

(1967) 10 MP CK 0010

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 346 of 1966

The Commissioner of Sales Tax

APPELLANT

Vs

Samaj Paper Mart

RESPONDENT

Date of Decision : 25-10-1967

Acts Referred:

Madhya Pradesh General Sales Tax Act, 1958 — Section 2(1)

Citation : (1971) ILR (MP) 772 : (1968) JLJ 71 : (1968) 13 MPLJ 65 : (1968) MPLJ 65 : (1968) 21 STC 239

Hon'ble Judges : P.V. Dixit, C.J.; R.J. Bhave, J

Bench : Division Bench

Advocate : K.K. Dubey, for the Appellant; K.A. Chitale, for the Respondent

Final Decision : Dismissed

Judgement

R.J. Bhave, J.

At the instance of the Commissioner of Sales Tax, the Sales Tax Tribunal (Board of Revenue, M.P.) has referred the following question for our decision :

Is the paper used in wrapping bidis, agarbattis and fire-works a raw material under Clause (1) of Section 2 of the Madhya Pradesh General Sales Tax Act, 1958 ?

The non-applicant is a dealer in paper. It sold paper to the manufacturers of bidis, agarbattis and fire-works, having registration certificates, after obtaining declarations from them in Form XII-A of the Madhya Pradesh General Sales Tax Rules, 1959, and it claimed to be taxed at the reduced rate of one per cent, under Sub-section (1) of Section 8 of the Act. It was not disputed at any stage of the proceedings that paper was shown as one of the items required for the manufacture of either bidis or agarbattis or fire-works in the registration certificates of the purchasing (manufacturing) dealers. The claim for reduced rate of one per cent. was, however, rejected by the Sales Tax Authorities on the ground that the paper sold to these manufacturers was not "raw material" as

defined in Clause (1) of Section 2 of the Act and that the paper was only used as packing material, and not as raw material, in the manufacture of those articles. The Sales Tax Tribunal, however, held that bidis are always sold in bundles wrapped in paper. If the bundle was considered as a unit, it would follow that paper was consumed in the process of manufacturing bidis. It was pointed out that if the argument of the Sales Tax Authorities was accepted, without any limitation, it would lead one to absurd results, such as, in the case of liquid medicines it would be argued that glass was not one of the ingredients used in making the medicines. On similar considerations, with respect to agarbattis and fire-works, it was held that paper was used as an ingredient in the manufacture of those articles and that it was "raw material" as defined in Clause (1) of Section 2 of the Act. The Sales Tax Tribunal also found in paragraph 4 of its order that as the appellant had produced the necessary declarations in Form XII-A of the Rules, it was entitled to get the benefit of the reduced taxation under Sub-section (1) of Section 8 of the Act. As interpretation of the provisions of the Act was involved, the Sales Tax Tribunal referred the above question for our decision.

The answer to the question depends on the consideration of the following provisions :

Section 2. (1) "raw material" means an article used as an ingredient in any manufactured goods or an article consumed in the process of manufacture and includes fuel and lubricants required for the process of manufacture, but does not include bullion and specie ;

Sections. (1) Notwithstanding anything contained in Section 6 or 7 but subject to such restrictions and conditions as may be prescribed, the rate of tax payable on the sale to or purchase by a registered dealer of any raw material for the manufacture of other goods for sale in the State of Madhya Pradesh or in the course of inter-State trade or commerce shall be one per cent, of the sale or purchase price of such raw material.

(2) Where any raw material purchased by a registered dealer under Sub-section (1) is utilised by him for any purpose other than a purpose specified in the said sub-section, such dealer shall be liable to pay as penalty an amount not less than the difference between the amount of tax on the sale of such raw material at the full, rate mentioned in column (3) of Schedule II and the amount of tax payable under Sub-section (1), and not exceeding one and one-quarter times the amount of tax at such full rate as the Commissioner may determine having regard to the circumstances in which such use was made.

Rule 20. (4) No registered dealer shall be entitled to pay tax at the reduced rate of 1 per cent, in respect of sale or purchase of raw material for the purposes specified under Sub-section (1) of Section 8 unless-

(i) such raw materials are specified in the registration certificate of the purchasing dealer as being required by him for the manufacture of other goods for sale in the State of Madhya Pradesh or for sale in the course of inter-State

trade or commerce ; and

(ii) where the claim is by a selling dealer, the sale has been made to a registered dealer on a declaration in Form XII-A duly signed by the purchasing dealer.

At this stage, it may also be mentioned that under Rule 7 framed under the M.P. General Sales Tax Act a dealer is required to apply for registration in Form III wherein the applicant is required to furnish information to the following effect:

The following goods or classes of goods are ordinarily purchased by us for-

(i) use as raw materials in the manufacture of other goods for sale in the State of Madhya Pradesh or for sale in the course of inter-State trade or commerce ;

We manufacture and/or produce for sale the following classes of goods :-

Rule 8 then provides that the Sales Tax Officer, after making such enquiry as he may think necessary, if satisfied that the applicant has given all the requisite information, shall grant the registration certificate in Form IV. In Form IV there is a provision for indicating the articles that are required by the dealer as raw material for use by him in manufacture.

The provisions extracted above clearly indicate that the reduced rate can be claimed both by the purchasing dealer as well as by the selling dealer. In the case of the purchasing dealer, however, the condition is that the article must be mentioned in the registration certificate; while in the case of the selling dealer, he must have obtained from the purchasing dealer a declaration in the prescribed form and signed by the purchasing dealer. In the case of the purchasing dealer, however, Sub-section (2) of Section 8 further provides that if such material purchased by him is utilised for any other purpose than the purpose specified by him as required under Sub-section (1) of Section 8, such dealer shall be liable to pay as penalty an amount prescribed under the said sub-section. So far as the selling dealer is concerned, it is not his responsibility to see how the article purchased from him, on furnishing declarations, is utilised by the purchasing dealer. Rules 7 and 8 also clearly indicate that at the time of granting the registration certificate the Sales Tax Officer is expected to make an enquiry as to whether any article mentioned in the application for registration is "raw material" as defined under the Act for the purposes of the manufacture in question and, on being satisfied about it, he is expected to grant the registration certificate and mention the article in the certificate as raw material. At the stage of any assessment, such an enquiry is not contemplated. If the article is mentioned in the registration certificate, that is the end of the matter. A further safeguard is provided under Sub-section (2) of Section 8 under which the purchasing dealer is exposed to penalty if the article purchased by him on concessional rate is not used by him as raw material. That provision is wide enough to cover a case where any article, though mentioned in the registration certificate as raw material, is not used as such, that is to say, is not an ingredient in the manufacture or is not an article consumed in the process of manufacture. As to

the selling dealer, no duty is cast on him at the time of sale to satisfy himself that the article sold by him was, in fact, "raw material" for the purposes of the manufacture of the purchasing dealer; nor is the dealer called upon to satisfy the Sales Tax Authorities about it at the time of assessment. Once he has obtained the necessary declaration from the purchasing dealer, that the article is included as raw material in the registration certificate of the purchasing dealer, that is the end of the matter. If the provisions are not interpreted in the manner indicated above, sale transactions with manufacturers would become extremely difficult, if not impossible.

Their Lordships of the Supreme Court, while dealing with the provisions of the Central Sales Tax Act, which are similar, though not exactly identical to the provisions of the State Act, held in *State of Madras v. Radio and Electricals Ltd.* [1966] 18 S.T.C. 222:

The authority issuing the certificate of registration under Rule 5(1) has, before issuing a registration certificate, to be satisfied after making such enquiry as it thinks necessary that the particulars contained in the application are correct and complete. The enquiry should be made in the light of the nature of the business and goods which are likely to be needed either for resale, or for use in the manufacture of goods for sale, or for use in the execution of contracts. Satisfaction which is contemplated by Rule 5 is objective, and may be arrived at upon a quasi-judicial enquiry.

If, therefore, goods are specified in the certificate of registration in Form "B", it is not open, when a claim is made in respect of the purchase of those goods for the application of concessional rate of tax, to the Sales Tax Officer to deny to the selling dealer of those goods the benefit on the ground that the goods specified cannot be used by the purchasing dealer for the purpose of his business.

The seller can have, in transactions of sale and purchase in the course of inter-State trade and commerce, no control over the purchaser. He has only to rely upon the representations made to him. He must satisfy himself that the purchaser is a registered dealer, and the goods purchased are specified in his certificate; but his duty extends no further. If he is satisfied on these two matters, on a representation made to him in the manner prescribed by the Rules and the representation is recorded in the certificate in Form "C", the selling dealer is under no further obligation to see to the application of the goods for the purpose for which it was represented that the goods were intended to be used. Whether the goods specified in the registration certificate in Form "B" can be used for the purpose is not for the selling dealer to determine.

This decision of the Supreme Court fully applies to the present case also as indicated by us by referring to the various provisions of the State Act. The conclusion is, therefore, inevitable that so far as the selling dealer is concerned, he is entitled to the concessional rate if he has secured the appropriate declaration from the purchasing dealer and that the Sales Tax Authorities have

no right to embark upon an enquiry as to whether the articles can be used as raw material by the purchasing dealer. The Tribunal has found as a fact that the assessee sold the paper after obtaining the proper declarations. In this view of the matter, it is not necessary to answer the question referred to us by the Tribunal.

We, however, proceed to consider the question as posed before us. The definition of "raw material" speaks of articles which are used as ingredients in the manufacture of goods or consumed in the process of manufacture. The paper sold by the dealer may not be an ingredient in the manufacture of bidis, agarbattis or fire-works, but it may be consumed in the process of manufacture. In *Government of Andhra Pradesh Vs. Guntur Tobaccos Ltd.*, their Lordships of the Supreme Court (majority judgment) held that the use of water-proof material for packing to seal off the tobacco emerging from the reconditioning chamber from external atmospheric conditions and of storage to enable fermentation for the required period to make tobacco mature for use in cigarettes, cigars etc. must be regarded as an integral part of the process of re-drying and not independent of that process. The same reasoning may be appropriately applied in the case of the bidis, the agarbattis and the fire-works. The wrapping of the bidis and the agarbattis in the tissue paper sold by the assessee is necessary for preserving the aroma and freshness of the bidis and the scent of the agarbattis. In the case of the fire-works, such wrappers are necessary to keep them dry and thus save them from atmospheric interference. It thus follows that the paper is consumed in the process of manufacture of those articles, though it may not be an ingredient in the manufacture as such. On behalf of the revenue, reliance was placed on the decision of this Court in *Premchand Jhanji v. The State of Madhya Pradesh and Anr.*, Miscellaneous Petition No. 483 of 1965 decided on the 22nd July, 1966; [1968] 21 S.T.C. 237 wherein it was held by this Court that "packing material" cannot be said to be an article used as an ingredient in the manufacture of boot-polish ; nor could it be described as an article consumed in the process of manufacture of the boot-polish. It was held there that the articles were utilised for the purposes of packing for the facility of sale. In this view of the matter, it was held that the tin-dibbies and cartons manufactured by the dealer for packing the boot-polish could not be regarded as "raw material". That case is not of any help to the revenue, as we have pointed out that the paper is not used merely as a packing material for the purposes of convenience of sale, but the paper is used as wrapper for the purposes indicated by us.

For the aforesaid reasons, our answer to the question, referred to us, is in the affirmative. The Commissioner of Sales Tax, M.P., shall pay the costs of this reference to the assessee. Hearing fee Rs. 150.