
(1999) 11 MP CK 0006
In the Madhya Pradesh High Court
Case No : L.P.A. No. 77 of 1999

Shree Taran Taran Cold Retreaders

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 24-11-1999

Acts Referred:

Madhya Pradesh General Sales Tax Act, 1958 — Section 12

Citation : (2000) 1 MPLJ 526

Hon'ble Judges : A.K. Mathur, C.J.; A.K. Mishra, J

Bench : Division Bench

Advocate : B.L. Nema with B.K. Rawat, for the Appellant; P.D. Gupta, Government Advocate For State, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Mathur, C.J.

This is an appeal directed against the order dated 6-10-1999 passed by the learned Single Judge in Writ petition No. 3068/90. The learned Single Judge has interpreted the exemption Notification No. A-3-11-86 (74)-ST-V, dated 16th October, 1986, and has held that the tyre retreading work done by the appellant amounts to a manufacture, but does not amount to sale so as to exempt him from payment of sales tax.

The brief facts which are necessary for disposal of this appeal, are that the appellant/petitioner is a registered firm carrying on the business of retreading of tyres and has been registered as a Small Scale Industrial Unit with the District Industries Centre, Sagar. The appellant is also a registered Dealer under the M.P. General Sales Tax Act as also under the Central Sales Tax Act. The State has issued an exemption Notification No. A-3-11-86(74)-ST-V, dated 16-10-1986, which is relevant for our purposes reads as under:--

"NOTIFICATION

No. A-3-11-86(74)-ST-V

Dt. 16-10-1986

In exercise of the powers conferred by section 12 of the Madhya Pradesh General Sales Tax Act, 1956 (No. 2 of 1959) the State Government hereby exempts the class of dealers specified in column (1) of the Schedule below other than the dealers specified in paragraph - A below, who --

- (i) are registered under the said Act;
- (ii) having established an eligible industrial unit in any district in Madhya Pradesh have commenced commercial production on or after 1st August, 1986, and;
- (iii) hold an eligibility certificate issued by an officer authorised for the purpose: from payment of tax u/s 6 of the said Act to the extent specified in column (2) for the period specified in column (3) subject to the restrictions and conditions specified in column (4) of the Schedule and the general conditions specified in paragraph 2 below:--

xxx xxx xxx

(1) xxx xxx xxx

(2) The exemption under this Notification shall be available subject to the following general conditions, namely:--

(i) The exemption shall be available only in respect of the sales of the goods which the dealer is licensed to manufacture and which are manufactured by him as also waste and by-products obtained in the course of manufacture;

(ii)(a) The dealer shall obtain an eligibility certificate from the officer authorised for the purpose in the form and manner specified in Annexure II specifying, inter alia, the goods in respect of which the exemption is available and shall furnish a copy of such certificate to the assessing authority at the time of his assessment.

(b) a copy of such certificate shall also be furnished by the dealer along with his return for the quarter during which such certificate was issued to him;

(c) The application for eligibility certificate shall ordinarily be made within 90 days of the commencement of commercial production, failure to comply with this condition will render the dealer ineligible for the tax exemption;

(iii) xxx xxx xxx

On the basis of the aforesaid exemption Notification, the petitioner submitted that since he is a retreading the tyre and doing the job work that amounts to manufacture and also sell that item; therefore, he manufactures and sells the item and as such he is entitled to exemption from payment of sales Tax. The learned Single Judge has held that this amounts to manufacture, but does not amount to a sale therefore, he is not entitled to the benefit of the aforesaid

exemption Notification. Aggrieved against the order of the learned Single Judge, the present appeal has been preferred by the appellant.

The question before us is that when the customer comes with an old tyre to the appellant and he does the job work by retreading that tyre and charges the job work done by him and returns the original tyre to the customer, whether this activity amounts to manufacture and sell or not. In fact, if we read the exemption Notification what it means to convey is that those manufacturers who manufacture the items and sell it then they are entitled to exemption. But what it intends to convey is that those who are licensed to manufacture the item and sell, are entitled to benefit of exemption Notification. The petitioner does not originally manufacture the item. The tyre has already been manufactured by the Company and the customer comes with tyre to the appellant/petitioner, who is doing a retreading job work. The petitioner puts rubber and undertakes certain process thereof and returns the tyre back to the customer. He claims charges for the job work done by him including the rubber and other items for retreading the tyre.

Shri Nema, Sr. Advocate, submits that even processing amounts to a manufacture and he has invited our attention to the definition of word "manufacture" u/s 2(j) of the Act, which is relevant for our purposes, which reads as under:--

"S. 2(j) "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 baulies or any other articles of wood, but does not include such manufactures or manufacturing processes as may be notified."

Learned counsel for the appellant has also submitted that in terms of the aforesaid definition of "manufacture", putting the rubber to old tyre is a process and it is a manufacture. He also invited our attention to the definition "of" sale" u/s 2(n), which reads as under:--

"S. 2(n) "sale" with all its grammatical variations and cognate expressions means any transfer or property in goods for cash or deferred payment or for other valuable consideration and includes --

(i) xxx xxx xxx

(ii) a transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract".

The learned counsel for the appellant submits that the processing of a retreading tyre amounts to manufacture and charging for material, used therein for labour amounts to sale.

The learned counsel with his ingenuity, has done good work by reading the

definition of "manufacture", as given in section 2(j) along with the definition of "sale" as given in section 2(n) to mean that retreading is a process which amounts to manufacture and charges for retreaded tyre amounts to a sale. Therefore, it is a sale of manufacture of item by the Tyre Retreading Company. The argument is attractive at first sight but it misses the centre point that incumbent is not having any licence for manufacture of tyre. In his application before Director Industries at item No. 20 under the heading "Nature of Activity" so far as manufacturing is concerned, he has stated "not applicable". That shows that the activity in which he is involved is not manufacturing. What we have to see that what is the intended purpose of the Notification. The Notification intended only to benefit of those Industrial Units which manufactures item and sells them. As against this, in the present case, what the appellant is doing is nothing but a job work and he does not undertake a manufacture of original tyre. The original tyre has already been manufactured and he has only put one more layer over that manufactured tyre so as to become serviceable. Essentially, it is a job work done by him. In the application, which he had moved before the authorities, which is on record as Annexure R/1, he himself admits that he is not a manufacturer. The bills which have been placed on record, show that what is charged is a job work done on that manufactured tyre. Therefore, the intention of this Notification is to exempt only those manufacturers who manufacture tyre and sell the same. But not the persons who though involved in a part of a process for retreading the old tyre and do the job work, they as a matter of fact, are not the original manufacturer of tyre. They only do the work of putting layer over the tyre so as to make it serviceable in the vehicle. By that process, it does not amount that they are original manufacturer of tyre.

After going through the definitions as given in the M.P. General Sales Tax Act and reading of the exemption Notification, makes it clear that the exemption Notification was only intended to benefit those who are engaged in manufacture and sale of its products. Therefore, we are of the opinion that the appellant/petitioner is not entitled to benefit of this Notification and the Assessing Officer has rightly assessed the situation and declined to grant the benefit of the Notification. Hence, we do not find any merit in this appeal and the same is dismissed. No order as to costs.