(1988) 07 RAJ CK 0037

In the Rajasthan High Court

Case No : Sales Tax Revision No. 189 of 1987

Hemraj Udyog APPELLANT

Vs

Commercial Taxes Officer RESPONDENT

Date of Decision : 08-07-1988

Acts Referred:
Rajasthan Sales Tax Act, 1954 — Section 15

Citation : (1989) 73 STC 243

Hon'ble Judges : S.C. Agrawal, J

Bench : Single Bench

Advocate : G.S. Bapna, for the Appellant; V.K. Singhal, for the Respondent

Final Decision : Allowed

Judgement

S.C. Agrawal, J.—This revision is filed u/s 15 of the Rajasthan Sales Tax Act, 1954 read with Section 13(10) of the Rajasthan Sales Tax (Amendment) Act, 1984. Earlier there was a reference by the Board of Revenue, wherein the following question has been referred for the opinion of this Court:

Whether, on the facts and in the circumstances of the case, the tin containers sold by the assessee along with the hydrogenated vegetable oil/ ghee but charged separately in the bills can be treated as empty tins and are chargeable to sales tax at the rate of 3 per cent as per notification dated 27th March, 1971 or at the rate of 7 per cent as goods not otherwise provided for.

2. It appears that the aforesaid question also came up for consideration before this Court in Hemraj Udyog v. Commercial Taxes Officer, ''E'' Circle, Jaipur [1987] 67 STC 229. This Court decided the said question in favour of the assessee and held that where packing material was sold separate from the goods packed and charged separately, then the rate prescribed for packing material was applicable in taxing sales of the said packing material and that there was an implied agreement in this case to sell the empty tins along with the vegetable oil contained therein and they were charged separately and tins were, therefore,

taxable at the rate of 3 per cent, which was the rate applicable on the packing material and not at 7 per cent, the rate applicable to vegetable oil. The said case was also between the same parties, namely, the applicant-assessee and the Commercial Taxes Officer. The present case is fully covered by the said decision and in view of the said decision the revision is allowed and it is held that the Board of Revenue was not justified in holding that the empty tins used as packing material for vegetable oil were also to be taxed at 7 per cent instead of 3 per cent under the notification dated 27th March, 1971. The assessing authority is directed to make a fresh assessment with regard to the sales tax payable on the packing material. There will be no order as to costs.

