**(1979) 07 RAJ CK 0005**

**In the Rajasthan High Court**

**Case No :** Civil Miscellaneous Sales Tax Case No. 18 of 1976

The Assistant Commercial Taxes Officer — APPELLANT

Vs

Ramesh Leather Stores and Another — RESPONDENT

**Date of Decision :** 03-07-1979

**Acts Referred:**
Rajasthan Sales Tax Act, 1954 — Section 15(3A)

**Citation :** (1982) 49 STC 79

**Hon'ble Judges :** N.M. Kasliwal, J;D.P. Gupta, J

**Bench :** Division Bench

**Advocate :** B.K. Pathak, Additional Government Advocate, for the Appellant; R.C. Ghiya, for the Respondent

**Final Decision :** Allowed

## Judgement

Dwarka Prasad, J.—This application for making a reference has been filed by the Assistant Commercial Taxes Officer, Ward II, Circle D, Jaipur, u/s 15(3A) of the Rajasthan Sales Tax Act, 1954 (hereinafter referred to as "the Act"), and arises in the following circumstances:

M/s. Ramesh Leather Stores, Jaipur (hereinafter referred to as "the assessee"), is a registered dealer and the applicant, Assistant Commercial Taxes Officer, Ward II, Circle D, Jaipur, is the assessing authority in respect of the assessee. While making the assessment of the turnover of the assessee for the assessment year 1971-72, pertaining to the period from 1st April, 1971, to 15th February, 1972, the assessing authority levied tax on the turnover of leather board sheets worth Rs. 61,633.79 at the rate of 10 per cent. In making the aforesaid order, the view of the assessing authority was that the goods in which the assessee was dealing, namely, leather board sheets, fell under entry 36 pertaining to all kinds of leather goods except footwear- vide Notification No. F. 5(16)FD(CT)/69-II, Jaipur, dated 8th March, 1969. The assessee filed an appeal against the decision of the assessing authority and the Deputy Commissioner (Appeals-I), Commercial Taxes, Jaipur, by his order dated 13th March, 1973, partly allowed the appeal and held that the leather board sheets were taxable under entry 79 of the aforesaid notification and, thus, the general rate of 6 per cent was applicable to such goods. However, the assessee still felt dissatisfied with the order passed by the Deputy Commissioner (Appeals-I), Commercial Taxes, Jaipur, and filed a revision petition before the Board of Revenue for Rajasthan at Ajmer. The Board of Revenue, by its order dated 31st July, 1974, held that leather board sheets were pressed skins and as such they were squarely covered within entry 12 of the aforesaid notification, relating to hides and skins, and thus the assessee should have been charged sales tax at the rate of 3 per cent applicable to entry 12.

2. The assessing authority filed an application u/s 15(1) of the Act before the Board of Revenue, but as the Board failed to decide the application of the assessing authority within the statutory period, the present application u/s 15(3A) of the Act has been filed before this Court by the assessing authority.

3. It was urged on behalf of the assessing authority that a question of law arose out of the order passed by the Board of Revenue, as to the entry in which leather board sheets fell and that the Board of Revenue should be directed to state the case and refer the question of law arising out of its order to this Court.

4. Mr. Ghiya opposes the application for making a reference on the ground that no question of law arises in the case because in the case of "mishri", "patasa" and "ilaychidana", it was held by their Lordships of the Supreme Court that they were chargeable to sales tax as sugar, as they were different forms of the same material and merely because the shape was changed, they did not become different goods. It is not the case of the assessee that the question as towhether leather board sheets were the same thing as hides and skins has been decided by this Court or by the Supreme Court. This Court has held in several cases that the question as to whether certain goods fell within a particular entry or not is a question of law. As such, in our view, a question of law does arise in the present case out of the order passed by the Board of Revenue.

5. We, therefore, allow the application and call upon the Board of Revenue to state the case and refer the following question of law to this Court for its decision :

Whether, on the facts and in the circumstances of the case, the Board of Revenue was right, in holding that leather board sheets, in which the assessee was dealing, fell under entry No. 12 of Notification No. F. 5(16)FD(CT)/69-II, Jaipur, dated 8th March, 1969.

6. We have slightly reframed the question in order to bring out clearly the matter in dispute between the parties.

7. The parties are left to bear their own costs of these proceedings.