(1968) 05 DEL CK 0022

In the Delhi High Court

Case No : Civil Writ Appeal No. 135D of 1960

The Ganesh Flour Mills	APPELLANT
Vs	
The Chief Commissioner, Delhi and Others	RESPONDENT

Date of Decision : 03-05-1968

Acts Referred:

Citation : (1969) 5 DLT 187 : (1968) 22 STC 264

Hon'ble Judges : I.D. Dua, C.J;Hardayal Hardy, J

Bench : Division Bench

Advocate : Y. Dayal and S.S. Chadha, for the Appellant;

Judgement

I.D. Dua, C.J. and Hardyal Hardy, J.

(1) The petitioner is a dealer registered under the Central Sales Tax Act, 1956 which will hereafter be referred to as the Act, and was granted a Registration Certificate under Rule 5(1) of the Central Sales Tax (Registration and Turnover) Rules, 1957. In the appropriate columns (a) and (b) the Words "Empty Tins" and "Tin sheets" were respectively entered according to its own application.

(2) On 11th December, 1958 the petitioner applied to the Sales Tax Officer, Ward No. 5, Delhi to amend its Registration Certificate so as to include "Tin Plates" or "Tin Sheets" on the allegation that those were used by the petitioner for packing its vegetable products for sale u/s 8(3) of the Act.

(3) By his order dated 19th January, 1959 the application was refused by the Assistant Sales Tax officer on the ground that those were declared goods and as such their purchase on the strength of the Registration Certificate could be allowed only if they were to be resold in the same form in which they were purchased.

(4) The petitioner filed a revision petition before the Commissioner of Sales Tax, Delhi against the order of the Assistant Sales Tax Officer, Delhi, but the application was dismissed on the ground that "Tin Plates" or "Tin Sheet" were not

declared goods or goods of special importance but on the other hand they were goods which fell in the category mentioned in sub-section (e) or sub-section (d) of Section 8(3) if they were either containers or material used for packing of goods for sale. The Commissioner further held that "Tin Plates" or "Tin Sheets in themselves are certainly not containers as they have to undergo manufacturing process before they can be used as containers and, Therefore, they do not fall into the first category. They also do not fall within the second category of being material used for packing vegetable oil because according to him the Word "Container" is usually used when the contents are liquid or sometimes even solid but the word "packing" is invariably used for holding solid contents only. He, Therefore, held that "Tin Plates" or "Tin Sheets" did not constitute packing material in the present context.

(5) Against the order of the Commissioner the petitioner filed a further revision petition before the Chief Commissioner, Delhi who agreed with the opinion of the Commissioner and dismissed the same by his order dated 27th November, 1959. The petitioner applied for certified copy of the order of the Chief Commissioner on 14th December, 1959 which was furnished to it on 18th December, 1959. On 29th January, 1960 the petitioner filed an application for a reference to be made to the High Court of Punjab at Delhi u/s 21 of the Bengal Finance (Sales Tax) Act, 1941 as in force in the Union Territory of Delhi read with Section 9(3) of the Central Sales Tax Act, 1956, of the question of law arising from the order of the Chief Commissioner. The application was, however, rejected by the Chief Commissioner, by his order dated 26th February, 1960 on the ground that it was barred by time.

(6) Against the order of refusal of its application by the Chief Commissioner the petitioner filed two applications in the High Court of Punjab at Delhi; one for mandamus u/s 21(2) (6) of the Bengal Finance (Sales Tax) Act, 1941 read with section 9(3) of the Central Sales Tax Act 1956 directing the Chief Commissioner to refer to the High Court particular Questions formulated by the petitioner while the other for grant of a writ of mandamus requiring the respondent to suitably amend the certificate of Registration granted to the petitioner, so as to include "Tin Plates" and "Tin Sheets" as being materials intended for being used for packing of goods and. also to issue appropriate writ, order or direction calling upon the respondents to decide the petitioner''s application dated 29th January, 1960 in accordance with law.

(7) In this order we are concerned with the petition filed under Articles 226 and 227 of the Constitution.

(8) The question for determination falls within a short compass. The petitioner is admittedly a manufacturer of and dealer in vegetable oil products. It buys "Tin Sheets" from the dealers from Bihar and elsewhere, converts them into '' Tin Containers" which it fills with vegetables oil products and sells to different parties. Apparently it also buys empty tins and drums and sells them, as those items are also mentioned in the column for resale in the Certificate of

Registration issued to it. What the petitioner now desires is that another colum should be added to the Registration Certificate and the words "Tin Sheets" and "Tin Plates" should be mentioned under the appropriate heading of materials for packing of goods for sale.

(9) It is common ground that "Tin plates" and "Tin Sheets" are not goods of special importance which have been declared to be such u/s 14 of the Act. In order to succeed, Therefore, the petitioner must show that the goods sought to be added to the Registration Certificate come within the category of goods referred to in clause (b) or (c) or (d) of Sub-section (3) of section 8 which reads as under :-

"(3)The goods referred to in clause (b) of sub-section (1)- (a)* * * * (b)* * * * are goods of the class or classes specified in the certificate of registration of registered dealer purchasing the goods as being intended for re-sale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods for sale or in mining or in the generation or distribution of electricity or any other form of power ; (e) are containers or other materials specified in the certificate of registration of the registered dealer purchasing the goods, being containers or materials intended for being used for the packing of goods for sale; (d) are containers or other materials used for packing of any goods or classes of goods specified in the certificate of registration referred to in clause (b) or for packing of any container or other materials specified on the certificate of registration referred to in clause c." (10) A plain reading of the three clauses of sub-section (3) shows that clause (b) cannot be availed of by the petitioner so far as the petitioner''s request for amendment of the certificate is concerned.

(11) The petitioner''s counsel has, however, strongly urged that "Tin Sheets" and "Tin Plates" are "materials intended for being used for packing of goods for sale" and, Therefore, the case is clearly covered by clause (e). On the other hand the contention that has weighed with the Sales Tax authorities and is pressed upon us by the learned counsel appearing for them is that clause (e) is intended to apply either to readymade containers such as bottles ,tins or boxes or to packing materials in which the goods to be sold are merely wrapped. It is urged that one cannot talk of "Tin Plates" or "Tin Sheets" being used for packing oil and that such an expression would be doing violence to English Language. "Tin Plate", it is argued, is obviously used for the manufacture of containers as stated in the certificate of Registration of the petitioner and the oil is contained in those tin containers. In the circumstances the phrase ''''materials intended for being used for the pecking of goods for sale" can only mean those materials in which the goods to be sold are merely wrapped and is in the context to be confined to wrapping of solid goods.

(12) We are not impressed by the contention urged on behalf of the Sales Tax authorities. The words "container" and "materials intended for being used for the packing of goods" do not have any technical meaning nor have the words been

defined in the Act. The word "container" as defined generally by the Century Dictionary means ''one who or that which contains''. In one of the American statutes the word was defined to include a wrapper (See Corpus Jurisdiction Secundum, Volume 16 A, Page 1250). Similarly the word "Packing" includes the act or process of one who or that which packs. It also means any material used to pack, fill up or make close (See Corpus Jurisdiction Secundum, Volume 67, page 550). The word "Container" is not confined merely to receptacle for storing liquid as was attempted to be argued by the learned counsel for the respondents. In a Treatise on Words and Phrases ,published by the West Publishing Co. of America, there is a reference to the word "Container" being used in one of the New York Statues for boxes in which Apples were bought by weight, and were to be weighed by the purchaser, or some one approved by him, and not with relation to anything stamped upon the boxes in which they were contained. The boxes were merely "containers" within General Business Law.

(13) The Oxford English Dictionary gives the meaning of the word "Container" as he or that which contains, while the meaning of the word "Packing" is the putting of things together compactly as for transport, preservation, or sale; the filling of receptacle with things So put in. Another meaning given to it is "Any material used to fill up a space or interstice closely or tightly; filling, stuffing."

(14) WEBSTER''S New International Dictionary (Second Edition) gives the meaning of the Word "Packing" as an act or process of one who or that which packs especially the putting up of meat, fruit .etc. for future sale or any materials used to pack, fill up or make close.

(15) It is thus apparent that neither the word "Container" is confined to liquids only nor is the meaning of the word "materials for picking" restricted to wrappers to be used as a covering for solid goods. The expression "Containers or materials intended for being used for packing of goods for sale'' as used in clause(c) of sub-section (3)appears to us to have been deliberately coached in a language which brings within its sweep all kinds of ready-made receptacles or other materials which are intended or by a slight alteration or fabrication can be converted into such receptacles for the purpose of storage of goods provided the use to which those receptacles are ultimately put by the dealer is not to sell them as independent articles of sale as such but as receptacles for storage or transportation of goods contained therein for sale.

(16) It is not necessary that those materials should be capable of being used directly for purposes of packing. It is quite enough if the intention of the dealer is to acquire them in order that they may be used for packing of goods for sale even if in that process of adapting them to such use they have to undergo some change in shape or form. The dominent intention is that they should serve the purpose of storage or transportation of goods for sale.

(17) The petitioner''s object in seeking the amendment of the Registration Certificate is to convert the "Tin Sheets" and "Tin Plates" into tin Containers with

a view that the same may be filled with its vegetable oil products to be sold to different parties.

(18) We are, Therefore, of the view that the petitioner''s request for amendment of its Registration Certificate has been declined by the Sales Tax authorities on erroneous interpretation of law. We accordingly direct the respondents to decide the petitioner''s application for amendment of the Registration Certificate in the light of our observations but in the circumstances of this case we make no order as to costs.

