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KHATEMA FIBRES LTD.

v

STATE OF UTTAR PRADESH AND ANR.

DECEMBER 12, 2000

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[S. RAJENDRA BABU AND R.C. LAHOTI, JJ.]

C *U.P. Trade Tax Act, 1948—Section 4-B—Exemption for paper used as packing material—Craft paper—Packing material or paper—Held, exemption is available on paper used only as packing material and since appellants failed to prove the fact, matter remitted back to High Court.*

D Appellants are manufactures of craft paper. They applied for Recognition Certificate under Section 4-B of U.P. Trade Tax Act, 1948 to avail exemption claiming the craft paper as packing material. The appellants were granted the Recognition Certificate, which enabled them to purchase raw materials, packing materials or machinery without payment of tax or at concessional rate of tax. Subsequently, a Full Bench decision of the High Court held that craft paper is paper and not packing material and the manufactures of craft paper are not entitled for the exemption under the Act. The authorities issued notices to the appellants for deleting craft paper from the Recognition Certificate and withdrawing exemption. The appellants filled writ petitions before the High Court against the notices, which were dismissed on the basis of the Full Bench judgment. Hence these appeals.

Disposing of the appeals, the Court

F HELD : 1.1. 'Paper' or 'packing material' has not been defined under the U.P. Trade Tax Act, 1948. The High Court in the Full Bench decision proceeded to State that the common parlance meaning or commercial sense of the term is to be taken for determination whether the craft paper is a packing material or a paper. The High Court further observed that the petitioner did not prove that the craft paper manufactured by it is used exclusively as packing material and not as paper. The word 'paper' in the exclusionary clause of the notification is used in its generic sense and the term as understood in the common parlance and commercial sense includes craft paper manufactured by the appellants. Paper, in common parlance and

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commercial sense, can be used for writing, printing, packing and wrapping purposes and therefore the craft paper does not cease to be a paper merely because it is also used for packing purposes. Any type of paper can be used for the purpose of packing and packing material used in the notification refers to a product, which by its manufacturing process or adaptation is used only as packing material. [570-F, G, H; 571-A, B]

1.2. The High Court in its Full Bench decision observed that the petitioner did not prove that the craft paper manufactured by it is used exclusively for packing and not for writing or other purposes. Therefore, the High Court held that the craft paper manufactured by the petitioner was paper and not a packing material. The Full Bench decision of the High Court is based on the pleadings arising in the case and material placed before the Court. The High Court observed that the burden is on the petitioner claiming the exemption or concessional rate to establish the fact and in the absence of any pleading and material to show the manufacturing process involved and its usage not being clear took the view that craft paper does not cease to be paper merely because it is also used for packing purposes. It is shown that craft paper can be used only for packing purposes and in commercial parlance understood to be packing material and if the facts can be established the concessions arising under the law can be claimed. The Full Bench decision of the High Court does not come in the way of the appellants claiming and establishing this fact. [571-C, D, E]

1.3. The order of the High Court is set aside and is remitted back for a fresh decision in accordance with law after, allowing the parties to place the necessary material before the Court. [571-F]

M/s. Lalji Board Industries v. State of U.P., (W.P. No. 763 of 1994 decided on 11.12.1997 by the Allahabad High Court, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4658 of 1998.

From the Judgment and Order dated 4.3.98 of the Allahabad High Court in C.M.W.P. No. 1841 of 1993.

WITH

Civil Appeal Nos. 7308-7309 of 2000.

Joseph Vellapally, Sr. Adv. Manish Garg, Srilok Nath Rath, Tarun Gulati, R. Sasiprabhu, K.R. Sasiprabhu, Aruneshwar Gupta, R.C. Verma and

A C. Siddharth for the appearing parties.

The Judgment of the Court was delivered by

RAJENDRA BABU, J. Leave granted in S.L.P. (C) No. 7302-7303 of 1999.

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The appellants manufacture 'craft papers' which is claimed to be used as packing/wrapping material. The appellants applied for Recognition Certificate under Section 4-B of the U.P. Trade Tax Act, 1948 [hereinafter referred to as 'the Act'] to avail of the exemption provided thereunder. The appellants were granted the Recognition Certificate which enabled them to purchase raw material and packing material without payment of any tax in respect of machinery for which the purchase was to be made at concessional rate. On the basis of a Full Bench of the Allahabad High Court in *M/s. Lalji Board Industries v. State of U.P.* in Civil Miscellaneous Writ Petition No. 763 of 1994 decided on December 11, 1997 held that 'craft paper' is not a 'packing material' and it is a 'paper' and, therefore, the manufactures are not entitled to any exemption thereof, respondent No. 2 issued notice to delete 'craft paper' from the Recognition Certificate as it was not packing material. Against the said notice writ petition was filed which was dismissed on the basis of the Full Bench decision in *M/s Lalji Board Industries* (supra). The parties in Full Bench case did not challenge the correctness of the decision.

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The question is whether the craft paper manufactured by the petitioner is a 'packing material' or it is 'paper'. If it is the former the petitioner would be entitled to purchase raw materials and packing materials or machinery without payment of tax or at concessional rate of tax and the Recognition Certificate could have been properly issued, and if it is the latter then the petitioner was not entitled to any exemption from payment of tax and the Recognition Certificate was liable to be cancelled. 'Paper' or 'packing material' has not been defined under the Act. Therefore, the High Court proceeded to state that the common parlance meaning or commercial sense of the term is to be taken for determination of the question and referred to certain dictionaries. The High Court noticed that the petitioner had not laid any foundation in pleading to show that the manufacturing process of the craft paper manufactured by it or had made any averment that the product is so adopted that it is meant to be used exclusively as packing material and cannot be used as paper. The word 'paper' in the exclusionary clause of the notification dated 31.12.1976 is used in its generic sense and the term as understood in

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the common parlance and commercial sense includes 'craft paper' manufactured by the appellants. 'Paper' as understood in common parlance and commercial sense can be used for writing, printing, packing and wrapping purposes and, therefore, 'craft paper' does not cease to be 'paper' merely because it is also used for packing purposes. Indeed, any type of paper can be used for the purpose of packing and packing material as used in the notification in question is such a product which by its manufacturing process or adaptation is meant to be used only as packing material.

The Full Bench in the case of *M/s Lalji Board Industries* (supra) took the view that there were no pleadings in the case set out to show that the manufacturing process of the craft paper manufactured by the petitioner nor as to its adaptation or exclusive use in respect of packing and further that it cannot be used for writing or other purposes. The question formulated by the petitioner in that case was, therefore, answered that the 'paper' manufactured by the petitioner was 'paper' and not packing material. Therefore, the whole decision of the Full Bench in *M/s Lalji Board Industries* (supra) rested on the pleading arising in that case and material placed before the Court. The court took the view that the burden lay upon the person claiming the exemption or concessional rate to establish that fact and in the absence of any pleading and material to show the manufacturing process involved and its usage not being clear took the view that the 'craft paper' does not cease to be 'paper' merely because it is also used for packing purposes. If it is shown that 'craft paper' can be used only for packing purposes or mainly for packing purposes and in commercial parlance understood to be packing material and if the facts can be established the concessions arising under the law can be claimed. In that view of the matter we think that the view taken by the High Court in *M/s Lalji Board Industries* (supra) does not come in the way of the appellants claiming and establishing this fact.

In the circumstances, we set aside the order made by the High Court in the case of appellants and remit the matter to it for a fresh decision in accordance with law after allowing the parties to place the necessary material before the Court to take the view one way or the other, as indicated by us above.

The appeals are disposed of accordingly.

B.S.

Appeals disposed of.