

(1984) 03 RAJ CK 0011
In the Rajasthan High Court
Case No : Sales Tax Reference No. 12 of 1973

Shrigopal Industries

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 27-03-1984

Acts Referred:

Rajasthan Sales Tax Act, 1954 — Section 15, 2(cc)

Citation : (1985) 58 STC 75

Hon'ble Judges : S.N. Bhargava, J; S.C. Agarwal, J

Bench : Division Bench

Advocate : S.M. Mehta, for the Appellant; K.K. Sharma, for the Respondent

Judgement

1. By order dated 3rd August, 1972, passed u/s 15 of the Rajasthan Sales Tax Act (hereinafter referred as "the Act"), the Board of Revenue has referred the following question for the opinion of this Court :

Whether the sale of the machinery, iron or steel defectives or spare parts can be considered as "business" within the meaning of Section 2(cc) of the Rajasthan Sales Tax Act, 1954 (Act No. 29 of 1954) ?

2. Shri Gopal Industries Limited, petitioner (hereinafter referred to as "the assessee"), carries on business of manufacture of cotton yarn which is the principal business of the assessee. The assessee decided to modernise their plant and in that connection sold iron and steel defectives and used machinery during the period 1st July, 1960, to 3rd June, 1961, and 1st July, 1961, to 3rd June, 1962. The Commercial Taxes Officer taxed the aforesaid sales of iron, steel and defective machineries and spare parts on the ground that the said sales were made in regular course of business conducted by the assessee. The said order of the Commercial Taxes Officer was reversed in appeal by the Deputy Commissioner (Appeals). The Board of Revenue in revision restored the order of the Commercial Taxes Officer. Thereupon, the assessee moved an application for referring the question aforesaid to this Court and this reference has been made.

3. Shri S. M. Mehta, the learned counsel for the assessee, and Shri K.K. Sharma, the learned counsel for the Revenue, have invited our attention to the decision of the Supreme Court in *The District Controller of Stores, Northern Railway, Jodhpur Vs. The Assistant Commercial Taxation Officer and Another*, wherein the definition of the term "business" as contained in Section 2(cc) of the Act has been construed. In the aforesaid case the Supreme Court was dealing with the question as to whether the sale of unserviceable material and scrap-iron by the Northern Railway could be regarded as sales during the course of business of the Railway u/s 2(cc) of the Act. The Supreme Court held that said sales fall within the definition of "business" as contained in Section 2(cc) of the Act and observed:

We also think that there is no fallacy in thinking that the Railway since it is concerned in the activity of transportation is engaged in commerce within the meaning of Clause (i) of the definition and that the sale of unserviceable materials and scrap-iron, etc., is transaction in connection with or ancillary to such commerce within the Clause (ii) of that definition.

There can be no dispute that the legislature was competent to give retrospective effect to the definition of "business" introduced by the amending Act.

4. The aforesaid decision of the Supreme Court fully covers the present case. Shri Sharma has also invited our attention to the decision of the Madras High Court in *Deputy Commissioner (C.T.), Coimbatore Division Vs. The Vijayalakshmi Mills Limited*, In that case the sales of unserviceable machinery by the assessee, who was a manufacturer of cotton yarn, was held to be liable to sales tax on the ground that the said sale was in the course of business.

5. In the view of the decisions referred to above, it must be said that the sales by the assessee of machinery, iron, steel defectives and the spare parts were made in the course of business of the assessee could be considered as "business" within the meaning of Section 2(cc) of the Act. The question referred to is, therefore, answered in the affirmative, i.e., in favour of the Revenue and against the assessee. No order as to costs.