(1991) 04 GUJ CK 0017

In the Gujarat High Court

Case No : Sales Tax Reference No. 8 of 1982

State of Gujarat APPELLANT

Vs

Kishor Timber RESPONDENT

Date of Decision : 02-04-1991

Acts Referred:

Gujarat Sales Tax Act, 1969 — Section 62, 69

Citation : (1991) 04 GUJ CK 0017

Hon'ble Judges : S.D. Shah, J;G.T. Nanavati, J

Bench : Division Bench

Advocate : K.M. Mehta, Assistant Government Pleader, for the Appellant; R.D. Pathak, for the Respondent

Judgement

G.T. Nanavati, J.—The question which arises for our decision in this reference is whether sales of wooden pallets are liable to tax under entry 12 of Schedule II, Part A to the Gujarat Sales Tax Act, 1969 or under residuary entry 13 of Schedule III thereof.

2. M/s. Kishor Timber, a registered dealer under the Act, is engaged in manufacturing and selling, inter alia, goods called wooden pallets. For the assessment of Samvat year 2029, i.e., 1972-73 A.D., the Sales Tax Officer assessed the tax on the sales of such wooden pallets under entry 12 of Schedule II, Part A to the Act.

3. The Assistant Commissioner of Sales Tax, Rajkot, in exercise of his revisional powers, revised the order passed by the Sales Tax Officer and held that the sales attracted tax under entry 13 of Schedule III to the Act. In taking this view, the Assistant Commissioner relied upon earlier determination by the Deputy Commissioner made upon an application made u/s 62 of the Act by M/s. Kishor Timber itself.

4. The assessee thereupon filed a revision application to the Tribunal. The Tribunal after considering how wooden pallets sold by the assessee are

manufactured and the use to which they are being put, came to the conclusion that though they are not packing materials by themselves, they being wooden frames must be regarded as covered by entry 12 of Schedule II, Part A to the Act, particularly in view of the Notification dated 29th April, 1970, issued by the Government in exercise of its powers under the said entry. The Tribunal, therefore, allowed the revision application and held that the sales of wooden pallets effected by the assessee during Samvat year 2029 are covered by entry 12 of Schedule II, Part A to the Act.

5. The State of Gujarat, feeling aggrieved by the said decision, moved the Tribunal u/s 69 of the Act for making a reference to this Court. It is in these circumstances that the Tribunal has referred the following question to us for our decision :

"Whether, on the facts and in the circumstances of the case, and on proper construction of entry 12 in Schedule II, Part A to the Gujarat Sales Tax Act, 1969, the Tribunal was justified in law in holding that the sales of wooden pallets effected by M/s. Kishor Timber during Samvat year 2029 were liable to tax under the said entry 12 in Schedule II, Part A to the said Act and not under the residuary entry 13 in Schedule III to the Gujarat Sales Tax Act, 1969 ?"

6. Entry 12 of Schedule II, Part A to the Act, at the relevant time, read as under :

-- Sl.No. Description of goods Rate of sales Rate purchase tax tax -- 12. The following articles, that Three paise Three paise is to say, - in the rupee. in the rupee. (i) gunny bags and hessians (ii) jute twine (iii) brown paper and other papers adapted for use in packing goods. (iv) cardboard boxes and cartons (v) empty tines and empty barrels (vi) wooden boxes (Khokas) and tin boxes (vii) empty bottles and corks (viii) polythene packing materials (ix) paper labels and such other packing materials as the State Government may, by a notification in the Official Gazette, specify for the purpose of this entry. --

7. It is an admitted position that wooden pallets are not one of the articles specified in the said entry. Even the assessee has relied upon the notification issued by the State Government in exercise of the powers available to it under the Act in support of its contention that sales thereof would be covered by the said entry. By Notification bearing No. GHN-633/1070 dated April 29, 1970, the State Government specified the following three items as packing materials for the purpose of entry 12 :

"(1) Tin seals (that is, a tin seal called thigdi used for soldering packing materials, such as, tins of oil, ghee and the like.

(2) Wooden frames.

(3) Wooden rolls."

8. What is, therefore, required to be decided is whether wooden pallets manufactured by the assessee can be said to be wooden frames as contemplated by the aforesaid notification. From the judgment of the Tribunal, it appears that the photograph of wooden pallet was produced before it. On the basis of the said photograph and the material which was available to the Tribunal, it has described the wooden pallet as under :

"Two big planks of wood are put at a little distance from each other. In between these two wooden planks three similar planks of smaller length but having the same width are placed at uniform distances keeping some space between each of these planks. On these five planks arranged thus, three or four similar planks with similar width are arranged at right angles at uniform distances. Over the two kinds of planks arranged thus similar planks as at bottom are placed on the top and are fitted with the nails. The article thus prepared is a kind of platform which is known as wooden ....."

9. So far as its use is concerned, it is further stated by the Tribunal that wooden pallet is used as a platform on which number of cement bags are kept in a particular manner and then the whole thing is fitted with iron straps or hoops so as to make a bundle of it. Thus bundle in turn is wrapped in a big polythene sheet and the entire thing, namely, platform along with the cement bags wrapped in polythene sheet is lifted and put on board of a ship for its transhipment abroad. It is in these context that we will have to decide whether wooden pallet can be said to be "wooden frame" in the sense of specified packing material. It is not in dispute that the word "frame" means anything fitted together according to a design. It was faintly argued by the learned Assistant Government Pleader that the wooden pallets manufactured by the assessee cannot be regarded as wooden frames, as ordinarily understood. But this submission cannot be accepted as wooden pallets are prepared by putting together or by joining wooden planks in a definite manner so as to give them a desired shape or design. Only reason given by the learned Assistant Government Pleader for holding that the wooden planks sold by the assessee cannot be said to be wooden frames was that a frame should cover the thing within it from all sides, otherwise it cannot be described as a frame. In our opinion, merely because they are used as a base in the packing process, they would not cease to be wooden frames.

10. The next question that we will have to consider is whether wooden pallets manufactured and sold by the assessee can be said to be wooden frames as contemplated by entry 12 of Schedule II, Part A to the Act. The said entry deals with packing materials and obviously, therefore, not all wooden frames would fall within its scope and ambit but only those wooden frames which are ordinarily used or intended to be used for packing purposes would be covered by that entry. Whether an article is ordinarily used as a packing material or not would depend upon its accepted use or the use to which it is put to by the buyer of such an article. If it can be shown that a class of buyers normally uses such as

article as a packing material, then there is no reason why such an article should not be regarded as packing material. If we apply this test to the facts of this case, it can be said, without any doubt, that the wooden pallets manufactured and sold by the assessee are wooden frames as contemplated by entry 12 of Schedule II, Part A. Wooden frames are being used by the buyers for packing number of cement bags so as to make a compact bundle of them for the purpose of their transportation and sale. According to Oxford Dictionary, Volume VII, the word "packing" means putting together compactly as for transport, preservation or sale. According to Webster''s New Twentieth Century Dictionary, 2nd Edition, "pack" means to put together compactly in a box, trunk, etc., for carrying or storing or to fill for carrying or storing. Thus when things are put together in a compact manner so as to facilitate their transport or sale, then it can be said that they have been packed. Therefore, the material which can be used for this purpose will have to be regarded as packing material. It need not be something in which the articles or goods can be placed. It can be of any type and yet would answer the description of packing material so long as it is used for that purpose. If it serves the purpose of putting together things compactly so as to make a bundle of those things, then it can be rightly described as packing material. Admittedly, the wooden pallets manufactured and sold by the assessee are used for the purpose of packing cement bags so as to prepare a bundle of certain number of cement bags which can be lifted as a bundle and put in a ship for transhipment for the purpose of their transport and sale. We are, therefore, of the view that the Tribunal was right in considering the wooden pallets as wooden frames falling within entry 12 of Schedule II, Part A to the Act.

11. We, therefore, answer the question in the affirmative that is, against the department and in favour of the assessee. There shall be no order as to costs in this reference.

12. Reference answered in the affirmative.

