

(1986) 04 MP CK 0027
In the Madhya Pradesh High Court
Case No : M.P. No. 57 of 1982

K.P. Sons, (M/S) Katni

APPELLANT

Vs

Sales Tax Officer, Katni and another

RESPONDENT

Date of Decision : 24-04-1986

Acts Referred:

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

Citation : (1986) JLI 725

Hon'ble Judges : J.S. Verma, Acting C.J.; B.M. Lal, J

Bench : Division Bench

Advocate : B.L. Nema with M.J. Bajaj, for the Appellant; S.L. Saxena, Dy. Advocate General, for the Respondent

Final Decision : Allowed

Judgement

B.M. Lal, J.—The order passed in this petition shall also govern the disposal of connected Misc. Petition No. 1289 of 1982 (M/s K P. Sons, Katni v. M C. Kuril & 2 others).

2. By this Petition under articles 226 and 227 of the Constitution of India, the petitioner firm, which is a dealer, registered under the M. P, Sales Tax Act, 1958 (hereinafter referred to as the Act) and Central Sales Tax Act respectively, challenges the constitutionality of the amendment introduced in section 2 (o) of the Act by adding an explanation w e. f. 1-9-1976 by Act No. 48 of 1976 whereby the definition of "Sale Price" has been made exhaustive so as to include the value or cost of packing material or container in the Sale Price of goods when such goods are sold along with packing material or container, irrespective of whether such price or cost or value is charged separately or not.

3. The petitioner firm further challenges the notification dated 1-10-1978 (Annexure-D) issued under sub-section (5) of section 8 of the Central Sales Tax, Act 1956. (No. 74 of 1959) on the ground that the said notification is contrary to the provisions of section 8 (5) of the 1956 Act. The petitioner firm also

challenges the demand notice vide Annexure-B and Annexure-C by which Rs. 8,515/- and Rs. 23,322.80 towards M. P. Sales Tax and Central Sales Tax respectively have been demanded, on the ground that the petitioner firm has reasonably claimed deduction on account of tax paid on Bardana (gunny bags) in the return. It also challenges the notices which were issued by the respondents vide Annexure-E and F by which the petitioner was asked to show cause as to why its registration certificate should not be cancelled.

4. The case of the petitioner is that it is a registered dealer under the Act as well as under the Central Sales Tax Act, 1956. It carries on the business of manufacturing and also of sale of Lime which is sold in jute (gunny) bag and polyphone bag packing for cheap and convenient transportation of Lime.

5. The petitioner firm purchases Bardana i e., packing material from registered dealers in Madhya Pradesh and utilises the same in packing Lime for purposes of sale after paying Sales Tax on it,

6. The petitioner firm as an assessee filed return for three quarters i. e. for the periods 8-11-1980 to 4-2-1981, 5-2-1981 to 4 5-1981 and 5-5-1981 to 31-7-1981 under the provisions of the Act. While filing return the petitioner firm has deducted the value of packing material from the total value of Lime and for this reason did not pay sales tax on the value of packing material (Bardana) for which the Sales Tax Officer, Respondent No. 1 issued notice to the petitioner asking to deposit the Sales Tax on the value of the packing material as well on the ground that there is not separate sale of packing material i. e. Bardana.

7. The petitioner firm as stated has computed the taxable turnover as per provisions of the Act by deducting the value of packing material Bardana which had been purchased by the firm from a registered firm after paying tax @ 5%,

8. Similarly, the petitioner firm under the provisions of Central Sales Tax Act had computed taxable turnover as per provision of section 8 (5) of the Central Sales Tax Act by deducting the value of tax-paid Bardana.

9. However, while advancing the arguments on behalf of the assessee firm, it has been submitted that the amendment introduced by Explanation to section 2 (o) of the Act is illegal, void and without authority of law as it is discriminatory in nature in as much as it subjects the tax-paid packing material which is contrary to the scheme of the Sales Tax Act. It is further submitted that the notices issued by the respondent No. 1 demanding Rs. 8,515/- and Rs. 2,322 80 are illegal, void and without jurisdiction and therefore, deserve to be quashed by this Court.

10. The return submitted on behalf of the Revenue stated that the amendment in section 2 (o) of the Act does not suffer from any vices of illegality. It is also not ultra vires on the ground of legislature's competence.

11. Regarding the provisions of section 8 (5) of the Central Sales Tax Act, 1956, it is contended that it does not prohibit giving of such benefit, if the tax is paid on packing material.

12. After hearing the rival contentions of the assessee and the Revenue, we reached the conclusion that it is a case of interpretation and construction of the amendment of Explanation clause appended to section 2 (o) of the Act. The assessment could be on the basis of its construction. It is not a case that amendment introduced suffers from any vices, and on this count it deserves to be declared ultra vires.

13. Therefore, the contention of the assessee firm that the amendment as has been made to section 2 (o) of the Act i. e. its Explanation clause is discriminatory in nature in as much as it subjects the tax-paid packing material to Sales Tax and as such it is contrary to the scheme of the Sales Tax Act, has no substance.

14. The whole scheme of section 2 (o) of the Act and its Explanation Clause is that, it is a single-point tax but not a multi-point tax. The Explanation added to section 2 (o) of the Act entails taxation on packing material (Bardana) on which tax has not been paid at the time of purchase. Therefore, where on packing material Sales Tax is paid and the packing material is not sold separately but the goods are sold in packing material and the packing material has not lost its original identity transforming in enhancing the price of the goods by virtue of the use of the packing material, then the formula for assessment would be as under :-

Turnover-Taxpaid Sale price i. e. Sec. 2 (r)-Sec. 2 (t) Sec. 2 (o) and, as such, this sale price alone is assessable to Sales Tax.

15. Hence, the newly added explanation to section 2 (o), in our opinion, has to be read in the context with section 2 (v) (ii) of the Act and this makes the position clear that while assessing total turnover pertaining to any period the value of tax paid goods are liable to be deducted. The definition of Sale price as given u/s 2 (o) of the Act is only for the purpose of determining the tax and hence, it is to be given effect to while interpreting that provision in the context of other relevant definition provided u/s 2, i. e. section 2 (rr), 2 (r), 2 (t) and 2 (o) of the Act, and therefore, the Explanation appended to section 2 (o) normally be so read as to harmonies and clear up any ambiguity in the main section and should not be so construed as to widen the ambit of original provision. In *Hiralal Rattanlal Vs. State of U.P. and Another etc. etc.*, while interpreting the explanation clause added to section 3-D of the U. P. Sales Tax Act 15 of 1948) it has been held that-

"there is no doubt that taxing provision has to be strictly interpreted if a legislature intends to impose any tax, that intention must be made clear by the language employed in the statute but that does not mean that the provision in a taxing statute should not be read reasonably".

16. It is true, as argued on behalf of the revenue that, in a tax statute one has to look merely as to what is clearly said. There is no room for any intent. There is no equity about a tax. But as discussed above, the Explanation appended to section 2 (o) of the Act explains that, it is a single-point tax and not a multi-point

tax and by this interpretation alone the definition in section 2 (rr) could be harmonised that tax-paid goods could not be deducted from the total turnover to find out the real sale-price for assessment of the Sales Tax.

17. In *Shree Sajjan Mills Ltd. Vs. Commissioner of Income Tax, M.P., Bhopal and Another*, Their Lordships of the Supreme Court, while interpreting the taxing statute laid down-

"the principle that fiscal statutes should be strictly construed does not rule out the application of the principles of reasonable construction to give effect to the purpose of intention of any particular provision as apparent from the scheme of the Act, with the assistance of such external side as are permissible under the law".

Therefore, though the tax in statute has to be construed strictly, yet, nonetheless, it must be borne in mind that the construction does not suffer from any vices of rigid rule of interpolation; on the other hand, the statute after taking assistance of such internal and external aid of the relevant provisions of the Act could be harmoniously interpreted as in the instant case, in the light of the relevant provisions of the Act, i. e. section 2 (rr), 2 (r), 2 (t) and the principal provision of section 2 (o) of the Act. Then, the position emerges from the Explanation appended to section 2 (o) is that the amendment is nothing but an attempt to rationalise the rate of tax with a view to mitigate the difficulties of the trading community.

18. In *Kukreja Udyog v. Stand & others* (1985) V. K. N. 475 Division Bench of this Court held that the goods sold duly packed will also amount to sale of the packing material even in the absence of implied or express contract for the same. But the price or cost or value of such packing material is deductible if it was tax-paid. This is how the Explanation appended to section 2 (o) of the Act has been interpreted in the light of section 2 (r) (ii) of the Act.

19. From the discussions aforesaid it is clear that there is no question involved of Constitutional invalidity of the amendment incorporated u/s 2 (o) of the Act, but only a question of its construction and interpretation is involved.

20. In the result, this petition is allowed to the extent that annexure-B, Annexure "C" and Annexure-F are hereby quashed and it is directed that fresh assessment be made on the basis of the construction of section 2 (o) of the Act in adherence to the aforesaid discussion. There shall be no order as to costs. Security amount, if any, deposited by the petitioner shall be refunded.