(1979) 05 DEL CK 0039

In the Delhi High Court

Case No : Letter Patent Appeal No. 82 of 1975

Union of India APPELLANT

Vs

Palam Potteries RESPONDENT

Date of Decision : 09-05-1979

Acts Referred:

Citation : (1979) ILR Delhi 319

Hon'ble Judges : S.B. Wad, J;Prakash Narain, J

Bench : Division Bench

Advocate : R.C. Chawla and B. Kirpal, for the Appellant;

Judgement

S.B. Wad, J.

(1) The question for determination in the present appeal is whether the order of appellant No. 3 dated January 16, 1975, deleting the packing materials, Nails, Packing cases, strips from the registration certificate of the respondent-dealer (depriving the dealer of the benefit of exemption from payment of sales-tax on the said packing materials), was lawful and proper. M/s. Palam Potteries, the writ petitioner in C. W. Petition No. 249 of 1975 challenged the deletion of the said items from the Registration Certificate as contrary to Section 5(2)(a)(ii) of the Bengal Finance (Sales-tax) Act, 1941 (as extended to the Union Territory of Delhi) and the rules framed there under.

(2) The learned Single Judge, Rangarajan J., by his order of April 15, 1975 quashed the impugned order and directed that the matter be re-heard after giving proper opportunity to the respondent-Assessee. For answering the said question, it is necessary to decide whether under the relevant provisions of the Bengal Finance (Sales-tax) Act, 1941 (as extended to the Union Territory of Delhi) a dealer who manufactures goods for sale is entitled to deduct from his gross turnover the amount spent by him for containers or other materials for the packing of goods manufactured for the purposes of sales. It is not in dispute that the respondent-dealer''s registration certificate since the year 1962-63 included

the packing materials mentioned above (thereby permitting the dealer to exclude from the gross turn-over the amounts spent on the packing material) and it was after thirteen years that the said benefit was taken away by the impugned order.

(3) For proper appreciation of the problem it is necessary to understand the importance of packaging in the modern commercial life Encyclopedia Britannica ,1969 (Edn.) succinctly summarised them as follows:

" IMPORTANCE of Marketing:

IN advanced economies where most of population is engaged in specialised production of goods of which they themselves can use only a small part, marketing is a pre-activity. . . (thus) Specialisation, industrialisation and urban concentration are associated with organized marketing and rapid economy. Development is conditional upon a comparable growth of marketing functions and services." (Vol. 14, page 909)

Packaging:

MOST food and manufactured products must be enclosed in some kind of container if they are to be marketed widely and efficiently. These containers offer a convenient way of handling, help to prevent physical deterioration, making theft, adulteration or substitution more difficult, ensure cleanliness, and facilitate measurement, labelling and attachment of sales instructions and descriptions. They may also promote sales because of their attractive appearance.

SPECIALISED Equipment:

ENTERPRISES have developed to pack goods in wood, metal paper board or plastic containers adapted to wide range of requirements." (Vol. 17, page 22)

(4) A few examples of the goods mentioned in the 1st Schedule which are liable to pay sales-tax at a maximum rate of ten paise per rupee would show that the sale of those goods by the manufacturer cannot simply be made without the goods being properly packed. Refrigerators, air conditioners ,delicate electronic goods, cinematographic goods such as lenses and films, clocks and time-pieces. binoculars and telescope, sanitary goods and glass wares if not properly and securely packed with special packing would get seriously damaged and would be rendered useless for use. Liquors and cosmetics are usually sold in beautiful costly containers and are accepted in trade and commercial life as a necessary pre-condition of sale. Heavy machinery is required to be properly crated. Dangerous substances such as sulphuric acid and cooking gas cannot be sold by a manufacturer unless a special container ensuring safety of the consumer is ensured. Even the traditional articles of food such as milk and prepared food are now a days sold in special polythene bags and packs. The need for packing and insistence of original packing by the consumers are commercial facts too well known.

(5) The provisions of the Bengal Finance (Sales-tax) Act, 1941 in regard to

exemption of packing material from liability to pay sales- tax are very peculiar. Section 5(2)(a)(ii) in regard to the deductions from the gross turn-over runs as follows :

" SALES to a registered dealer of goods of the class or classes specified in the certificate of registration of such dealer, as being intended for re-sale by him and for such use by him as raw materials in the manufacture in the Union Territory of Delhi of goods (other than goods declared tax free under section) for sale inside Delhi; etc. and for containers or other materials for the packing of goods of the class or classes so specified."

(6) Rule 4 prescribes the particulars to be given in the application for certificate of registration. The rule requires that it should be stated by a dealer as to whether the goods are for use as raw material for the manufacture of goods for sale or for re-sale or for containers or other packing materials. Although the principle section, namely, Section 5(2)(a)(ii) entitles an assessed for deductions on account of the containers or packing and also provides for the said information in an application for registration, surprisingly the actual form of a certificate of registration, which is a prescribed form, does not provide for the containers or packing materials. The said prescribed form namely, ST-III in Column 3(a) requires the authorities to specify the goods for purposes of manufacture and under column 3(b) which is on the right hand side to state the goods which are for re-sale. As stated earlier in ST-III there is no separate column for packing materials and containers. Further, column 3(a) speaks of goods "For purpose of manufacture" and not manufacture for sale. Form S. T. Iii thus does not conform with Section 5(2)(a) (ii) and Rule 4. The Ru1es must, however, subserve the provisions of the Act and the form (including form ST-III) must yield to the substance of section 5(2) (a) (ii).

(7) The occasion of using the containers or packing materials comes at different stages. A manufacturer manufactures the goods for consumption. He receives the goods which are his raw material in some containers or packing material. As against the goods which are manufactured for sale these goods are finished products manufactured by the manufacturer and put in the market, for sale. At this stage the manufacturer uses the containers for packing materials so as to put the finished goods in the saleable form. The finished goods are sold directly to a consumer or to a seller. A seller in his turn sells the goods to another seller or to a consumer. The question of use of containers or the packing material in the chain of manufacture and sale primarily arises at the stage when the finished products are offered for sale by the manufacturer. The use of containers and packing material at the re-sale stage arises only where the re-packing of the goods becomes necessary. In our opinion, the word ''sale'' used in the 3rd clause of section 5(2)(i)(ii) in relation to deductions on account of the containers and the packing material, represents a sale of finished goods made by a manufacturer either to the consumer or to another seller for re-sale, also.

(8) The dealer''s contention in the writ petition and before us is that the packing

material used by him should be treated as raw material for the manufacture of goods put for sale. The dealer further contends that the crockery being of a delicate and fragile nature, its sale is impossible without use of packing. The contention is that since the words used in section 5(2)(a)(ii) are "manufactured" for sale and not merely ''manufactured'' the word ''raw-material'' should be understood in a wider sense so as to cover a sale of the manufactured goods, and should not be used in a narrow sense of raw materials for manufacture. In the alternative, the dealer submits that since no consumer or a re-seller would accept crockery unless it is securely packed in appropriate boxes and other packing material, the sale of crockery inevitably and necessarily implies sale of packing material as well. Since the manufacturer does not himself manufacture the packing material and buys them from other dealers, the sale of the packing material, it is contended such as the boxes Along with the crockery is a re-sale, within the meaning of section 5(2)(a)(ii). There is a great deal of substance in the contention of dealer So far as the present sales-tax legislation is concerned, the crucial word in the phrase ''raw materials for manufacture for sale'' is sales u/ s 5 (2) (a) (ii). Both the words ''raw-material'' as well as ''re-sale'' used in the said section should be understood in the context of and for eitectuating the idea of ''manufacturing for sale''.

(9) The learned counsel for the Revenue strongly urged before us that the crucial words in section 5(2) (a) (ii) are "goods of the class or classes so specified". According to him, no deduction is permissible for containers or packing materials unless they are used for the specified goods, namely, the raw material or the goods for re-sale. He further submits that on the facts of the case packing material is not a raw material of goods manufactured for sale nor there is any re-sale of the packing material. In this connection he has referred to the two declarations which a dealer is required to file in the prescribed form under the Rules. The learned counsel further contends that the provisions of section 5(2) (a) (ii) being in the nature of exemption from tax, sales should be considered strictly.

(10) We arc unable to agree with the contentions of the counsel for the Revenue in this regard. In the first place, the argument of the counsel for the Revenue overlooks the terminology of the relevant clause regarding the manufacture for sale in Section 5 (2) (a) (ii). The clause does not refer to manufacture simpliciter, i.e. as manufacturer who manufactures the good''s for consumption. The manufacturer referred to in this clause is essentially a manufacturer who produces the finished goods for sale. The manufacturer is interested in buying the raw materials only with a view to produce the finished products and sell it in the market himself or through a re-seller. The words ''manufacture for sale'' used in the said clause are used in contradiction with manufacture for consumption. Similarly in the relevant clause regarding the container and the packing material what is provided is that the class of goods must be specified ''for sale''. The use of words ''sale'' in the said two clauses of section 5 (2) (a) (ii) shows that while giving deductions for purposes of sales-tax, the legislature was aware of the fact

that the packing material or the container used by the manufacturer for the sale of his finished product is necessary. It is perhaps an acknowledgement of the modern market practice and the habit of all modern consumers to insist upon the original packing of the goods at the manufacturing stage so as to ensure the quality and sale condition of the goods.

(11) The learned counsel for the Revenue further submitted that in case of re-sale of goods, it is unnecessary to mention the said goods, in the registration certificate, as on the strength of the section 5(2)(a)(ii) itself, the containers used for re-sale would be free from the sales-tax. If the argument is correct, column 3(b) of the registration certificate regarding re-sale will have to be treated as redundant. If the requirement of specification of goods in the registration certificate is to be treated as redundant or in any case as merely directory (and not mandatory) as is contended by the Revenue, it destroys the argument of the Revenue earlier made, that a dealer is not entitled to deductions for packing material unless goods as raw material or goods for re-sale are so specified in the registration certificate. Assuming that this argument is correct, it is equally applicable to the finished goods manufactured for sale. This argument is in the nature of a last ditch defense in order to avoid reinstatement of the items of exemption in the registration certificate.

(12) The law as regards exemption of packaging material from sales tax is laid down by the Supreme Court in The Supreme Court has held that for claiming exemption from sales tax, it must be proved that there is a separate and independent agreement, express or implied, the sale of packaging material. The Supreme Court has further held that the question as to whether there is an agreement of sale packaging material is a pure question of fact depending upon the facts of each case. In the Supreme Court held that the packing material was used incidentally to the drying process of tobacco by the assesses and there was no independent contract for sale of the packing materials. In the Supreme Court held that the packing materials namely, cardboards cases did not form part of the bargain to sell cigarettes but were used by the sellers as a convenient and cheap vehicle of transportation.

(13) Considering the decisions of the Supreme Court peculiar provisions of the Bengal Finance (Sales Tax) Act, 1941 and Rules and delicate fragile character of the goods involved, we hold that the packing material in the present case is entitled to deductions from the gross turnover u/s 5(2) (a)(ii) of the Act.

(14) The Revenue had for 12 years exempted the packing material used by the assessed in substantial compliance of the requirements of section 5(2) (a) (ii). The deletion from the registration certificate is done on the erroneous interpretation and application of the decisions of the Supreme Court quoted above and some decisions of the High Courts. Even otherwise, as pointed out by the learned single Judge, the opportunity to show cause given to the assessed was a sham opportunity and was no opportunity in the eyes of law.

(15) For the reasons stated above, we quash Order No. ST/W-36/ 75/533 dated January 16, 1975 passed by the Assistant Sales Tax Officer, Ward No. 36, New Delhi. We further direct the Assistant Sales Tax Officer to restore the following items, namely :

1.Nails

2.Packing material,

3.Strips,

4.Packing cases and

5.Registration Certificate

of the writ petitioner-M/s. Pallam Potteries. The parties will bear their respective costs. Order of the Assistant Sales Tax Office" quashed.

