

Commissioner Of Sales Tax, U.P vs Masneill And Barry Ltd., Kanpur on 19 November, 1985

Equivalent citations: 1986 AIR 386, 1985 SCR SUPL. (3) 739, AIR 1986 SUPREME COURT 386, 1986 (1) SCC 23, 1986 ALL. L. J. 252, 1986 TAX. L. R. 2249, (1986) IJR 117 (SC), 1986 UJ (SC) 142, 1986 (16) STL 14, 1986 ALL TAX J 78, 1986 UPTC 398, 1986 (19) VKN 236, 1986 SCC (TAX) 155, 1986 TAXATION 80 (7) 23, (1986) 1 CURCC 254, (1986) 1 SUPREME 284, (1986) 23 ELT 5, (1986) 8 ECC 147, (1986) 7 ECR 266, (1986) 61 STC 76

Author: R.S. Pathak

Bench: R.S. Pathak, V.D. Tulzapurkar

PETITIONER:
COMMISSIONER OF SALES TAX, U.P.

Vs.

RESPONDENT:
MASNEILL AND BARRY LTD., KANPUR

DATE OF JUDGMENT 19/11/1985

BENCH:
PATHAK, R.S.
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PATHAK, R.S.
TULZAPURKAR, V.D.

CITATION:
1986 AIR 386 1985 SCR Supl. (3) 739
1986 SCC (1) 23 1985 SCALE (2) 1093
CITATOR INFO :
RF 1986 SC1730 (8)

ACT:
U.P. Sales Tax Act, 1948 & Notification No. ST 3124/X-1012 (4) - 1964, dated July 1, 1966 - Sales Tax - Levy of - 'Ammonia Paper' and 'ferro paper' - Whether "paper other than hand made paper."

HEADNOTE:
The respondent-assessee, a dealer in stationery and drawing material, sells ammonia paper and ferro paper. In

assessment proceedings under the U.P. Sales Tax Act, 1948 for the assessment year 1966-67 the assessee claimed that ammonia paper and ferro paper were liable to tax as unclassified goods at the rate of two per cent prescribed by 8.3 of the Act. The Sales Tax Officer rejected the claim holding that ammonia paper and ferro paper fell under the entry "paper other than hand made paper" included in notification no.ST-3124/X-1012(4) - 1965 dated July 1, 1966 and its turnover was, therefore, liable to tax at six per cent.

The appeal as well as the revision petition of the assessee were dismissed.

At the instance of the assessee a reference was made to the High Court, which held that "ammonia paper and ferro paper do not fall within the category of paper".

Dismissing the Appeal of the Commissioner of Sales Tax,
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HELD: 1. Ammonia paper and ferro paper do not fall within the entry "paper other than hand made paper" in the notification dated July 1, 1966 issued under the U.P. Sales Tax Act, 1948. [743 D]

2. Ammonia paper and ferro paper are used for preparing prints and sketches of site plans. An impression of the print or sketch is made on the paper, and it is then exposed to light for a period of time during which the chemical evaporates resulting in the emergence of the print or sketch of the site plan. Therefore, ammonia paper and ferro paper cannot be regarded as paper in the popular sense of that term. Paper is used for

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printing or writing or for packing. Ammonia paper and ferro paper are not employed for any of the purposes and subjected to any of the processes for which paper, as commonly understood, is generally used. [742 C-E]

State of Uttar Pradesh and Anr. v. Kores (India) Ltd., (1977) . 8 and State of Orissa v. Gestetner Duplicators (P) Ltd.. (1974) 33 S.T.C. 333, relied upon.

Maharaja Book Depot v. State of Gujarat, [1979] 2 S.C.R. 138, distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 133R of 1973.

From the Judgment and Order dated 19.2.1973 of the Allahabad high Court in sales Tax Reference No. 357 of 1971.

S.C. Manchanda, R.A. Gupta and Ujjal Singh for the Appellant.

S.T. Desai, H.K. Puri, M.N. Tandon and Randhir Chawla for the Respondent.

The Judgment of the Court was delivered by PATHAK, J. The short question in this appeal by special leave is whether ammonia paper and ferro paper can be described as "paper other than hand made paper" for the purposes of the notification No. ST-3124/X-1012(4) - 1965 dated July 1, 1966 issued under the U.P. Sales Tax Act, 1948.

The respondent assessee is a dealer in stationery and drawing material, and sells ammonia paper and ferro paper. In assessment proceedings under the U.P. Sales Tax Act, 1948 for the assessment year 1966-67 the assessee claimed that ammonia paper and ferro paper were liable to tax as unclassified goods at the rate of two per cent prescribed by s.3 of the Act. The claim was not accepted by the Sales Tax Officer who held that ammonia paper and ferro paper fell under the entry "paper other than hand made paper" included in notification No. ST-3124/X-1012(4) - 1965 dated July 1, 1966 and its turnover was, therefore, liable to tax at six per cent. Against the assessment 80 made the assessee appealed, but his appeal was dismissed by the Assistant Commissioner (Judicial), Sales tax. A revision petition by the assessee thereafter was dismissed by the Revising Authority. At the instance of the assessee a reference was made to the Allahabad High Court for its opinion on the following question :

"Whether ammonia paper and ferro paper fall within the category of paper?"

The High Court has expressed the view that ammonia paper and ferro paper, being chemically coated paper used for obtaining prints and sketches of site plans, were paper to which a chemical process had been applied and a chemical coating had been given, and were not paper in the popular sense of the word, and therefore did not fall within the entry in the aforesaid notification of July 1, 1966. Accordingly it answered the question referred to it in the negative, in favour of the assessee and against the Commissioner of Sales Tax.

In this appeal, the entire contention on behalf of the Commissioner of Sales Tax is that the opinion expressed by the High Court to, erroneous and that upon a proper view ammonia paper and ferro paper must be regarded as "paper other than hand made paper" within the meaning of the aforesaid notification of July 1, 1966.

Section 3 of the U.P. Sales Tax Act charges sales tax on goods sold by a dealer at a specified rate, the charge being imposed on every sale in the series of sales through which the commodity may pass, commencing from the manufacturer to the ultimate retail dealer. It imposes a multi-point tax. Section 3 A of the act, however, provides for the imposition of sales tax on one only of the sales of the commodity in the series of sales, the single point being specified by notification by the State Government. If ammonia and ferro paper fall under the entry "paper other than hand made paper" mentioned in notification ST-3124/- X1012(4) - 1965 dated July 1, 1966 the turnover of ammonia and ferro paper sold by the assessee is liable to tax at six per cent. The charge is imposed on the sale either by the manufacturer or by the importer. Presumably, the assessee is either the manufacturer of ammonia paper or ferro paper or their importer. If ammonia paper and ferro paper do not fall within the aforesaid notification the turnover of such paper is liable to sales tax under s.3 of the U.P.

Sales Tax Act at two per cent on every sale in the series of sales through which the goods pass.

According to the facts admitted between the parties, the following extract set forth in the assessee's revision petition explains accurately the nature of ammonia paper and ferro paper :

"The ferro and ammonia paper is made of paper of rough and special texture by applying a chemical process and giving chemical coating thereon. The chemicals which are used are dye, tartaric acid, therein, ethylene, glycole and some other chemicals. These chemicals are absorbed by the base paper and the coated paper is again passed through another set of rollers so that the chemicals are properly and evenly impregnated in the base paper. It is only this chemical coating which is important for making the use of ammonia and ferro paper, otherwise it is nothing but an ordinary rough base paper. This ferro and ammonia paper has got only this specific use of obtaining prints and sketches of site plans and it cannot be used as an ordinary paper because of these special texture and its chemical properties".

The paper is used for preparing prints and sketches of site plans. An impression of the print or sketch is made on the paper, and it is then exposed to light for a period of time during which the chemical evaporates resulting in the emergence of the print or sketch of the site plan. Plainly, ammonia paper and ferro paper cannot be regarded as paper in the popular sense of that term. Paper is used for printing or writing or for packing. Ammonia paper and ferro paper are not employed for any of the purposes and subjected to any of the processes for which a paper, as commonly understood, is generally uses. In *State of Uttar Pradesh and Anr. v. Kores (India) Ltd.*, [1977] 39 S.T.C. 8, this Court held that carbon paper was not paper as envisaged by the relevant entry in notification no. ST-3124/X-1012(4) - 1965 dated July 1, 1966, and referred to the fact that carbon paper was manufactured by coating tissue paper with a thermosetting ink based mainly on wax, non-drying oils, pigments and dyes by means of a suitable coating roller and equalising rod and then passing it through chilled rolls. It is used between two sheets of plain paper in order to reproduce on the lower sheet that which is written or typed on the upper sheet, making a replica or carbon copy of the original document. The learned Judges observed that carbon paper could not be applied to the same uses to which paper, as generally understood, was used, that is to say, for preparing, writing or printing or for packing or drawing on or for decorating or covering the walls of a room. Indeed, the learned Judges appear to have approved of this very judgment under appeal when considering the question whether carbon paper could be regarded as paper within the aforesaid notification.

Learned counsel for the Commissioner of Sales Tax has invited our attention to *Maharaja Book Depot v. State of Gujarat*, [1979] 2 S.C.R. 138, where this Court laid down that exercise books were included within the term "paper" mentioned in sub-cl. (vii) of Cl. (a) of s. 2 of the Essential Commodities Act, 1955 and in Item 13 of Schedule I to the Gujarat Essential Articles Dealer (Regulation) order 1971. The learned Judges supported their conclusion by reference to the object and purpose of the Act and the Regulation order. That case in our opinion, is distinguishable from the instant case. On the contrary, more to the point is the decision of the Orissa High Court in *State of Orissa v. Gestetner Duplicators (P) Ltd.*, [1974] 33 S.T.C. 333, where it was held that stencil paper

was not paper within the meaning of serial No. 7A of the Schedule to the notification issued by the State Government under the first proviso to sub-s. (1) of s.5 of the Orissa Sales Tax Act, 1947.

Accordingly, we agree with the High Court that ammonia paper and ferro paper does not fall within the entry "paper other than hand made paper" in notification No. ST-3124/X- 1012(4) - 1965 dated July 1, 1966.

The appeal is dismissed with costs.

A.P.J.

Appeal dismissed.