
(1989) 08 MP CK 0071
In the Madhya Pradesh High Court
Case No : M.C.C. No. 213 of 1986

Filterco

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 18-08-1989

Acts Referred:

Madhya Pradesh General Sales Tax Act, 1958 — Section 2, 43(1), 43(2)

Citation : (1993) 88 STC 448

Hon'ble Judges : G.G.Sohani, Acting C.J.; R.K. Verma, J

Bench : Division Bench

Advocate : Chaphekar, for the Appellant; D.D. Vyas, Government Advocate, for the Respondent

Judgement

G.G. Sohani, Ag. C.J.

1. The order in this case will also govern the disposal of Miscellaneous Civil Cases Nos. 216, 217, 218, 263, 266 and 268, all of 1986, as the following common questions of law have been referred to this Court for its opinion, by the Board of Revenue, u/s 44(1) of the M.P. General Sales Tax Act, 1958 (hereinafter referred to as "the Act") :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that mere cutting of the trimmings, that is, "chindies" of the compressed woollen felts, into different shapes and sizes, which, in commercial circles, are known as compressed felt components, amounts to manufacture, as defined in Section 2(j) of the M.P. General Sales Tax Act, 1958 and a commercial commodity different from the compressed woollen felts is produced and are, therefore, liable to tax and that these cease to be "cloth" in terms of entry 6 of Schedule I to the M.P. General Sales Tax Act, 1958, so as to be exempt from sales tax ?

(2) Whether, the Tribunal was right in holding that the penalty of Rs. 150 imposed on the applicant u/s 43(1) of the M.P. General Sales Tax Act, 1958, was

legal and proper ?"

2. The material facts giving rise to these references, briefly, are as follows :

The assessees are manufacturers and dealers in compressed woollen felt and felt accessories. In the proceedings for assessment for the relevant years in question, the assessees contended that compressed felt components were exempted under entry 6 of Schedule I to the Act. The assessing authority, however, overruled that contention and also imposed penalty on the assessees. The appeals preferred by the assessees before the first appellate authority as well as before the Board of Revenue were dismissed. Hence, at the instance of the assessees, the aforesaid questions of law have been referred to this Court for its opinion.

3. Before we proceed to appreciate the contentions of the parties, it would be useful to refer to the following observations of the Supreme Court in *Filterco V. Commissioner of Sales Tax* [1986] 61 STC 318 :

"Going by the meaning given in dictionaries as well as by its generally accepted popular connotation "cloth" is woven, knitted or felted material, which is pliable and is capable of being wrapped, folded or wound around. It need not necessarily be material suitable for making garments because there can be "cloth" suitable only for industrial purpose ; but nevertheless it must possess the basic feature of pliability. Hard and thick material, which cannot be wrapped or wound around cannot be regarded as "cloth". We are, therefore, of opinion that the Commissioner was perfectly right in his view that only those varieties of felt manufactured by the appellants,, which satisfy the test of pliability, will constitute "cloth" so as to fall within the scope of entry 6 of Schedule I of the Act."

In view of the aforesaid decision of the Supreme Court, the question as to whether felt manufactured by the assessees can or cannot be held to be "cloth" is concluded. As held by the Supreme Court, only that variety of felt, which satisfies the test of pliability, can be held to constitute "cloth" so as to fall within the scope of entry 6 of Schedule I of the Act.

4. The question for consideration, however, is whether "chindies" or trimmings of such felt as constitute "cloth" in the light of the aforesaid decision of the Supreme Court, would cease to be so as a result of cutting of such felt into different shapes and sizes. The answer to this question depends upon the answer to the question as to whether by cutting or trimming felt, a new product distinct from "felt" comes into existence. In this connection, the following observations of the Supreme Court in *Deputy Commissioner of Sales Tax v. Pio Food Packers* [1980] 46 STC 63 are pertinent :

".....commonly, manufacture is the end result of one or more processes through which the original commodity is made to pass. The nature and extent of processing may vary from one case to another, and indeed there may be several

stages of processing and perhaps a different kind of processing at each stage. With each process suffered, the original commodity experiences a change. But it is only when the change, or a series of changes, take the commodity to the point where commercially it can no longer be regarded as the original commodity but, instead, is recognised as a new and distinct article that a manufacture can be said to take place. Where there is no essential difference in identity between the original commodity and the processed article, it is not possible to say that one commodity has been consumed in the manufacture of another. Although it has undergone a degree of processing, it must be regarded as still retaining its original identity."

In the aforesaid case, the Supreme Court held that pineapple slices must be held to possess the same identity as the original pineapple fruit. In *Commissioner of Sales Tax v. Paper Process Works* [1986] 62 STC 317, the Bombay High Court held that the process of slitting paper did not amount to manufacture. In our opinion, "chindies" or trimmings of felt continue to remain felt and no new product distinct from felt comes into existence.

5. As regards imposition of penalty u/s 43 of the Act, we may refer to the decision of a Division Bench of this Court in *Dadabhoy's New Chirimiri Ponri Hill Colliery Company Private Ltd. v. Commissioner of Sales Tax* [1979] 44 STC 100, where it has been held that where the facts are fully and correctly disclosed, the raising of a legal plea of exemption cannot make the return a false return within the meaning of Section 43(1) of the Act, We respectfully agree with that decision.

6. For all these reasons, our answer to question No. 1 referred to this Court by the Board is that by cutting of "chindies" of the compressed woollen felt into different shapes and sizes, no new commercial commodity different from the compressed woollen felts is produced and that these cuttings would not cease to be "cloth" in terms of entry 6 of Schedule I to the Act if the cuttings are of such felt as would constitute "cloth" in the light of the decision of the Supreme Court in [1986] 61 STC 318 (*Filterco v. Commissioner of Sales Tax*). Our answer to question No. 2 referred to by the Board is that the Board was not justified in holding that the penalty imposed on the assesseees u/s 43(1) of the M.P. General Sales Tax Act, 1958, was legal and proper.

7. References answered accordingly. In the circumstances of the case, parties shall bear their own costs of these references.