

SUPREME COURT OF INDIA

Kumar Paints and Mills Stores

Vs.

Commissioner of Trade Tax

C.A.No.2350 of 2004

(Ashok Bhan and S. H. Kapadia JJ.)

08.12.2005

ORDER

1. The appellant is a retailer/dealer of Asian Paints (hereinafter referred to as "the manufacturer") since 1986. In the year 1988, the manufacturer promoted a concept of "Colour World", to give a wide choice of shades to the customers through Dealer Tinting System (hereinafter referred to as "DTS"), wherein pre-determined quantities of colourants (also known as "stainers") are added to the base paint through a colourant dispenser to arrive at the desired shade. The paints and varnishes are leviable at single point tax under the U. P. Trade Tax Act.

2. The assessing authority came to the conclusion that what the manufacturer sold was not fully produced and was a base material for preparing paint and/ therefore, the sale made by the dealer/assessee after adding colourants to the base material/paint and therefore liable to pay sales tax. This order of the assessing authority was confirmed right up to the High Court of Allahabad.

3. The present appeal is directed against the aforesaid judgment rendered by the High Court in Trade Tax Revision No. 711 of 20021. Subsequent to this decision, Trade Tax Tribunal in Second Appeal No. 416 of 2004 (2000-2001) in the case of Rajdeep Brothers, Rambagh, Agra v. Commissioner of Trade Tax, U, P., took a different view and came to the conclusion that what was supplied by the manufacturer to the dealer was paint itself, on which the tax had already been paid and therefore the dealer was not required to pay sales tax afresh after adding colourants to the white paint/ base material. Against this order of the Tribunal, another Trade Tax Revision No. 1550 of 2005 has been filed and is pending consideration before the High Court. The Tribunal has distinguished the impugned judgment of the High Court of Allahabad.

4. In order to avoid any inconsistency of views by the co-ordinate Benches of the same High Court, we deem it appropriate to set aside the judgment impugned before us and remit the case back to the High Court for a fresh decision along with T. T. R. No. 1550 of 2005.

5. Intervention is dismissed. However, the applicants are at liberty to approach the High Court to intervene in the matter.

6. Since in this case, no evidence was led by either of the parties and in the case decided by the Tribunal subsequently evidence has been led, we leave it to the discretion of the High Court to decide on the basis of the material already on record or remand the case to enable the parties to lead further evidence.

7. The appeal stands disposed of accordingly. No costs.