

SUPREME COURT OF INDIA

Dy. Commr. (Law), Board Of Revenue (Taxes)

Vs.

Mrf Ltd.

(S.P. Bharucha, N. S. Hegde and Ruma Pal JJ.)

02.02.2000

ORDER

S.P. BHARUCHA, J.

1. This is an appeal by the Revenue against the decision of a Division Bench of the Kerala High Court in tax revision cases filed at the instance of the Revenue. We are here concerned only with compounded rubber and with scrap. The assessment year concerned is Assessment Year 1986-87 and there is a provisional assessment for the period April to December, 1990. The respondent manufactures compounded rubber in Kerala from rubber that is bought in Kerala. It claimed for the rubber that it bought the benefit of a notification (SRO No. 641/81) issued by the State in exercise of power conferred by Section 10 of the Kerala General Sales Tax Act, 1963. Thereby the rate of tax was reduced from five per cent to three per cent "on the purchase of rubber by manufacturers of finished rubber products within the State for use of such rubber by such manufacturers in the manufacture of finished rubber products". It was the case of the respondent that the compounded rubber that it manufactured was a finished rubber product and it produced before the assessing authority the affidavits of several individuals in the trade who affirmed that the compounded rubber was a finished rubber product as understood in the trade.

2. It is the contention of the Revenue that compounded rubber is not a finished rubber product and that the word "finished" must be understood as the last or concluding product in a chain. We are of the view that due weight must be given to the uncontested evidence of those in the trade who have stated that compounded rubber is understood in that trade as a finished rubber product and that, accordingly, the Tribunal and the High Court cannot be faulted for the view that they took in this behalf.

3. There is no dispute in regard to any future years and Mr. Salve, learned Solicitor General, appearing for the State has, fairly, not contended that the notification dated 2nd November, 1990 (SRO No. 1516/90) is either clarificatory or has retrospective effect.

4. The next item that we are concerned with is the scrap that was sold by the respondent. The scrap consisted of butyl rubber, ban bury tailings, brass valves, empty drums and gunny bags. The Tribunal found, taking into consideration the nature of the articles and the manner in which they were sold, that they had been treated as condemned articles and not as articles which could be put to use again and, accordingly, should be treated as scrap. It was contended on behalf of the Revenue

that each of these items of butyl rubber, ban bury tailings etc. should have been assessed under the particular tariff entry in which they fell and that the Tribunal was in error in taking into account the intention of the buyer and the seller in this behalf. It was not only the intention of the buyer and the seller that was taken into account but the nature of the articles that were being sold and, obviously, the Tribunal was satisfied that they were really no more than scrap and found that they should be taxed accordingly. The High Court was, therefore, right in not interfering.

5. The civil appeals are accordingly dismissed.

6. No order as to costs.