(1980) 11 MP CK 0006

In the Madhya Pradesh High Court

Case No : M.C.C. No. 14 of 1978

Sales Tax Commissioner APPELLANT

Vs

Dhameja Home Industries RESPONDENT

Date of Decision : 21-11-1980

Acts Referred:
Madhya Pradesh General Sales Tax Act, 1958 — Section 2(j)

Citation : (1983) 54 STC 217

Hon'ble Judges : R.K. Vijayvargiya, J;G.G.Sohani, J

Bench : Division Bench

Advocate : S.R. Joshi, for the Appellant; K.S. Jain, for the Respondent

Judgement

G.G. Sohani, J.—By this reference u/s 44(1) of the M.P. General Sales Tax Act, 1958, hereinafter referred to as the Act, the Board of Revenue has referred the following question of law to this Court for its opinion :

Whether, under the facts and circumstances of the case, the preparation of ''garam masala'' would amount to manufacture as defined u/s 2(j) of the Act.

2. The material facts giving rise to this reference briefly are as follows : The assessee deals in condiments and he was assessed to sales tax for the financial year 1969-70. The gross turnover of the assessee was determined by the assessing authority at Rs. 1,94,000 which included the sale of garam masala worth Rs. 13,135.14. Garam masala was treated by the assessing authority as the product of a process of manufacture and hence was excluded from the goods for which rebate was given. On appeal preferred by the assessee the contention advanced on behalf of the assessee that garam masala was not a product of a manufacturing process was rejected. On further appeal the Board held that the preparation of garam masala was expressly excluded from the definition of "manufacture" by the Rules framed under the Act. In this view of the matter, the appeal preferred by the assessee was allowed. At the instance of the department the Board has referred the aforesaid question of law to this Court for its opinion.

3. To appreciate the question referred to us it is necessary to refer to the relevant provisions of the Act. The expression "manufacture" is defined by Section 2(j) of the Act. That provision reads as follows :

Manufacture'' includes any process or manner of producing, collecting, extracting, preparing or making any goods and in respect of trees which have been severed from the land or which have been felled, also the process of lopping the branches, cutting the trunks, or converting them into logs, poles or bailies or any other articles of wood, but does not include such manufactures or manufacturing process as may be prescribed.

Rule 2-A of the Rules framed under the Act provides that for the purpose of Clause (j) of Section 2 of the Act, "manufacture" shall not include the grinding of chillies, turmeric, dhania and other condiments. It was not disputed before us that but for the provisions of Rule 2-A(iii) the process for obtaining the product "garam masala" would amount to "manufacture" as defined by the Act because the essence of manufacturing as held by Das, J., in North Bengal Stores Ltd. v. Board of Revenue, Bengal [1946] 1 STC 157 (MP) is that something is produced or brought into existence which is different from that out of which it is made.

4. Now, it was not disputed before us that "garam masala" is made by mixing different condiments in certain proportion. The mixing may take place either before or after grinding of the condiments which go to make the product "garam masala". But mixing of condiments has to take place because the product "garam masala" is not obtained merely by grinding of a condiment. It is thus clear that the process of obtaining the product "garam masala" is not confined to merely grinding of condiments. It involves something more than grinding to bring into existence a product different from those which are mixed. The conclusion is inescapable that the process of obtaining the product garam masala is not excluded by the Rules from the definition of "manufacture" contained in Section 2(j) of the Act.

5. For these reasons, our answer to the question referred to us is in the affirmative and against the assessee. In the circumstances of the case parties shall bear their own costs of this reference.

