsel for the dealer/assessee placed reliance on a letter from the Director, National Test House (annexure C-3 with the petition) for the purpose of showing that the red oxide of iron cannot be considered as a "dye". In our opinion, resort to scientific and technical meaning of such terms cannot be had but what is required to be taken into consideration is an ordinary meaning or a meaning attributed to them by those dealing in these commodities. It has been already found herein above nor it has been disputed that the red oxide of iron is used as a colouring agent for cement and plaster and, therefore, the opinion expressed by the Director, National Test House, cannot be of any advantage to the dealer/assessee. The learned Counsel for the dealer/assessee also relied on a copy of memorandum dated 11th November, 1960, to show that the red oxide of iron, i.e., "geru", is not covered by entry No. 41 "paints and varnishes" of Schedule I to the Central Provinces and Berar Sales Tax Act, 1947. It may be stated that this letter (annexure C-2) was with respect to the entry "paints and varnishes" and the term "dye" was not included in the said entry and apart from that, the material was geru and not hirmichi. Under these circumstances, this is also of no help to the dealer/assessee.

For the reasons stated herein above, the question referred for our decision in this reference has to be answered in favour of the department and against the assessee. Accordingly, the question referred to this Court is answered in the following manner:

Under the facts and circumstances of this case, the materials which are used as colouring agent and sold by the assessee, are covered under entry No. 25 of Schedule II--Part II of the Madhya Pradesh General Sales Tax Act, 1958.

There shall be no order as to costs.