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**(1984) 02 P&H CK 0039**

**In the Punjab And Haryana At Chandigarh**

**Case No : General Sales Tax Reference No. 5 of 1977**

Nilokheri Bone Mills

APPELLANT

Vs

The State of Haryana

RESPONDENT

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**Date of Decision :** 01-02-1984

**Acts Referred:**

Central Sales Tax Act, 1956 — Section 8

**Citation :** (1985) 58 STC 359

**Hon'ble Judges :** Sukhdev Singh Kang, J;M.R. Sharma, J

**Bench :** Division Bench

**Advocate :** Bhagirath Dass and Romesh Kumar, for the Appellant; B.S. Gupta, for Advocate-General, for the Respondent

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## **Judgement**

Sukhdev Singh Kang, J.—The assessee, M/s. Nilokheri Bone Mills, Nilokheri, District Karnal, is a partnership firm registered under the Central Sales Tax Act (for short, "the Central Act") and the Haryana General Sales Tax Act (for brevity, hereinafter referred to as the "State Act"). It is engaged in the business of manufacture and sale of bone-meal. For the year 1972-73, the assessee returned a total turnover of Rs. 3,46,800.50 and claimed exemptions on account of sales in the course of export of goods worth Rs. 2,47,161.50. After excluding a sum of Rs. 450 on account of sale made to a registered dealer in Haryana, the Assessing Authority disallowed the claim of the assessee for exemption. The assessee went up in appeal and raised two contentions : (i) that the order of the Assessing Authority, holding that the sale of bone-meal of the value of Rs. 2,47,161.50 was not in the course of export out of the territory of India, was illegal and untenable and (ii) that bone-meal was covered by the expression "fertilizer" and was exempt under the State Act, and therefore, the inter-State sale of this commodity would not be exigible to Central sales tax. The Deputy Excise and Taxation Commissioner rejected both the pleas raised before him and affirmed the findings of the Assessing Authority. Still dissatisfied, the assessee filed second appeal before the Sales Tax Tribunal, Haryana.

2. The Tribunal also held that the sales were not in the course of export outside the territory of India but were merely inter-State transaction. On the second point, the Tribunal held that it was for the assessee to prove that the entire quantity of bone-meal sold by it had been actually sold for use as fertilizer. Since at no stage the assessee had contested the finding of the Assessing Authority that the entire quantity of bone-meal had been sold in the course of inter-State trade and commerce for non-agricultural purposes, it is not entitled to exemption on the ground that it was fertilizer. The assessee made a petition u/s 42 of the State Act requiring the Sales Tax Tribunal to refer the questions of law arising out of the order of the Sales Tax Tribunal dated February 26, 1975. The Tribunal has submitted the statement of the case before us and has framed the following questions of law for our opinion :

(1) Whether the sales of the value of Rs. 2,47,161.50 were not in the course of export in view of the fact that the goods had been sold F. O. B. P. B. T. N. panten Bunder to the two purchasers of Bombay ?

(2) Whether the property in the goods sold in the course of export did not pass after the goods had crossed the customs frontiers of India ?

(3) Whether bone-meal was not fertilizer and exempt from the Central Sales Tax Act because of the mention of fertilizer in Schedule B of the Punjab General Sales Tax Act as applicable to Haryana during the relevant period ?

(4) Whether the department was not bound to bifurcate the sales of bone-meal used as a fertilizer as distinct from its use for other purposes ?

3. It is fairly conceded by the learned counsel for the assessee that questions Nos. (1) and (2) stand concluded against it and in favour of the Revenue by the Supreme Court decisions in *Serajuddin and Others Vs. The State of Orissa*, and *Manganese Ore (India) Ltd. Vs. The Regional Assistant Commissioner of Sales Tax, Jabalpur*, . Respectfully following the above two decisions, we answer questions Nos. (1) and (2) against the assessee and in favour of the Revenue.

4. By entry No. 44 in Schedule B of the Punjab General Sales Tax Act (as applicable to the State of Haryana at the material time) fertilizers except oilcakes were exempt from sales tax. u/s 8 of the Central Act, goods which were not exigible to sales tax under the State Act were exempted from Central sales tax also. In finding out the true meaning of an expression used in the sales tax law the Court has not to refer to dictionary but to ascertain the meaning ascribed to it in common parlance. In a taxing statute, words of every day use must be construed not in their scientific or technical sense but as understood in common parlance. Reference may be made to *Endupuri Narasimham and Son Vs. The State of Orissa and Others*, , *Motipur Zamindary Co. (P) Ltd. Vs. The State of Bihar*, , *Jugal Kishore Brij Mohan v. State of Punjab* [1963] 14 STC 469 , *Avadh Sugar Mills Ltd. Vs. The Sales Tax Officer, Sitapur and Another*, and *Porritts and Spencer (Asia) Ltd. Vs. State of Haryana*, .

5. Bone-meal is used as a fertilizer is not denied by the learned counsel for the respondents. Even the Sales Tax Tribunal has noticed that the Director of Agriculture, Punjab, in 1960 had issued instructions to the effect that dealers in bone-meal were required to take licence for export as bone-meal was a fertilizer. In *Yasin Bone Mills v. State of U. P.* [1980] 46 STC 112 it has been held that bone-meal is a fertilizer. They included the report of the Directorate of Marketing and Inspection, Ministry of Food and Agriculture, Government of India. In *Standard Cyclopedia of Modern Agriculture, Volume II* (page 185), a distinction has been drawn between bone-meals and bone-dusts. According to Sri Swaraj Prakash, State Level Leather Officer, Punjab Khadi and Village Industries Board, Chandigarh, raw bone is as good a fertilizer as bone-meal and there is no difference in the properties of raw bones and crushed bones. Sri K. V. Raman, Head of the Department of Soil Science College of Agriculture, U. P. Agricultural University, Pantnagar, has however not gone so far and has confined himself to bone-meal).

6. A Full Bench of the Madhya Pradesh High Court in *Ratlam Bone & Fertilizer Co. v. State of M.P.* [1975] 35 STC 132 (F.B) has held that bone-meal to be a fertilizer and it was observed as under :

The above information will show that all crushed bones of a size less than 3/23 inch fall under the description of bone-meal. This makes it clear that all powdered bones properly so called can be described as bone-meal and used as fertilizer.

7. The Sales Tax Tribunal and the authorities have not allowed exemption on the sales of bone-meal on the ground that the assessee had failed to prove that the entire quantity of bone-meal sold by it had been actually sold for use as fertilizer. Before us also, learned counsel for the respondents has argued that in order to take the benefit of exemption the assessee had to establish that the bone-meal sold was to be used as a fertilizer. Since he had failed to do so, he was not entitled to any exemption. In support of his contention, Mr. Gupta has relied upon a decision of the final Court in *State of U.P. and Others Vs. Indian Hume Pipe Co. Ltd., and Yasin Bone Mills*" case [1980] 46 STC 112.

8. We have carefully perused these two judgments. In our view, they do not help Mr. Gupta.

9. In the first case, the question was as to whether hume pipes were sanitary goods and fittings. It was observed by their Lordships that in order to determine this question the expression "sanitary fittings" had to be construed in the popular sense of the term as it was used in every day life. Thus construing, the hume pipes which were generally laid underground and are extremely heavy could not be brought in use in lavatories, urinals or bath-rooms. Here the user of the goods has been taken note of to find as to what is popularly understood by sanitary fittings. It was not solely on the test of user that the hume pipes were not held to be sanitary fittings. In any case, this was a decision rendered by a Bench of

two Judges. In *Porritts and Spencer (Asia) Ltd. Vs. State of Haryana*, a Bench of three Honourable Judges did not accept the theory of user of a commodity to determine its character for the purpose of levy of tax. It was observed as under :

When yarn, whether cotton, silk, woollen, rayon, nylon or of any other description or made out of any other material is woven into a fabric, what comes into being is a "textile" and it is known as such. The method of weaving adopted may be the warp and woof pattern, as is generally the case in most of the textiles, or it may be any other process or technique. What is necessary is no more than weaving of yarn and weaving would mean binding or putting together by some process so as to form a fabric. Moreover a textile need not be of any particular size, strength or weight. It may be bleached or dyed. The use to which it may be put is also immaterial and does not bear on its character as a textile. It can be used even for industrial purposes.

10. In view of this clear enunciation of law by a larger Bench in *Porritts and Spencer (Asia) Ltd. Vs. State of Haryana*, the observations in *State of U.P. and Others Vs. Indian Hume Pipe Co. Ltd.*, do not hold the field. It is interesting to note that Bhagwati, J., who presided the two Judges' Bench in *State of U.P. and Others Vs. Indian Hume Pipe Co. Ltd.*, headed the Bench of three Judges decided *Porritts and Spencer (Asia) Ltd. Vs. State of Haryana*, and the judgment has also been written by him. In *Yasin Bone Mills* case [1980] 46 STC 112, it was held that crushed bones of size 3/8" x 3/4" manufactured and exported by the assessee were held to be taxable as bones. They were not treated to be bone-meal. So this authority does not help Mr. Gupta. So we are of the considered view that it was not incumbent upon the assessee to prove and establish that the bone-meal sold by it was in fact used as a fertilizer. Law does not require any such proof. If a commodity is included in entry Schedule B of the State Act then it stands exempted from the levy of sales tax irrespective of the use to which that commodity is to be put by the purchaser after it has been sold by the dealer.

11. We answer question No. (3) in affirmative, in favour of the assessee and against the Revenue.

12. In view of our answer to question No. (3), no answer is needed for question No. (4). No costs.