**(1969) 01 MP CK 0011**

**In the Madhya Pradesh High Court**

**Case No :** Miscellaneous Civil Case No. 216 of 1967

G.R. Kulkarni APPELLANT

Vs

Commissioner of Sales Tax RESPONDENT

**Date of Decision :** 15-01-1969

**Acts Referred:**
Madhya Pradesh General Sales Tax Act, 1958 — Section 12

**Citation :** (1976) ILR (MP) 291 : (1969) JLJ 381 : (1969) 14 MPLJ 278 : (1969) MPLJ 278 : (1969) 23 STC 469

**Hon'ble Judges :** R.J. Bhave, J;G.P. Singh, J

**Bench :** Division Bench

**Advocate :** M. Adhikari and V.S. Malhotra, for the Appellant; Rama Gupta, Government Advocate, for the Respondent

## Judgement

G.P. Singh, J.

This is a case stated by the Sales Tax Appellate Tribunal (Board of Revenue) referring to us the following question of law :

Whether on the facts and circumstances of the case the assessment at 5 per cent, instead of two per cent, as prescribed by Notification No. 878-613/V/ST dated 31st March, 1963, on the turnover arising out of supply of bricks, chips, rubble, flooring material, balast) stares etc. to the Railways was not in accordance with law?

The facts stated are that the assessee who is a contractor supplied to the Engineering Department of the Railways under a contract bricks, chips, rubble, flooring material, balast etc. The assessee did not submit any return and a notice in Form No. XVI was issued to him. After enquiry, his taxable turnover was determined at Rs. 81,000 and a tax of Rs. 4,000 was assessed. A penalty of Rs. 440 was also imposed for the default in submission of returns. During the assessment proceedings the assessee raised the contention that he should not be assessed at the normal rate of five per cent, but at the concessional rate of two per cent, under the Notification No. 878-613/V/ST dated 31st March, 1963. This notification reads as follows :

In exercise of the powers conferred by Section 12 of the Madhya Pradesh General Sales Tax Act, 1958 (No. 2 of 1959), the State Government hereby exempts in part the class of goods mentioned in column (1) of the Schedule below from the payment of tax so as to reduce it to the rate of tax mentioned in column (2) thereof for the period specified in column (3) and subject to the restrictions and conditions specified in column (4) of the said Schedule :

Schedule
------------------------------------------------------------------------------ Class of goods Reduced Period Restrictions and conditions rate subject to which exemption is granted. (1) (2) (3) (4)
------------------------------------------------------------------------------ All classes of Two per cent. From 1st When sold by a dealer goods specified in of April registered under the M.P. Schedule II of the 1963, to General Sales Tax Act, Madhya Pradesh the 31st 1958 (No. 2 of 1959) to General Sales Tax March the Government of India Act, 1958, for which 1964 or any of its departments the rate of tax (both days for the purpose of official exceeds one per cent. inclusive). use only, against a certificate in writing in the appended form. This reduced rate will not be applicable to sales to Government of India or any of its departments when engaged in a commercial activity and carrying on business.
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It would be seen that the notification on its own terms does not give the benefit of reduced rate of tax "to sales to Government of India or any of its departments when engaged in a commercial activity and carrying on business." The claim of the assessee to get the benefit of the notification was negatived on the ground that as Railways are engaged in a commercial activity and carry on business, sales made by the assessee fell within the exception contained in the notification. On an application made by the assessee, the question of law which we have already set out has been referred to us for our answer.

The argument of the learned counsel for the assessee is that Railways are not engaged in a commercial activity and do not carry on business and at any rate the Engineering Department of the Railways is not one engaged in a commercial activity and does not carry on any business and, therefore, the sales made to the Engineering Department did not fall within the exception contained in the notification.

It cannot be disputed that the Railways are engaged in a business activity. The word "business" is a word of very wide import and "means practically anything which is an occupation as distinguished from pleasure": (Halsbury''s Laws of England, 3rd Edition, Vol. 38, p. 10). The point that the Government of India is engaged in a business activity in running the Railways is concluded by the decision of the Supreme Court in Union of India (UOI) and Another Vs. Ladu Lal

 

Jain, , where their Lordships observed :

Running of railways is a business. That is not denied. Private companies and individuals carried on the business of running railways, prior to the State taking them over. The only question then is whether the running of railways ceases to be a business when they are run by Government. There appears to be no good reason to hold that it is so. It is the nature of the activity which defines its character. Running of railways is such an activity which comes within the expression ''business''. The fact as to who runs it and with what motive cannot affect it.

The next point is whether the running of railways is also a commercial activity. The word "commerce" has different shades of meaning. In conventional sense "wherever capital is to be laid out on any work, and a risk run of profit or loss, it is a commercial venture": M''Kay v. Rutherford (1848) 6 Moore P.C. 413, p. 425. Then in another sense it means "exchange of merchandise especially on a large scale between different countries or districts": (Reader''s Digest Dictionary, Vol. 1, p. 186). But in this sense commerce includes not only "the purchase, sale and exchange of commodities, but also the instrumentalities and agencies by which it is promoted and the means and appliances by which it is carried on, and the transportation of persons as well as goods both by land and sea": (Black''s Law Dictionary, p. 336). And, in industrial legislation an activity is commercial when it is "systematically and habitually undertaken for production or distribution of goods or for rendering material services to the community or any part of the community with the help of employees in the manner of a trade or business": Dr. Devendra M. Surti Vs. The State of Gujarat, , p. 67. In our opinion, the word "commercial" is used in the notification in the conventional sense and as in running the railways capital is laid out and a risk run of profit or loss, the activity is commercial. But even if the word commerce be taken in the two other meanings indicated above, the railways satisfy the requirement of those meanings. The Railways are engaged in transportation of goods and passengers between different States and districts in the country; and the activity is systematically undertaken for rendering material services to the community with the help of employees in the manner of a trade or business. Thus whatever meaning be given to the word "commercial" there can be no doubt that the Railways are engaged in a commercial activity. "The carriage of passengers and goods" said Denning, L.J., in Tamlin v. Hannaford [1949] 2 All E.R. 327, is a commercial concern." In our opinion, the Railways are engaged in a commercial activity and carry on business. That is, however, not the end of the matter, for the point still remains to be considered that the sales were made to the Engineering Department of the Railways which is not a department engaged in commerce or business. The word "department" as used in the notification refers to the department of the Government of India. A department in this context is a unit or branch of the Union Government under the political charge or control of a Minister: Ram Chandra v. District Magistrate AIR 1952 All, . The Railways constitute a unit or branch of the Governmental activity under the charge of a

 

Minister and this forms a department of the Government. Branches of this department, such as the Engineering Department of the Railways, do not constitute a separate unit or branch of the Government and cannot be properly regarded as a department of the Government of India in the sense the word department is used in the notification. For purposes of the notification, even when a sale is made to a branch of the Railways department, the sale will be taken to be a sale made to the Railways department, as the branches of the department have no separate existence. In our opinion, the sales by the assessee in the instant case, though made to the Engineering Department of the Railways, have to be regarded for purposes of the notification as sales made to the Railways department of the Government of India, which is engaged in a commercial activity and carries on business. The sales, therefore, fell within the exception contained in the notification and were rightly not assessed at the reduced rate of tax fixed by it.

For the reasons indicated above, we answer the question referred to us in the negative. There will be no order as to costs of this reference.