

Commissioner of Sales Tax Vs Polychem Ltd.

Court: Bombay High Court

Date of Decision: Jan. 24, 1977

Acts Referred: Bombay Sales Tax Act, 1959 " Section 52, 61(1)

Citation: (1977) 39 STC 315

Hon'ble Judges: M.H. Kania, J; D.P. Madon, J

Bench: Division Bench

Judgement

Kania, J.

This is a reference u/s 61(1) of the Bombay Sales Tax Act, 1959 (hereinafter referred to as "the said Act"). The reference has

been made at the instance of the Commissioner of Sales Tax, and the question referred to us for our determination is as follows :

Whether, on a true and proper interpretation of entry 19A of Schedule E of the Bombay Sales Tax Act, 1959, the Tribunal was correct in law in

holding that "polynite sheets" manufactured and sold by the respondents are not goods made primarily from plastics falling under the said entry ?

2. The facts giving rise to this reference are as follows : The respondents are a public limited company and manufacture products known in the

trade as "styron" (plastic moulding powder) and polynite sheets. On 21st September, 1967, the respondents filed two applications u/s 52 of the

said Act before the applicant requesting him to determine the rate of tax applicable to the sales of the aforesaid two products, viz., styron and

polynite sheets. The respondents contended that these articles were not chargeable at the rates prescribed under entry 19A of Schedule E but

were chargeable under the residuary entry, viz., entry 22 of Schedule E to the said Act. The applicant, the Commissioner of Sales Tax, by his

order held that both these articles were goods made from plastics and were taxable under entry 19A of Schedule E to the said Act. The

respondents preferred and appeal against this order to the Sales Tax Tribunal. The Tribunal came to the conclusion that both the aforesaid

products were plastics and not goods made from plastics and, in view of this, the Tribunal held that these goods were not covered by entry 19A of

Schedule E but would fall within the residuary entry 22 of the said schedule. The department has accepted the view of the Tribunal regarding the

product, styron, which consists of granules, but has sought to dispute the correctness of the view of the Tribunal regarding the polynite sheets by

way of the question raised before us.

3. Before going into the arguments canvassed in the matter, it may not be out of place to take notice of the relevant entries in Schedule E to the

said Act. Entry 19A of Schedule E, as it stood at the relevant time, read thus :

Goods made primarily from any kind of plastics (other than those to which entry 53 in Schedule C or any other entry in that or any other schedule

applies, but including roofing, floor, or wall plastic tiles).

4. Entry 22 of the Schedule E is a residuary entry. It is common ground that, in the present case, if the goods in question cannot be regarded as

goods made primarily from any kind of plastics, then the same would be covered by entry 22 of Schedule E, it again being common ground that

neither entry 53 in Schedule C nor any other entry is applicable to these goods.

5. In order to appreciate the arguments advanced in the matter, it is necessary to examine the nature of the product involved and the manner in

which it is manufactured. In its judgment, the Tribunal has considered what the substance known as "plastics" is. Reference has been made by the

Tribunal to the definition of the term "plastics" given in the Chambers's Twentieth Century Dictionary (Revised Edition, Reprinted, 1966). The

relevant portion of the meaning of the said term "plastics" given in the aforesaid dictionary reads as follows :

Generic name for certain natural and synthetic substances which under heat and pressure become plastic, i.e., mouldable, and can then be shaped

or cast.

6. The judgment of the tribunal shows that polystyrene is one of the oldest synthetic resins. The Tribunal has taken note of the process for obtaining

styron and polynite sheets. It has pointed out that styrene is the basic chemical to which are added ethyl benzene and mineral oil. To produce

higher impact strength, rubber and ionol are also added. It is not necessary to describe in detail here the process involved in the manufacture of

polynite sheets or styron granules. Suffice it to say that at one stage of this process the polymer mass which must be regarded as plastics raw

material, settles down in the flash tank or vacuum chamber and is then extruded through an orifice plate having a number of holes about 1/8" in

diameter or through a flat die. When this mass comes out of the orifice plate as aforesaid it emerges in the form of strands, which after cooling are

cut into granules. The product styron comprises of such granules. If such polymer mass is extruded through a flat die it comes out in the shape of

sheets which after cooling are cut and known as polynite sheets. The Tribunal has pointed out that there is no evidence to show that the condensed

polymer mass is itself salable or marketable commodity, and from the evidence furnished by the respondents, it is clear that these products, viz.,

styron or polynite sheets, are salable and marketable. It is on this basis that the Tribunal has taken the view that the change in the form of the

polymer mass into granules and polynite sheets would not result in the said granules or the said sheets being regarded as articles made from plastics

and that these must be regarded as plastics and not goods made from plastics. As we have already pointed out, the decision of the Tribunal

regarding styron (plastic moulding powder) is not being sought to be disputed. There appears to be no reason why a different view should be taken

regarding the polynite sheets. The machinery of these sheets is really a convenient mode in which processed plastics can be kept or preserved and

then sold. It is true that a pamphlet was produced before the Tribunal showing the various purposes for which polynite sheets could be used. To

give a few examples, polynite sheets can be used for making toys and novelties, for inner door lining and back panels of refrigerators, for wall

panelling, casings for musical instruments and so on. What is significant, however, is that the Tribunal has found that such use of the polynite sheets

can only be made after further fabrication thereof or by carrying out some process on these sheets. In view of this, we are of the opinion that

polynite sheets must be regarded as plastics and not goods made primarily from any kind of plastics and that the Tribunal was right in the

conclusion to which it arrived.

7. Our view is, to a considerable extent, supported by the decision of the Supreme Court in *The State of Madhya Bharat (Now The State of*

Madhya Pradesh) and Others Vs. Hiralal Ji, . In that case, the assessee purchased scrap iron locally and imported iron plates from outside, and

after converting them into bars, flats and plates in his mills sold them in the market. Under a notification issued by the Government of Madhya

Bharat, no tax was payable on the sale of iron and steel. But, u/s IV of Notification No. 59 issued by the said Government, sales tax at the rate

stated therein was payable in respect of a sale by an importer or producer of goods prepared from any metal other than gold and silver. It was

held by the Supreme Court that scrap iron purchased by the assessee was processed for convenience of sale. The raw materials were only re-

rolled to give them attractive and acceptable forms. They did not in the process lose their character as iron and steel.

8. In the result, we answer the question referred to us in the affirmative. The applicant to pay to the respondents the costs of this reference fixed at

Rs. 300.

9. Reference answered in the affirmative.