
(1989) 08 MP CK 0008
In the Madhya Pradesh High Court
Case No : M.C.C. No. 123 of 1986

Perfect Pottery Co. Ltd.

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 16-08-1989

Acts Referred:

Madhya Pradesh General Sales Tax Act, 1958 — Section 2
Madhya Pradesh Land Revenue Code, 1959 — Section 9
Madhya Pradesh Land Revenue Rules, 1956 — Rule 4

Citation : (1989) MPLJ 793 : (1990) 76 STC 475

Hon'ble Judges : G.G.Sohani, Acting C.J.; R.K. Verma, J

Bench : Division Bench

Advocate : Chaphekar, for the Appellant; S.R. Joshi, General, for the Respondent

Judgement

R.K. Verma, J.

This order shall also govern the disposal of M.C.C. No. 122 of 1986 (Perfect Pottery Company Ltd., Ratlam v. Commissioner of Sales Tax, M.P.).

This is a reference made by the Tribunal (Board of Revenue) at the instance of the assessee u/s 44(1) of the M.P. General Sales Tax Act, 1958 (hereinafter referred to as "the Act"), referring the following questions of law to this Court for its opinion :

"(i) whether, on the facts and in the circumstances of the case, the Board of Revenue was justified in holding that the levy of purchase tax on the purchase of building materials purchased for repairs, renewal and maintenance of buildings was in order ?

(ii) whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee was a dealer in respect of the activity of plying the trucks for public hire and hence the purchase of tyres for his trucks was liable to purchase tax ?

(iii) whether, on the facts and in the circumstances of the case, the Member of the Tribunal was justified in referring the point regarding purchase tax on building materials used for repairs, renewal and maintenance of the buildings, to the Division Bench when the assessee had made an application u/s 45(2) of the Act, the point not having been considered and decided by his predecessor in disposing of Appeal No. 154-V/78, whereas identical facts in Appeal No. 153-V/78 were decided in favour of the assessee ?"

The relevant facts of the case are as follows :

The assessee is a manufacturer and dealer of pipes and pipe fittings. For the assessment period 1st January, 1974 to 31st December, 1974, his turnover was assessed at Rs. 33,67,362. This included Rs. 77,697 on account of building materials purchased for the repairs and also Rs. 55,192 on account of purchase of tyres used in respect of the activity of plying of truck for public hire.

The assessee appealed against the order of assessment to the Appellate Deputy Commissioner of Sales Tax, Ujjain. It was contended by the assessee that the building material purchased by him was not in the regular course of his business and was only used for repairs of office quarters, cycle stands and other buildings, etc. In respect of tyres, it was contended by him that the public carriers for which the tyres were purchased by him were not related to his business and these trucks were not used for carrying his goods manufactured in the Perfect Potteries. These contentions were rejected by the Appellate Deputy Commissioner holding that the purchase tax was leviable in respect of anything purchased in connection with his business. It was further held that the plying of trucks was also his business and comes within the definition of "business" u/s 2(bb) of the Act.

Aggrieved by the order of the Appellate Deputy Commissioner, the assessee filed a second appeal (No. 154-V/78) before the Tribunal (Board of Revenue) raising his aforesaid contentions specifically in his memo of appeal. However, in the order dated 6th October, 1982, passed by the Tribunal, the point regarding building material was not considered and it was also contended that the Tribunal's order stated under mistake that the trucks for which tyres were purchased, were being used for the assessee's own transport. Accordingly, the assessee filed an application u/s 45(2) of the Act. The assessee also contended that similar points were raised in respect of the appeal (No. 153-V/78) arising from assessment of his business for the preceding year 1973, which was decided by order dated 13th October, 1982, in which the point regarding the levy of purchase tax on building materials was decided in his favour. It was contended that by oversight these points were not decided while considering the appeal in respect of the assessment year, 1974. This contention was accepted by the Tribunal and arguments were heard on the points not decided by the order dated 6th October, 1982.

In respect of the point regarding levy of purchase tax on building material, the

learned Member of the Tribunal hearing the rectification application referred the case to the Division Bench of the Board of Revenue in terms of Rule 4 framed u/s 9 of the M.P. Land Revenue Code, 1959, having differed from the views expressed in the Appeal No. 153-V/78. The Division Bench considered this point and gave their opinion dated 29th June, 1984, holding that the purchase tax was leviable in respect of the building materials purchased for the repairs, renewal and maintenance of the buildings. Accordingly, this point was decided against the assessee by Tribunal's order dated 1st September, 1984. As regards the point regarding levy of purchase tax on tyres it was held that though there was a mistake in describing that the trucks were in use of assessee's own transport whereas actually the trucks were used for public hire, nevertheless since this was also the business of Potteries, etc., the purchases of tyres for the trucks were subject to purchase tax.

On reference u/s 44(1) of the Act made at the instance of the assessee the learned Tribunal has referred the aforesaid three questions arising out of the Tribunal's order in appeal dated 6th October, 1982 and the order in rectification dated 1st September, 1984, for the opinion of this Court as stated at the outset.

Question No. (i) relates to the levy of purchase tax on the purchase of building materials purchased for repairs, renewal and. maintenance of buildings. The learned counsel for the assessee has submitted that purchase of materials for repairs of buildings was not leviable to purchase tax since the building material is not purchased in the course of business of the assessee. The building activity was not a business of the dealer-assessee who is a. manufacturer and dealer in ceramics and is not a building contractor. Learned counsel has placed reliance on a decision of this Court in Commissioner of Sales Tax v. Satna Cement Works (1984) Cur TJ 246, wherein a similar question of liability to pay tax on the purchase of building materials for construction of building by the assessee who was a registered dealer and carried on the business of manufacture and sale of cement, arose and it was held thus :

"The business of the assessee is the manufacture of cement. The activity of construction is undertaken to make the building available for starting the business therefrom. This building activity actually precedes the business of the assessee and cannot itself be said to be the business of the assessee. The Board was perfectly right in saying that even if during the course of business the building is expanded, it would only mean the building activity precedes the expansion of the business for which purpose the building is required. We are, therefore, of the opinion that the building materials, which were purchased for the construction of building, cannot be said to be in the course of business of the assessee and the levy of purchase tax on the purchase of building materials was not justified."

In the instant case, the purchase of building materials was in connection with repairs, renewal and maintenance of buildings. Learned counsel for the assessee has submitted that for determining the question of liability to purchase tax, it

would make no difference whether the activity of construction is undertaken to make the building available for starting the business or for expansion of business or for maintenance or continuance of business. The activity of construction is a condition precedent not only for starting business of manufacture or its expansion but also for continuance of the business of manufacture and such activity of construction cannot be said to be the business of assessee so as to make him liable to pay tax on the purchase of building materials used in such building activity.

Accordingly, our answer to question No. (i) is that the Tribunal was not justified in holding that the levy of purchase tax on the purchase of building materials purchased for repairs, renewal and maintenance of buildings was in order.

Question No. (ii) relates to the levy of purchase tax on purchase of tyres of trucks owned by the assessee for use as public carrier. The learned counsel for the assessee has submitted that the Tribunal was not justified in holding that the assessee was a dealer in respect of the activity of plying the trucks for public hire and as such, the purchase of tyres for his trucks was liable to purchase tax. The assessee was a dealer in manufacture and sale of ceramics. The trucks owned by the assessee were used for hire by general public and were not used to transport ceramics, the manufacture and sale of which constituted the dealer-assessee's business. As per definition of the term "dealer" provided in Section 2(d), the dealer means any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash, or for deferred payment, or for commission, remuneration or other valuable consideration. From this definition it is clear that the dealer is one who deals in goods. The transport service of trucks cannot make the assessee a dealer in respect of the activity of plying the trucks for public hire and hence purchase of tyres by the assessee for his trucks was not liable to purchase tax,

Accordingly, our answer to this question is that the Tribunal was not justified in holding that the assessee was a dealer in respect of the activity of plying the trucks for public hire or that the purchase of tyres for his trucks was liable to purchase tax.

As regards question No. (iii), it is not seriously disputed that the Tribunal was justified on the facts and in the circumstances of the case in referring the point regarding purchase tax on building materials used for repairs, renewal and maintenance of the buildings, to the Division Bench. The course adopted by the learned Tribunal in referring the point to a Division Bench appears justified in the circumstances of the case under Rule 4 framed u/s 9 of the M.P. Land Revenue Code. This question, therefore, must be answered in the affirmative and against the assessee.

In view of the discussion aforesaid, out of the three questions referred to this Court by the Tribunal, we answer question No. (i) and question No. (ii) in the negative and in favour of the assessee and question No. (iii) in the affirmative

and against the assessee.

There shall, however, be no order as to costs of this reference.