(1966) 04 MP CK 0011

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 324 of 1965 & Miscellaneous Civil Case No. 325 of 1965

Commissioner of Sales Tax APPELLANT

Vs

Sagar Bone Mills RESPONDENT

Date of Decision : 26-04-1966

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

Citation : (1966) JLJ 672 : (1966) 18 STC 351

Hon'ble Judges : P.V. Dixit, C.J;R.J. Bhave, J

Bench : Division Bench

Advocate : K.K. Dube, for the Appellant; B.L. Seth, for the Respondent

Judgement

1. In this reference u/s 44(1) of the Madhya Pradesh General Sales Tax Act, 1958, at the instance of the Commissioner of Sales Tax the questions which the Sales Tax Tribunal has referred to this Court for decision are :

(1) Is bone-meal or crushed bone taxable under entry No. 11 of Part III of Schedule II of the Madhya Pradesh General Sales Tax Act, 1958, read with entry No. 2 of Schedule III of the same Act or is it exempt from the payment of sales tax under entry No. 22 of Schedule I of the same Act ?

(2) Are bone-meal and crushed bone taxable under the Central Provinces and Berar Sales Tax Act, 1947, or are they exempt from the payment of sales tax under entry No. 25 of Schedule II of the same Act?

(3) Is it necessary to make an analysis of the crushed bone or bone-meal to find out whether it satisfies the standards prescribed in the Schedule appended to the Fertilizer (Control) Order, 1957?

2. The assessee, Messrs Sagar Bone Mills, Sagar, is engaged in the business of manufacturing crushed bones and bone-meal. In the proceedings for assessment of sales tax for the period from 1st September, 1958, to 31st August, 1959, the assessee raised the contention that as crushed bones and bone-meal were

exempt from tax under the M.P. General Sales Tax Act, 1958, and the Central Provinces and Berar Sales Tax Act, 1947, no sales tax could be levied on sale transactions of crushed bones and bone-meal. This contention was rejected by the Sales Tax Officer, Sagar, who accordingly made an order of assessment on 5th June, 1961. This order of the Sales Tax Officer was upheld in appeal by the Appellate Assistant Commissioner. In the second appeal which was then filed before the Sales Tax Tribunal by the assessee, the Tribunal took the view that under the M.P. General Sales Tax Act, 1958, as also under the Central Provinces and Berar Sales Tax Act, 1947, fertilizers were exempt from tax and that the question whether an article was or was not a fertilizer within the meaning of the relevant entries of the Sales Tax Acts must be decided with reference to the definition of "fertilizer" given in Section 2(d) of the Fertilizer (Control) Order, 1957. The Tribunal thought that the assessee had not been given an opportunity of establishing the fact that the product manufactured by it was a "fertilizer" within the meaning of the definition given in Section 2(d) of the Fertilizer (Control) Order, 1957. Accordingly, the Tribunal remitted the matter to the Sales Tax Officer for decision observing:-

If it is found that the sample or samples from the product of the appellant-firm conform to the minimum standard laid down in the Fertilizer (Control) Order he can surely claim exemption under the M.P. General Sales Tax Act or the C.P. and Berar Sales Tax Act as the case may be. On remand the assessing authority should proceed as above and take a decision in accordance with the analytical reports.

3. The M.P. General Sales Tax Act, 1958, came into force on 1st April, 1959. So, the period of assessment involved in this case is governed partly by the C. P. and Berar Sales Tax Act, 1947, and partly by the M.P. General Sales Tax Act, 1958. The first Act governs the period from 1st September, 1958, to 31st March, 1959, and the Act of 1958 overns the period from 1st April, 1959, to 31st August, 1959. So far as the question of the taxability of crushed bones and bone-meal in the period from 1st April, 1959, to 31st August, 1959, under the M.P. General Sales Tax Act, 1958, is concerned, that must be answered in the same way we answered a similar question in Misc. Civil Case No. 324 of 1965 Since reported as Commissioner of Sales Tax, M. P. v. Sagar Bone Mills, Sagar : No. 1 [1966] 18 S.T.C. 338. As has been pointed out in that reference, bone-meal and crushed bone are taxable under entry No. 11 of Part III of Schedule II of the M.P. General Sales Tax Act, 1958, read with entry No. 2 of Schedule III of that Act.

4. As regards the taxability of these products under the C. P. and Berar Sales Tax Act, 1947, in the period before 1st April, 1959, the position is that under item No. 25 of Schedule II of the 1947 Act "fertilizers" are exempt from tax. There is no entry in the Act of 1947 in any way qualifying the exemption of fertilizers from taxation. Now, as has been emphasized by the Supreme Court in Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola, and other cases, the terms and expressions used in a tax statute must be construed not in

any technical sense but as understood in common parlance and that if the word or term is of everyday use, it must be construed in its popular meaning, that is, "that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it." It would not, therefore, be permissible to give a technical meaning to the word "fertilizer" as used in entry No. 25 of Schedule II of the 1947 Act. The term must be understood in its popular meaning. Now, "fertilizer" is clearly any material which increases the productiveness of the soil. So understood, crushed bones and bone-meal, which undoubtedly when applied to soil promote field and horticultural crops, are fertilizers. Under the Act of 1947, crushed bones and bone-meal are clearly exempt from tax.

5. The third question with regard to the analysis of crushed bones or bone-meal for determining whether it satisfies the standards prescribed in the Schedule appended to the Fertilizer (Control) Order, 1957, must be answered in the same way we answered an identical question in Misc. Civil Case No. 324 of 1965 Since reported at [1966] 18 S.T.C. 338.

6. For these reasons, our answer to the first question is that for the period governed by the M.P. General Sales Tax Act, 1958, bone-meal or crushed bone is taxable under entry No. 11 of Part III of Schedule II of that Act read with entry No. 2 of Schedule III of the same Act. The second question is answered by saying that for the period governed by the C.P. and Berar Sales Tax Act, 1947, bone-meal and crushed bone are exempt from payment of sales tax under entry No. 25 of Schedule II of the Act of 1947. Our answer to the third question is that it is wholly irrelevant for the purpose of assessment of sales tax to make an analysis of the crushed bone or bone-meal manufactured by the assessee in order to find out whether it satisfies the standards prescribed in the Schedule appended to the Fertilizer (Control) Order, 1957. It is unnecessary to add that the Tribunal must now dispose of the appeal preferred by the assessee in the light of the answers given by us in this reference.

7. In this reference as both the Commissioner of Sales Tax and the assessee have succeeded partly, we leave the parties to bear their own costs of this reference.