(1980) 03 MP CK 0019

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 413 of 1976

Commissioner of Sales Tax APPELLANT

Vs

Phoolchand Onkarlal RESPONDENT

Date of Decision : 10-03-1980

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

Citation : (1980) 46 STC 429

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

Bench : Division Bench

Advocate : K.L. Goyal, for the Appellant; G.M. Chaphekar, 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, at the instance of the department, referred the following question of law to this Court for its opinion :

Whether, on the facts and circumstances of the case, the assessee will fall under the category of "halwai", and "namkin" sold by him will be exempted from sales tax under Notification No. 965-V-ST dated 31st March, 1964 ?

2. The material facts giving rise to this reference briefly are as follows: The assessee deals in sweetmeats and namkin and has been assessed to sales tax for the assessment year 1965-66. The contention of the assessee was that it was carrying on business as a halwai and hence namkin prepared and sold by it was exempt from sales tax under Notification No. 965-V-ST dated 31st March, 1964. This contention was rejected by the assessing authority and the first appeal preferred by the assessee was also dismissed. On further appeal by the assessee, the Board upheld the contention of the assessee and allowed the appeal. Aggrieved by the order passed by the Board, the department submitted an application for making a reference, which was allowed and the aforesaid question of law has been referred to this Court for its opinion.

3. Having heard the learned counsel for the parties, we have come to the

conclusion that this reference must be answered in favour of the assessee. The notification dated 31st March, 1964, under which exemption is claimed by the assessee, provides for exemption where cooked food excluding sweetmeats, cakes, pastries, biscuits, chocolates, toffees, lozenges and peppermint drops is prepared and sold by tandurwalas, dhabawalas, lohwalas, khonchawalas and halwais. The Board has found that the assessee was at the material time a halwai. The goods in respect of which exemption is claimed by the assessee fall within the class of goods for which exemption is granted by the aforesaid notification. The learned counsel for the department, however, contended that as the assessee had employed servants for preparation of namkin, the goods sold by the assessee would not be exempt from tax as provided by the notification. The contention cannot be upheld. The Board rightly observed that the notification cannot be held to apply only to a self-employed halwai. The notification would also apply to the case of a halwai who got "namkin" prepared by others on payment of labour charges. The learned counsel for the department was unable to point out any authority to the contrary.

4. Therefore, our answer to the question referred to us is that on the facts and in the circumstances of the case the assessee will fall under the category of halwai and that the namkin sold by it would be exempt from sales tax under Notification No. 965-V-ST dated 31st March, 1964. Parties shall bear their own costs of this reference.