(1985) 01 MP CK 0018

In the Madhya Pradesh High Court

Case No : M.C.C. No. 90 of 1984

Commissioner of Sales Tax APPELLANT

Vs

Sajjan Mills Ltd. RESPONDENT

Date of Decision : 21-01-1985

Acts Referred:
Madhya Pradesh General Sales Tax Act, 1958 — Section 2(bb)

Citation : (1985) 59 STC 116

Hon'ble Judges : P.D. Mulye, J;K.K. Verma, J

Bench : Division Bench

Advocate : S.R. Joshi, for the Appellant; A.K. Chitle, for the Respondent

Judgement

1. The Tribunal, namely, the Board of Revenue, M. P., has made this reference u/s 44 of the M. P. General Sales Tax Act, whereby it has referred the following question of law for the opinion of this Court:

Whether on the facts and circumstances of the case, the Tribunal was justified in holding that the sale of second hand car will not be covered by the term ''business'' as defined in Section 2(bb) of the M. P. General Sales Tax Act, 1958.

2. The facts giving rise to this petition, as per the statement of facts furnished by the Tribunal may be stated, in brief, thus. The non-applicant assessee, M/s. Sajjan Mills Ltd., Ratlam, run a textile mill and are engaged in the manufacture of cloth. For the year 1972-73 a sale of second hand car was also assessed to tax under the Act. The assessment was maintained in first appeal. In second appeal to the Tribunal it was held that the sale of second hand car was an isolated sale which does not satisfy the test regarding volume, frequency and regularity of transactions which must be satisfied in order to hold that sale is in the course of business. It is in these circumstances that this reference has come up at the instance of the Revenue.

3. After hearing the learned counsel and after considering the definition of "business" as defined in Section 2(bb) of the M. P. General Sales Tax Act, 1958

and after considering the case law in Commissioner of Sales Tax v. Project Automobiles [1978] 42 STC 279 and Commissioner of Sales Tax v. Bhopal Sugar Industries, Sehore [1981] 48 STC 45 ; (1981) 14 VKN 134 we are of opinion that this reference has to be answered in favour of the department and against the assessee as both these authorities have considered and interpreted the definition of "business" as defined in Section 2(bb) of the M. P. General Sales Tax Act, 1958 as amended by Act No. 16 of 1965 which has widened the definition of "business". In view of these two Division Bench decisions of this Court, the learned counsel for the assessee was unable to point out any contrary authority.

4. However, the learned counsel for the assessee submitted that in fact no reference was necessary as it is not found as a fact proved that the assessee is carrying on the business of selling cars. He also submitted that no finding has been recorded by the concerned authorities that the second hand car, which was sold by the assessee, was meant for office use. However, we see no merit in both these contentions which are rejected summarily in view of the definition of "business" referred to above. In fact the burden lay upon the assessee to prove for what purpose the second hand car was purchased and to what use it was put to. In absence of any such evidence it has to be presumed that the second hand car was purchased for the use of the assessee.

5. In the result our answer to the question referred is that--

On the facts and circumstances of the case the Tribunal was not justified in holding, that the sale of second hand car will not be covered by the term "business" as defined in Section 2(bb) of the M. P. General Sales Tax Act, 1958.

6. Thus the reference is answered in favour of the department and against the assessee with no order as to costs.