(1981) 12 GUJ CK 0008

In the Gujarat High Court

Case No : Sales Tax Reference No. 16 of 1980

The State of Gujarat APPELLANT

Vs

Shah Bhagwanji Manekchand RESPONDENT

Date of Decision : 24-12-1981

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 18
Gujarat Sales Tax Act, 1969 — Section 67, 69(1)

Citation : (1982) 50 STC 147

Hon'ble Judges : P.D. Desai, J;B.K. Mehta, J

Bench : Division Bench

Advocate : J.R. Nanavati, Government Pleader, instructed by H.V. Chhatrapati, of Bhaishanker Kanga and Girdharlal, for the Appellant;

Judgement

Desai, J.—The assessee is a registered dealer dealing in materials used in the building constriction industry. Amongst the items in which the assessee deals is lime. Different varieties of lime are purchased and sold by the assessee for diverse uses in the building construction activity. During the accounting period corresponding to S.Y. 2029, the assessee purchased and sold lime described as merta lime, sojat lime and gotan lime. In the course of proceedings for assessment to sales tax for the said accounting period, the assessee''s contention was that the lime of all the three varieties was covered by entry 9 of Schedule II, Part A, to the Gujarat Sales Tax act, 1969 (hereinafter referred to as "the Act").

2. The Sales Tax Officer held that whereas sojat lime and gotan lime were covered by entry 9 of Schedule II, Part A, merta lime was not comprehended within the said entry and that the said variety of lime was liable to be subjected to sales tax under the residuary entry 13 of Schedule III to the said Act.

3. The assessee carried the matter in appeal before the Assistant Commissioner of Sales Tax who held that lime of all the three varieties was of the same type and quality though the trade names were different depending upon the place

from which the lime was procured. Under the circumstances, the Assistant Commissioner of Sales Tax allowed the appeal and directed that merta lime should also be taxed at the rate set out in entry 9 of Schedule II, Part A. The assessee thus succeeded wholly as regards the applicability of entry 9 of Schedule II, Part A, to all the three varieties of lime.

4. The Deputy Commissioner of Sales Tax, however, initiated proceedings for suo motu revision u/s 67 of the said Act since he was prima facie of the view that all the three varieties of lime, namely, merta, sojat and gotan, were not covered by entry 9 of Schedule II, Part A, and that the residuary entry 13 of Schedule III was attracted. After affording an opportunity of being heard to the assessee, the Deputy Commissioner of Sales Tax revised the orders of assessment passed by the Sales Tax Officer as well as by the Assistant Commissioner of Sales Tax and held that tax at the rate prescribed in the residuary entry 13 of Schedule III should be recovered from the assessee on sales of all the said three varieties of lime.

5. The assessee carried the matter in revision before the Gujarat Sales Tax Tribunal (hereinafter referred to as "the Tribunal") u/s 67 of the Act. The Tribunal allowed the revision and held that all the three varieties of lime sold by the assessee were covered by entry 9 of Schedule II, Part A. In reaching this decision, the Tribunal held that the three varieties of lime in which the assessee dealt were used as building materials, more particularly as mortar for plaster and as whitewashing material. It further held that the lime of those three varieties was used as one of the ingredients in mortar as well as in whitewash and that it was not capable of being directly used as building material. The Tribunal precisely found :

"............... It is common knowledge that lime is not a basic chemical .... So far as the production of mortar is concerned, lime is used as one of the ingredients .... lime cannot be used without admixture for whitewash .... In the materials furnished on behalf of both the parties, it is nowhere stated that lime can be directly used as building materials. From this it is clear that as a building material the use of lime is not direct but as a raw material in prepration of mortar or for use as whitewash with the mixture of glue or some such material. From this it is clear that lime is a chemical and also that it is an intermediary product ......"

6. In view of the findings recorded in the above terms, the Tribunal, as earlier stated, allowed the revision and restored the orders of the Appellate Assistant Commissioner as well as that of the Sales Tax Officer and directed that additional amount of tax, if any, recovered from the assessee on the basis of the order passed by the Deputy Commissioner of Sales Tax, should be refunded.

7. At the instance of the revenue, the Tribunal has stated a case in respect of the following question u/s 69(1) of the act for the opinion of this Court :

"Whether, on the facts and in the circumstances of the case, the three varieties of lime sold by the opponent under the popular names of sojat, gotan and merta are intermediary chemicals covered by entry 9 of Schedule II, Part A, to the Gujarat Sales Tax Act, 1969, or are covered by residuary entry 13 of Schedule III to the said Act ?"

8. Two entries in question may be set out first. Entry 9 of Schedule II, Part A, reads as under :

"SCHEDULE II - PART A -- Sl. No. Description of goods Rate of Rate of sales tax purchase tax 1 2 3 4 -- 9 Dyes and chemicals other 3 paise in 3 paise in than those specified in the rupee. the rupee." any other entry in this or any other schedule. -- Entry 13 of Schedule III to the Act reads as under :

"SCHEDULE III -- Sl. No. Description of goods Rate of Rate of general sales tax sales tax 1 2 3 4 -- 13 All goods other than those 5 paise in 3 paise in specified from time to the rupee. the rupee." time in section 18 and in Schedules I and II and in the preceding entries. --

9. Upon a bare reading of the two entries, it becomes apparent that whereas entry 9 of Schedule II, Part A, is a residuary entry for dyes and chemicals, entry 13 of Schedule III is a general residuary entry covering all goods other than those specified in Schedule I and II and in the preceding entries of Schedule III. Therefore, lime of the varieties with which we are concerned would be taxable under entry 13 of Schedule III only if it is not covered by entry 9 of Schedule II, Part A. Under the circumstances, the real question which requires determination is, whether merta, sojat and gotan limes are covered within the meaning of the expression "dyes and chemicals" occurring in entry 9 of Schedule II, Part A. In fact the question is still narrower, namely, whether those varieties of lime are "chemicals" within the meaning of the said entry because no one contends that they are "dyes".

10. At this stage it is relevant to refer to the decision of this Court in Gujarat Distributors Vs. The State of Gujarat, . Entry 4 of Schedule C to the Bombay Sales Tax Act, 1959 (hereinafter referred to as "the Bombay Act"), which contained description of the goods identical with the goods described in entry 9 of Schedule II, Part A, to the Act with which we are concerned herein, fell for construction in that case, and more particularly, the word "chemicals" occurring in the said entry was the subject-matter of interpretation. Having considered the discussion contained under the caption "Chemical industry", in the Encyclopaedia Britannica, 5th Volume, the court proceeded to observe as follows :

"This shows that, broadly, speaking, all chemicals which are used in the commercial world can be classified as (1) basic chemicals, (2) chemical products which are intermediary and which are used for producing other finished articles, and (3) end-products, which are ready for final consumption. Speaking of entry No. 4 of Schedule C which contemplates ''dyes and chemicals'', we have to consider in what particular category out of the three categories mentioned above, the word ''chemicals'' used in entry No. 4 of Schedule C falls .... In order to decide this question, we have necessarily to bear in mind the fact that the word ''chemicals'' is put by the legislature along with the word ''dyes'' .... In other words, the use of both these words together in one entry would attract the principle of noscitur a sociis ..... It cannot be disputed that dyes are intermediary products and are utilised for various purposes ...... When this word is used along with the word ''chemicals'' and when the principle of noscitur a sociis is applied, it follows that the word ''chemicals'', which is used in entry No. 4 of Schedule C is that chemical which can be used as an intermediary product and not as an ''end-product'' ....

.... Since we find that dye is an intermediate chemical product, which determines the nature of the wider word ''chemicals'', we are of the opinion that the word ''chemicals'' should take its meaning from the category of chemicals which a dye represents.

.... In other words, dyes and chemicals which are referred to in this entry are the intermediary products."

10. This decision, which was rendered in the context of entry 4 of Schedule C to the Bombay Act, which is in pari materia, must govern the interpretation of the entry under consideration, namely, entry 9 of Schedule II, Part A. For an article to be qualified as "chemicals" within the meaning of the said entry, therefore, it must be an intermediary chemical product which can be utilised as such for producing other finished products.

11. The Tribunal has found as a matter of fact, on the basis of the evidence led before it, that the three varieties of lime in question are used in the preparation of various types of mortars as well as in preparation of whitewash. So far as mortar is concerned, lime is used as one of the ingredients along with cement and sand and so far as whitewash is concerned lime is mixed with glue and other materials to prepare white wash which is applied as a paint. The Tribunal, in the light of those findings, rightly concluded that lime was an intermediary agent used for the purpose of producing finished products such as mortar and whitewash which are utilised in the building construction activity. That lime is a chemical is not in dispute. Under the circumstances, the three varieties of lime, namely, merta, sojat and gotan, would squarely fall within the description of the term "chemicals" occurring in entry 9 of Schedule II, Part A.

12. We might mention that apart from the ample material which was produced before the Tribunal and which it took into consideration before recording the

material findings of fact, there is considerable authority in standard books which support the relevant conclusions of the Tribunal. In Encyclopaedia Britannica, 15th Edition, Micropaedia, Volume II, at page 451, the following discussion is to be found under the caption "calcium oxide" :

"Calcium oxide, commonly known as lime or quicklime, the monoxide of calcium derived from calcium carbonate ...... by purging all of it carbon dioxide content ...... It is a white or grayish - white solid with specific gravity ranging from 3.25 to 3.38 and a melting point of 2,580 Degree C. It is produced in large quantities by roasting limestone, chalk, or oyster shells under controlled conditions.

Lime is one of the oldest products of chemical reaction known to man. It has been used extensively as a building material and as a fertilizer ......"

13. In the earlier edition (1972) of Encyclopaedia Britannica, the topic is found under the caption "Lime" at page 34 of Volume 14. At page 35 the following observations are to be found :

"In common usage the term ''lime'' includes the various chemical or physical forms of quicklime, hydrated lime and hydraulic lime .... Commercially quicklime is commonly produced by burning carefully graded limestone in rotary kilns, similar to those used in portland cement manufacture, and in large stationary vertical kilns ......

Hydraulic lime is a type of cementitious lime that will set and harden under water in a manner similar to portland cement. It is obtained by calcining an impute limestone containing large quantities of silica and alumina so that sufficient calcium silicates and aluminates are formed to give the lime its characteristic hydraulic properties. Hydraulic limes are widely used in Europe for mortars in masonry construction; use in the U.S. however, is limited.

....

Uses .... A large new market exists in the use of lime as a soil-stabilizing agent in the construction of base courses for modern highways, airport runways and building foundations."

14. In McGraw-Hill Encyclopaedia of Science and Technology, Volume 7, the following discussion is to be found under the heading "Lime (Industry)" at page 581 :

"A general term for the various products of calcined limestone, for example, quicklime and hydrated lime. Principal uses of lime are in mortar, stucco, and plaster for the building industry .....

Hydraulic lime is made from a limestone containing silica and alumina which, when the stone is calcined at a temperature just short of fusion, form unhydrated calcium-aluminium-silicates, allowing the material to set under water ....."

15. These standard works clearly go to support the finding of the Tribunal that lime, especially hydraulic lime, is used as a cementing material in the building construction industry, and that it is an agent which, when mixed with other substances, gives the same service as portland cement. Lime, therefore, is a chemical which is an intermediate product used to obtain the end-product which is used in the construction industry. It is, therefore, a chemical within the meaning of entry 9 of Schedule II, Part A, on the basis of the decision in Gujarat Distributors'' case [1975] 35 STC 116 GUj.

16. For the foregoing reasons, we are of the view that the Tribunal was right in law in taking the view that merta lime, sojat lime and gotan lime are covered by entry 9 of Schedule II, Part A, to the Act. The question referred for our opinion is, therefore, answered accordingly, that is to say, against the revenue and in favour of the assessee. There will be no order as to costs of the reference.

17. Reference answered accordingly.

