(1985) 03 MP CK 0032

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1418 of 1983

Western Coal Fields Ltd. APPELLANT

Vs

Sales Tax Officer and Another RESPONDENT

Date of Decision : 28-03-1985

Acts Referred:

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

Citation : (1985) ILR (MP) 397 : (1985) 30 MPLJ 596 : (1985) MPLJ 596 : (1986) 61 STC 102

Hon'ble Judges : G.L. Oza, C.J;B.M. Lal, J

Bench : Division Bench

Advocate : M.S. Shrivastava, for the Appellant; S.L. Saxena, Deputy Advocate-General, for the Respondent

Final Decision : Allowed

Judgement

G.L. Oza, C.J.

This petition has been filed by the petitioner challenging the orders passed by the Sales Tax Officer, Chhindwara, dated 30th December, 1982, deleting explosives and other goods from the category of raw materials specified in the registration certificate under the M.P. General Sales Tax Act.

According to the petitioner, the petitioner, Western Coal Fields Ltd., is working coal mines and is a dealer registered under the M.P. General Sales Tax Act. This unit is separately registered as a dealer under the provisions of the Madhya Pradesh General Sales Tax Act and holds registration certificate dated 31st January, 1974.

It is alleged that the petitioner-dealer while applying for registration certificate under the Act requested for specification of the following goods as raw material, for mining of coal from the coal mines :

(a) gun powder, gelignite, detonators and safety fuses "of all kinds, explosives of all kinds, saltpetre, sulphur, cartridge paper, electrodes (all required for blasting the mines underground);

(b) fuel and lubricants like fuel oil, high speed diesel oil, coal and other

kinds of fuel and lubricants.

It is alleged that these goods were specified as raw material in the State registration certificate granted on 31st January, 1974. The dealer later on applied for specification of dolomite and lime as raw materials which were also specified in the registration certificate from 14th August, 1978.

The dealer was served with a memo dated 23rd December, 1982, issued by the Sales Tax Officer, Chhindwara, requiring the dealer to appear before him on 30th December, 1982, and to produce the copy of registration certificates as action for amendment of the registration certificates in relation to raw materials and incidental goods was to be taken according to the circular of the Commissioner of Sales Tax. A copy of this memo has been annexed.

It is further alleged that the representative of the petitioner-dealer appeared before the Sales Tax Officer, Chhindwara, on 30th December, 1982, and enquired as to what amendments were required to be done in registration certificates and also intimated that the registration certificates were already in his office.

He was informed that according to the circular issued by the Commissioner of Sales Tax, the certificate was to be corrected. The Sales Tax Officer, Chhindwara, thereafter send the copies of the sales tax registration certificates in which the following materials were deleted from the category of "raw materials" with effect from 30th December, 1982, and were specified as incidental goods from that date. The goods deleted have been stated by the petitioner as under:

gun powder, gelignite, detonators and safety fuses of all kinds and explosives of all kinds, saltpetre, sulphur, cartridge paper, electrodes (all required for blasting the mines underground).

This amendment made in the registration certificate is being challenged by this petition.

According to the petitioner, the definition of "raw material" as contained in Clause (1) of Section 2 of the M.P. General Sales Tax Act is wide enough to cover these goods and therefore the Sales Tax Officer committed an error in excluding these articles.

The learned counsel for the petitioner contended that the definition of "raw material" in the second part refers to articles consumed in the process of manufacture and it has further been clarified by saying "and includes fuel and lubricants". It was, therefore, contended that these articles which have now been excluded by the Sales Tax Officer from the registration certificate from the category of raw material are all ingredients of explosives which are used in the process of blasting underground mines and, therefore, will squarely fall within the definition of "raw material". The learned counsel placed reliance on a decision of this Court in Rewa Coal Fields Ltd., Shdhdol (Misc. Petition No. 464 of 1972 decided on 4th May, 1979), wherein the question of timber and .cement was considered as to whether they will fall within the ambit of raw material. It was also contended that incidental goods as has been defined in Section 2(h) will only be goods which will not fall within the ambit of definition of "raw material" and, as contended, these goods which have now been deleted squarely fall within the definition of "raw material".

The learned Deputy Advocate-General appearing for the respondents contended that these explosives could not be said to be raw materials from which the manufactured goods will be coal.

The definition of "raw material" has been provided in Section 2(1) and reads:

''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.

It will be material also to consider the definition of the word "manufacture", which is defined in Section 2(j):

''manufacture'' includes any process or manner of producing, collecting, extracting, preparing or making any goods, and in respect of trees which have been severed from the land or which have been felled, also the process of lopping the branches, cutting the trunks, or converting them into logs, poles or bailies or any other articles of wood, but does not include such manufactures or manufacturing processes as may be notified.

In the process of manufacture in this definition they have included the terms "extraction" and "collection". It is not disputed before us that the process of mining means the process of extraction and collection of coal and, therefore, clearly falls within the definition of "manufacture" and in this context the definition of "raw material" will have to be looked into. The second part of the definition of "raw material" indicates "goods or an article consumed in the process of manufacture". If in place of "manufacture", "extraction" is read as it is the process so far as mining is involved, it will be clear that use of explosives will be for the purpose of extraction and the explosives consumed in this process and looking at it from this point of view it could not be doubted that explosives will fall within the definition of "raw material". What has been stated in this definition further makes the matter further clear as it has been stated that it includes fuel and lubricants required for the process of manufacture. In this view of the matter, therefore, there can be hardly any doubt that explosives will fall within the definition of "raw material" and if it falls within the definition of "raw material", it could not be included in the incidental goods. In the judgment of this Court in Rewa Coal Fields Ltd. (Misc. Petition No. 464 of 1972 decided on 4th May, 1979) on which reliance has been placed, this definition of "raw material" has been considered but that has been considered in respect of timber and cement with which we are not concerned in this case. In the light of the discussion above, therefore, there is no justification for the Sales Tax Officer to delete these articles including explosives from the category of raw materials in the registration certificate.

The petition is allowed. The order passed by the Sales Tax Officer, Chhindwara, dated 30th December, 1982, deleting explosives and other articles from the category of raw materials specified in the registration certificate is hereby quashed and it is directed that the raw materials previously specified shall be included in the registration certificate. In the circumstances, parties are directed to bear their own costs. (sic)