(1970) 03 AHC CK 0038

In the Allahabad High Court

Case No : S.T.R. No. 363 of 1969

District Co-Operative Development Federation Ltd. APPELLANT

Vs

Commissioner, Sales Tax RESPONDENT

Date of Decision : 27-03-1970

Acts Referred:

Citation : (1970) 26 STC 464

Hon'ble Judges : Satish Chandra, J;R.L. Gulati, J

Bench : Division Bench

Advocate : S.B.L. Srivastava, for the Appellant; Standing Counsel, for the Respondent

Judgement

Satish Chandra, J.—The Additional Revising Authority, Sales Tax, Varanasi, has referred the following question of law for the opinion of this court:-

Whether ''coal dust'' in which the assessee deals, comes within the description ''coal'' mentioned in Notification No. St-911/X dated 31st March, 1956, or is a commodity distinct from ''coal'' ?

2. For the assessment year 1959-60, the assessee returned a turnover of Rs. 1,30,472.83 in respect of coal dust, as apart from its turnover of foodgrains, cement, fertilizers etc. The disclosed turnover was accepted. But, the assessing authority felt that coal dust was not "coal" within the meaning of the notification dated 31st March, 1956 and assessed it at 2 per cent, as an unclassified item. The assessee felt dissatisfied. It filed an appeal, but failed. It then went up in revision. The Judge (Revisions) affirmed the finding. He held that the coal dust was a different commercial article than coal and could not be included within the word "coal" appearing in entry 33 of the said notification, which exempted coal from sales tax.

3. In Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh, the Supreme Court held that the word "coal" in entry 1 of Part III of Schedule II of the Madhya Pradesh General Sales Tax Act, 1958, included

charcoal. It was held that a sales tax statute, being one levying a tax on goods, in the absence of a technical term or a term of science or art, be presumed to have used an ordinary term as "coal" according to the meaning ascribed to it in common parlance. Viewed from that angle, both the merchant dealing in coal and a consumer wanting to purchase it would regard coal not in its geological sense, but in the sense as ordinarily understood and would include "charcoal" in the term "coal". The Supreme Court cautioned that, while interpreting items in statutes like the Sales Tax Acts, resort should be had not to the scientific or technical meaning of such terms but to their popular meaning or the meaning attached to them by those dealing in them, that is to say, to their commercial sense. In Mahabir Singh Ram Babu v. Assistant Sales Tax Officer [1962] 13 S.T.C. 248, a Single Judge of this Court held that "cinder" is not "coal". It was observed that coal is a mineral which is dug out of the bowels of the earth without anything more being done to it. Cinder, on the other hand, is not coal, because cinder is got only after something has been done to coal, namely, after coal has been burnt. If coal is completely burnt and all combustible property of coal has escaped into the atmosphere, what is left is ashes which are no longer capable of burning. Where all the combustible property of coal has not completely escaped into the atmosphere, the residue, which may still be capable of combustion and which may serve many of the purposes which are served by burning coal, is not coal, but cinder. It was also held that when the Legislature used the word coal" in the notification, it was using that word in the sense in which it is, strictly speaking, used and understood in the English language.

4. It will be seen that "coal" is not a word of art. It is not a scientific terra. It is a popularly known commodity. It has not been found by the authorities below that in the commercial world, coal dust has different uses or is popularly known as a commodity different from coal. Coal dust is also the mineral known as coal, but in a different shape. The various particles have been reduced by friction or use to a very small size so as to render coal into dust. Coal is not treated or processed in order to produce coal dust. It has come in the affidavits that coal dust is sold for burning bricks just as coal is used for such a purpose. It is clear that coal dust has the same combustible property as coal has. It is used for similar purposes as coal. We doubt if, in the popular sense, one would say that coal dust is not the same commodity as coal. In our opinion, coal dust is included within the word "coal" as used in entry 33 of the notification dated 31st March, 1956. We answer the question referred to us in the affirmative and in favour of the assessee. The assessee would be entitled to its costs which are assessed at Rs. 100. The fee of the learned counsel is also assessed at the same figure.,

