(2003) 02 MP CK 0078

In the Madhya Pradesh High Court

Case No : Writ Petition No. 237 of 2003

Mahankal Agencies APPELLANT

Vs

State of M.P. and Others RESPONDENT

Date of Decision : 24-02-2003

Acts Referred:

Citation : (2003) 4 MPLJ 569 : (2004) 134 STC 43

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Advocate : K.N. Puntambekar, for the Appellant;

Final Decision : Dismissed

Judgement

A.M. Sapre, J.

Having heard the learned counsel for the petitioner and having perused the record of the case, I find no substance in the writ. It thus fails and is dismissed in limine.

The question involved in this writ is under what entry of Madhya Pradesh Commercial Tax Act, the petitioner''s product is to be taxed ? The petitioner is engaged in the business of sale of what is known in the market "mosquito and insect repellents". According to the petitioner the product being regarded as insecticide under the Insecticide Act, it be taxed as insecticide under the Commercial Tax Act. The departmental authorities (assessing as well as revisionary one) have taxed the product under the entry "Mosquito and insect repellants".

These entries in the Act from time to time reads as under in Schedule II [Part IV at item No. 4] :

Mosquito and insect repellants such as Jet Mat, Good Knight Mat, etc., 12 per cent April 1, 1999 to December 31, 1999.

Mosquito and insect repellants such as Jet Mat, Good Knight Mat, etc., 12 per cent January 1, 2000 to March 14, 2000.

Mosquito and insect repellants such as Jet Mat, Good Knight Mat, etc., 12 per cent March 15, 2000 to March 31, 2000.

In my opinion, the assessing authorities are right in taxing the petitioner''s product under aforementioned entry--it being the only and rather proper entry for taxing the petitioner''s product. It is a settled principle of taxing statute, that when there is a specific entry for taxing a particular product by its very name prevalent in the commercial market, then it is only under that entry, the concerned product has to be taxed and not in any general or residuary entry. In other words, the general or/and residuary entry can be brought in aid only when there is no specific entry available under the Act. This principle will squarely apply to the facts of the case.

It is not in dispute that petitioner sells mosquito repellant by and under the trade name "Kachhua Chhap Agarbatti". It is one and the same thing like such as Jet Mat, Good Knight Mat. Once the Legislature mention in specific words the names of some other brand and then uses the word "etc." in the entry then it necessarily follows that all products alike will be taxed under the same entry. It cannot be disputed that the product of petitioner is alike Jet Mat and Good Knight--the difference being only in trade name. One company sells their product, by name Kachhua Chhap and other sells it by name Jet Mat or Good Knight. What is common in all these product is their object and use by a consumer.

Learned counsel for the petitioner then made attempt to rely upon one decision reported in [2000] 25 TLD 103 (annexure A-4). In my opinion, the said case is distinguishable on its facts and does not help the petitioner at all. Indeed its headnote does not give the correct version of what is actually decided in the case. The perusal of decision (photo copy filed by the petitioner) would show that the basic question involved in the case was relation to reassessment of the case relating to dealer and secondly it related to the year 1992. In the present case the concerned entries relates to the year 1999 onwards as has been rightly taken into account by the revisionary authority in its order dated January 8, 2003 (annexure A/7). In other words, this Court had no occasion to examine the issue as to which entry will apply.

The next submission of learned counsel for the petitioner was that no adequate opportunity was granted to the petitioner. I do not agree to this submission. This issue has been dealt with by the revisionary authority in the impugned order dated January 8, 2003 and rightly repelled. Even otherwise, I do not find any basis for this submission. The petitioner duly appeared before the assessing officer and participated in the proceeding. In substance there did not arise any case of prejudice on account of any inadequate opportunity, so as to set aside the orders of assessments. The submission is more for the sake of submission and not that of substance.

In view of aforesaid discussion, the petition fails and is dismissed in limine.

