(1989) 11 MP CK 0028

In the Madhya Pradesh High Court

Case No : M.C.C. No. 495 of 1986

Parmali Wallace Ltd. APPELLANT

Vs

Commissioner of Sales Tax RESPONDENT

Date of Decision : 02-11-1989

Acts Referred:
Central Sales Tax Act, 1956 — Section 8A(1)

Citation : (1991) 81 STC 440

Hon'ble Judges : D.M. Dharmadhikari, J;B.C. Verma, J

Bench : Division Bench

Advocate : S.C. Chaturvedi, for the Appellant; Govt. Advocate, for the Respondent

Judgement

B.C. Verma, J.—At the instance of the dealer, Parmali Wallace Ltd., Bhopal, the Board of Revenue has referred the following question to this Court for answer :

"Whether, in the facts and circumstances of the case, the sale price of Rs. 21,699 could be included in the taxable turnover of the applicant when the goods were returned by the purchaser on the ground that they were not according to the specifications stipulated by the purchaser after the period of six months as stipulated in Section 8A(1)(b)(ii) of the Central Sales Tax Act, 1956 ?"

2. Relevant facts are that the applicant, Parmali Wallace Ltd., is a registered dealer and deals in the manufacture of wooden parts of certain electrical machines. These are made to orders according to specifications desired by the purchasers. One of the terms of the deal between the applicant-dealer and the purchasers of those parts is that if the parts manufactured and sold by the applicant to those purchasers do not conform to the specifications, they shall be returned to the applicant. The applicant''s contention is that the value of such returned goods is Rs. 21,699. The contention is that this should not have been included in the applicant''s turnover as according to it the sale did not materialise, the goods having been rejected by the purchasers. The assessing authority did not accept the dealer''s contention. The first appellate court also

rejected this contention holding that since the goods sold to the purchasers were not returned for about a period of one year, the sales must be deemed to be complete. The second appellate court also rejected the dealer''s contention. It held that it was well for the applicants to have contested the return of goods and should not have taken back the same from the purchasers. Since the applicant failed to do so he was not entitled to any relief in view of the provision of Section 8A(1)(b)(ii) of the Central Sales Tax Act. It is then that this reference has been made at the instance of the dealer.

3. Shri S.C. Chaturvedi, learned counsel for the applicant-dealer, reiterated the contention raised before the first and second appellate courts and submitted that the reference must be answered in favour of the dealer. "Sale" u/s 2(g) of the Central Sales Tax Act is defined to mean any transfer of property in goods by one person to another for cash or for deferred payment or for any other valuable consideration, and includes a transfer of goods on the hire-purchase or other system of payment by instalments but does not include a mortgage or hypothecation of or a charge or pledge on goods. Obviously, the definition is wide enough to include the nature of transaction involved in the present case. It is clear that the property in goods was entitled to be transferred as soon as the goods were delivered to the purchasers against price or even against deferred payment. The agreement between the dealer and the purchaser for return of goods in future if they did not conform to the specifications would not take the transactions out of the ambit of the term "sale" as used in the Central Sales Tax Act. The real question, however, is whether on the return/rejection of the goods on the ground that there is no conformity to the specifications, the dealer is entitled to deduct the value of the goods so returned or rejected in determining the turnover. Section 8A of the Central Sales Tax Act contains the permissible deductions from the aggregate of sale price while determining a dealer''s turnover. Clause (b) of Sub-section (1) of Section 8A permits deductions of sale price of all goods returned to the purchasers,

"(i) within a period of three months from the date of delivery of the goods, in the case of goods returned before the 14th day of May, 1966 ;

(ii) within a period of six months from the date of delivery of the goods, in the case of goods returned on or after the 14th day of May, 1966 :

Provided that satisfactory evidence of such return of goods and of refund or adjustment in accounts of the sale price thereof is produced before the authority competent to assess or, as the case may be, reassess the tax payable by the dealer under this Act ; and"

It is not disputed that the goods in the present case were returned to the dealer not within the stipulated period. That being so, the dealer cannot claim deductions of the price of the goods returned to him by the purchaser in the present case.

4. This apart, the goods have been returned by the purchasers after a period of

about a year and without intimating to the applicant that the same have been rejected. The dealer, i.e., the applicant, could, therefore, well have contested the return of the goods to him. We are, therefore, of the opinion that the dealer, in the circumstances of the present case, was not entitled to deduction of a sum of Rs. 21,699 from its taxable turnover. We, therefore, hold that in the facts and circumstances of the case, the sale price of Rs. 21,699 could be included in the taxable turnover of the applicant (dealer) when the goods were returned by the purchaser on the ground that they were not according to the specifications stipulated by the purchaser after six months as stipulated in Section 8A(1)(b)(ii) of the Central Sales Tax Act.

5. The question is, therefore, answered against the applicant-dealer and in favour of the Revenue. There shall be no order as to costs.