

(1994) 08 MP CK 0013
Madhya Pradesh High Court
Case No: M.C.C. No. 118 of 1986

Commissioner of Sales Tax

APPELLANT

Vs

Irfan and Co.

RESPONDENT

Date of Decision: Aug. 31, 1994

Acts Referred:

- Central Sales Tax Act, 1956 - Section 8(5)

Citation: (1994) 95 STC 608

Hon'ble Judges: U.L. Bhatt, C.J; M.V. Tamasker, J

Bench: Division Bench

Advocate: Sanjay Seth, for the Appellant;

Judgement

U.L. Bhat, C.J.

The Board of Revenue, Madhya Pradesh, has referred the following questions at the instance of the Revenue u/s 44 of the M.P. General Sales Tax Act, 1958 :

"(1) Whether, on the facts and circumstances of the case, the Tribunal was justified in holding that the consideration paid by the dealer to the Forest Department was in lieu of the sale of mahul patta to the dealer and not as licence fees as contended by the Revenue ?

(2) Whether, on the facts and circumstances of the case, the Tribunal was justified in holding that no manufacturing process is involved in the packing of mahul patta and as such no new commodity has come into existence which can be subjected to tax ?"

2. The assessment in question relates to two periods, namely, March 9, 1977 to December 31, 1977 and January 1, 1978 to December 31, 1978. The licensee is a dealer in mahul patta. For the two periods aforesaid, he had taken on contract from the State Government the right to collect mahul patta from the forest. He paid sales tax at the time of purchase to the State Government and sold the same partly inside the State and partly in inter-State trade. In regard to sale made in the course of

inter-State commerce, he claimed exemption under Notification No. 2353-1765-V-SR dated October 27, 1959 issued by the State Government u/s 8(5) of the Central Sales Tax Act, 1956 (for short "the Act"). The assessing officer rejected this contention and assessed the Central sales tax. The Board in second appeal set aside that part of the assessment order. It is in this background that a reference was sought and made.

3. Section 8 of the Act deals with rates of tax on sales in the course of inter-State trade or commerce. Clause (a) of Sub-section (5) of Section 8 reads thus :

"(5) Notwithstanding anything contained in this section, the State Government may, if it is satisfied that it is necessary so to do in the public interest, by notification in the Official Gazette, and subject to such conditions as may be specified therein, direct--

(a) that no tax under this Act shall be payable by any dealer having his place of business in the State in respect of the sales by him, in the course of inter-State trade or commerce, from any such place of business of any such goods or classes of goods as may be specified in the notification, or that the tax on such sales shall be calculated at such lower rates than those specified in Sub-section (1) or Sub-section (2) as may be mentioned in the notification."

Under the aforesaid provision, the State Government is empowered to direct that no tax under the Act shall be payable by any dealer of the State in respect of sales by him in the course of inter-State trade or commerce of any goods or classes of goods as may be specified or the tax shall be calculated at such lower rate as may be mentioned in the notification.

4. Notification dated October 27, 1959, is one issued by the State Government in exercise of the aforesaid power. The notification reads thus :

"Whereas the State Government is satisfied that it is necessary so to do in the public interest :

Now, therefore, in exercise of the powers, conferred by Sub-section (5) of Section 8 of the Central Sales Tax Act, 1956 (No. 74 of 1956), the State Government hereby directs that no tax under the said Act, shall be payable by any dealer having his place of business in the State of Madhya Pradesh, in respect of sales by him of any goods, other than declared goods, from any such place of business in the course of inter-State trade or commerce during the period commencing from April 1, 1959 and ending on March 31, 1978 subject to the following conditions, namely :

(i) that the sales are made to a dealer, registered under the Central Sales Tax Act, 1956 or to a department of the Central or State Government outside this State on furnishing a declaration in form C or a certificate in form No. "D" as the case may be, as required by Sub-section (4) of Section 8 of the said Act ; and

(ii) that it is proved to the satisfaction of the assessing authority that there has been no change in the form of identity of the goods at the time of their sales in the course of inter-State trade or commerce and that they have already been subjected to tax under any sales tax law in force in this State."

The notification grants total exemption in respect of sales by a dealer of any goods other than declared goods from the place of business in the course of inter-State trade or commerce during the period commencing from April 1, 1959 and ending on March 31, 1978 subject to two conditions, namely, the sale is made to a dealer registered under the Act on furnishing a declaration in form "C" or a certificate in form "D" as required u/s 8(4) and the assessing authority is satisfied that there has been no change in the form of identity of the goods at the time of their sale in the course of inter-State trade or commerce and they have already been subjected to tax under any sales tax law in force in the State. There are similar notifications issued covering the period up to December 31, 1978.

5. The only contention urged is that the goods which were the subject-matter of inter-State trade, namely, mahul patta, were not already subjected to tax under the M.P. General Sales Tax Act, 1958. It appears that as a matter of fact, for acquiring right to pluck mahul leaves from the Forest Department, the assessee paid consideration and sales tax was collected from him. Learned Government Advocate, relying on the decision in *Anandilal Naraindas v. Commissioner of Sales Tax* [1968] 22 STC 19, submitted that the transaction between the Government and the assessee was not a transaction of sale of goods, but only a licence to pluck mahul leaves which was not a taxable event and, therefore, sales tax could not have been collected lawfully from the assessee and sales tax so paid has to be ignored for the purpose of considering the effect of the notification referred to above. The condition prescribed in the notification is that "they (i.e., the goods) have already been subjected to tax under any sales tax law in force in the State of M.P." On the basis that the transaction between the Government and the assessee involved sale of mahul leaves, the Government had collected sales tax. In that view, it is not open to the Government to contend that there was no sale of goods and, therefore, goods sold by the assessee in the course of inter-State commerce have not already been subjected to tax under the State law.

6. Question No. 2 is based on the contention that mahul leaves purchased by the assessee had to be dried and bundled before selling the same in the course of inter-State trade and this involved a manufacturing process. On the basis of the amended definition of the expression "manufacture" in the M.P. General Sales Tax Act, 1958, this Court in *Commissioner of Sales Tax v. Purshottamdas Somabhai* [1980] 13 VKN 1 has held that a similar process with reference to tendu leaves is not a manufacturing process. We are of the opinion that the decision would apply to mahul leaves also. Therefore, there was no manufacturing process involved in this case.

7. We answer both the questions in the affirmative, i.e., in favour of the assessee and against the Revenue.

8. A copy of this judgment under the signature of the Registrar and seal of the High Court will be transmitted to the Board of Revenue.