(1997) 04 KAR CK 0022

In the Karnataka High Court

Case No : Sales Tax Revision Petition Nos. 77 to 81 of 1995

M/s. Mallappa Mineral Industries, Hunsur APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 02-04-1997

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 23(1), 5(3)(A)

Citation : (1999) 47 KarLJ 331

Hon'ble Judges : B. S. Sreenivasa Rao, J;S. Rajendra Babu, J

Judgement

S. Rajendra Babu, J.-These five matters pertain to the assessment periods 1982-83 to 1984-85 and for the periods 1987-88 and 1988-89. So far as the first three years are concerned, the original assessments made were subjected to revisional proceedings initiated by the Deputy Commissioner of Commercial Taxes and he set aside the assessments and remanded to Assessing Officer to make a fresh order with a direction to examine whether the goods dealt with by the petitioner are covered by Entry 79 of the II Schedule to the Karnataka Sales Tax Act as it stood then under the heading ''chemicals of all kinds'' and thereafter bring the same to tax. Thereafter notices as contemplated under Form 31-A were issued by the Assessing Officer in respect of these years to which detailed replies were filed by the petitioner. He held that the lime is liable to tax as ''chemical'' relying on the decision of the Gujarat High Court in State of Gujarat v Shah Bhagwanji Manekchand, (1982)50 STC 147 (Guj.). The Assessing Authority also brought to tax the turnover relating to the value of the gunny bags and the transportation charges. So far as the remaining two periods of assessments are concerned identical findings have been given though they are subject-matters of fresh assessment. Appeals against the same having failed, the matter was carried in second appeals to the Tribunal. The Tribunal took the view that the goods dealt with by the petitioner could be brought under Entry 79 of the II Schedule to the KST Act and the contention raised in regard to the levy of tax on loading and the contention that packing and lorry hire charges are post-sale expenses was rejected by noticing that the claim for exemption under Rule 6(4)

(f) of the KST Rules was not correct. Hence these petitions.

2. Sri Ramabhadran, learned Counsel for the petitioner submitted that the scope of remand made by the Deputy Commissioner in revision was very limited and therefore it was not permissible for the Assessing Authority to have examined the matter afresh and included certain other items which are not dealt with by the Revisional Authority. This aspect was also dealt with by the Tribunal and it took the view that on the language adopted by the Revisional Authority in remanding the matter, it is clear that it was an open order of remand and therefore every aspect of the matter could be dealt with by the Assessing Authority. This view is fully supported by the learned Government Pleader.

3. A perusal of the order made by the Revisional Authority will disclose that the provocation or the basis for setting aside the order of assessment were the defects noticed by him. However, the Revisional Authority did not limit the scope of inquiry on remand to these aspects. He stated that the assessment order is set aside and the matter is remanded for fresh disposal in accordance with law after verification of facts. Therefore, there was no limit or any rider on the power to be exercised by the Assessing Authority. In that view of the matter we do not think there is any substance in the first contention urged on behalf of the petitioner.

4. It is next urged by Sri Ramabhadran that the goods dealt with by the petitioner are dolomite the chemical contents of which is magnesium oxide and lime the chemical contents of which is calcium oxide. He submitted that chemicals can be broadly classified into three categories as noticed in the decision in Manekchand''s case, supra, to which we have adverted to earlier such as firstly basic chemicals, secondly intermediary chemicals which are used for producing other finished articles and thirdly end products. He submitted that the decision in Manekchand''s case, supra, is clearly an authority for proposition that goods to be classified as chemicals within the meaning of Entry 79, are intermediary chemical products which is a produce for other finished articles. To reach this conclusion the Gujarat High Court relied on another decision of the same High Court in Gujarat Distributors v State of Gujarat, (1975)36 STC 116 (Guj.), wherein an expression ''chemicals'' were explained when the entry thereto contemplated was ''dyes'' and ''chemicals''. It was stated that on the principle of noscitur a sociis, the dye is an intermediary chemical which can be utilised as such and since the narrower word ''dyes'' determines the nature of the wider word ''chemicals'' the word ''chemicals'' should take its meaning from the category of chemicals which a dye represents. On that basis, the Gujarat High Court had taken the view that the chemicals in the context would only mean intermediary products. In the present case the entry being different that decision may not have any application.

5. We need not subject ourselves to any lexicographical or technological excursion to delineate the meaning of the chemical for the matter will have to be decided on the basis of the manner in which the goods that are dealt with by

petitioner are understood in the commercial parlance. No doubt, it is true that many goods dealt with commercially can be ''chemicals'' but whether they are treated as ''chemicals'' in the market by the buyer and the seller is a question that has to be considered by us. The goods that are dealt with by the petitioner are dolomite and lime which are used only for the purposes of conditioning the agricultural land. Though lime or dolomite as such may be used for several chemical processes in the present case what is put forth in the case by the petitioner and dealt with by the authority is that these goods are used only for the purpose of conditioning the soil to accept fertilisers. In the same manner as fertilisers, the goods in question are not dealt with as chemicals. They are not involved in any process to produce an end product nor which by itself be called as chemical to have a chemical effect. We think it just as any other fertiliser is required for effective conditioning the soil the goods in question are used to facilitate acceptance of fertilisers by soil. We do not think that the authorities were justified in holding that lime or dolomite dealt with by the petitioner could be treated as chemicals for purposes of Entry 79 of II Schedule to the KST Act. Therefore, the finding recorded by the Assessing Authority, the First Appellate Authority and the Tribunal on this aspect of the matter shall stand set aside.

6. It is next contended by the learned Counsel for the petitioner that the packing charges, loading and hiring charges could not have been brought to tax. The Tribunal considered this matter and found that the petitioner had failed to establish that there were contracts for charging separately the packing, freight and the loading charges. Sri Ramabhadran wanted to point out to us that the view taken by the Tribunal is incorrect on this aspect by a reference to certain invoices. We do not think we can embark upon an investigation on a question of fact when all the authorities have taken an identical view that the expenditure incurred in relation to the packing, loading, freight charges are not post-sale expenditure on the well settled principles. We do not think we can take another view to give relief to the petitioner. So far as that aspect of the matter is concerned, the view taken by the Authorities shall stand affirmed.

7. Petitions are thus partly allowed as indicated above and assessments have to be brought in conformity with this order.

