(1991) 06 GUJ CK 0020

In the Gujarat High Court

Case No : Sales Tax Reference No. 7 of 1984

Vijay Foundry and Machinery Works APPELLANT

Vs

State of Gujarat RESPONDENT

Date of Decision : 21-06-1991

Acts Referred:
Gujarat Sales Tax Act, 1969 — Section 2(21), 67, 69(1)

Citation : (1991) 06 GUJ CK 0020

Hon'ble Judges : Sharad D. Dave, J;A.P. Ravani, J

Bench : Division Bench

Advocate : R.S. Pathak, for S.L. Modi, for the Appellant; Rekha Doshit, AGP, for H.V. Chhatrapati and Co., for the Respondent

Judgement

A.P. Ravani, J.—This reference u/s 69(1) of the Gujarat Sales Tax Act, 1969, is at the instance of the dealer. The dealer is registered under the provisions of the Gujarat Sales Tax Act, 1969 ("the Act" for short) and it manufactures and sells cast from castings. For the purpose of manufacturing the said articles it purchased pig iron, scrap, hard coke, bentonite powder and other raw materials. During the course of assessment for the samvat year 2030 the Sales Tax Officer allowed set-off under rule 42 of the Gujarat Sales Tax Rules, 1970, in respect of sales tax paid by the dealer on the purchase of goods used in preparing moulds. The Assistant Commissioner of Sales Tax took up the matter in suo motu revision u/s 67 of the Act. After hearing the parties he came to the conclusion that raw bentonite powder was a chemical covered by entry 9 of Schedule II, Part A of the Act. Therefore the set-off in respect of the tax paid on the purchase of raw bentonite powder could not be claimed inasmuch as it was "prohibited goods" as defined u/s 2(21) of the Act. The assessee preferred revision before the Tribunal. The Tribunal confirmed the order passed by the Assistant Commissioner of Sales Tax.

2. The dealer submitted application in the Tribunal for making reference to this Court. The Tribunal has referred the following question for opinion of the High

Court. Our answer is indicated against the question.

Question :

"Whether on the facts and in the circumstances of this case, the Tribunal was justified in law in holding that raw bentonite powder is a chemical within the meaning of entry 9 of Schedule II, Part A, to the Gujarat Sales Tax Act, 1969 and is not covered by the residuary entry 13 of Schedule III in the said Act ?"

Answer :

"In the affirmative in favour of the Revenue and against the assessee".

The reasons for the aforesaid answer are as follows :

3. It is an undisputed position that bentonite powder is used by the assessee in preparing moulds for castings. In the case of State of Gujarat v. Jayant Chemical Works Pvt. Ltd. reported in [1975] 36 STC 112 the question arose as to whether refined bentonite powder was chemical or not. In that case entry 4 of Schedule C of the Bombay Sales Tax Act, 1959, came up for consideration. The said entry as it stood then was in pari materia with entry 9 of Schedule II, Part A of the Act. Therein also question came up for consideration as to whether refined bentonite powder was chemical covered by the expression "dyes and chemicals other than those specified in any, other entry".

4. Refined bentonite powder was described as follows in Jayant Chemical Works [1975] 36 STC 112 :

"........ it is a very fine, pale buff of cream-coloured powder which swells when added to water, free from grit, odourless; taste slightly earthly. It is put to medical and industrial use and the gels are suitable for suspending powders in aqueous preparation and for ointment and cream bases. It is also used for preparation of industrial barrier creams and cosmetics".

After referring to the aforesaid description of the article the Division Bench of this Court came to the conclusion that bentonite powder was a chemical. Be it noted that therein the case of the Revenue was that bentonite powder was not chemical. This contention of the Revenue was negatived by the High Court.

5. In view of the aforesaid decision of this Court there should not have been any difficulty in holding that bentonite powder even in unrefined form would be chemical. However, the said decision is sought to be distinguished on the ground that bentonite powder in unrefined form is mineral. In support of this submission reliance was placed on some certificates issued by one Dr. Gadgill, Professor and Head of Metallurgical Engineering Department, Falculty of Technology and Engineering, M.S. University, Baroda. Provisions of Mines and Minerals (Regulation and Development) Act, 1957 and the definitions of "minerals" and "minor minerals" contained therein were also referred. It was contended that minerals mean substances which can be obtained from earth by mining, digging, dredging, etc. In the said provision minor minerals have been defined so as to

mean building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, etc. Be it noted that in the Mines and Minerals (Regulation and Development) Act, 1957, or in the rules framed thereunder, nowhere bentonite is referred to as either mineral or as minor mineral. Moreover, there is nothing to show that mineral cannot be a chemical. Hence even if it is assumed that bentonite is a mineral, it would not cease to be a chemical on that ground alone.

6. The Tribunal has followed the decision of this High Court in the case of Jayant Chemical Works [1975] 36 STC 112 and Gujarat Distributors v. State of Gujarat [1975] 36 STC 116. In the case of Gujarat Distributors [1975] 36 STC 116, three broad categories of chemicals have been referred to by the Division Bench of this High Court. They are as follows :

(i) basic chemicals;

(ii) chemical products which are intermediary and which are used for producing other subordinate articles;

(iii) end-products.

Once it is held that refined bentonite is chemical, by necessary corollary it has got to be held that unrefined bentonite powder is basic chemical from which refined bentonite powder is derived. We have been taken through the judgment of this High Court in the case of Gujarat Distributors [1975] 36 STC 116. We are in respectful agreement with the reasons given and the conclusion arrived at in the aforesaid decision. We see no reason to differ with the same. Following the said decision one has got to come to the conclusion that if refined bentonite powder is chemical, unrefined bentonite powder is also a chemical.

7. The Tribunal has also referred to dictionary meaning of the term "chemical" occurring in Webster''s New Twentieth Century Dictionary of the English Language, Unabridged (2nd Edition, 1979). Therein the meaning of the term "chemical" is given as follows :

"Chemical - any substance used in or obtained by a chemical process or processes."

After referring to the aforesaid definition, the Tribunal rightly observed that a commodity need not be a product of a chemical process and also be used to produce a chemical effect in order to be classed as a chemical. Both these qualities are alternative qualities and the possession of either suffices to make the article a "chemical". We see no reason to differ from the aforesaid reasoning adopted by the Tribunal.

8. For the aforesaid reasons the reference is answered accordingly with no order as to costs.

9. Reference answered in the affirmative.

