

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 2350 OF 2004

M/s. Kumar Paints & Mills Stores

Appellant (s)

Versus

Commissioner of Trade Tax, U.P.

Respondent (s)

(With appl(s) for intervention and permission to file addl. documents with prayer for interim relief and office report)

Date: 08/12/2005 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN
HON'BLE MR. JUSTICE S.H. KAPADIA

For Appellant(s) Mr. Joseph Vellapally, Sr. Adv.
For State of U.P. Mr. D.S. Narula, Adv..
Mr. Gaurav, Adv.
Mr.Ashwani Kumar, Adv.

For Respondent(s) Dr. R.G. Padia, Sr. Adv.
Mr. Vasim Ahmad Kadari, Adv.
Mr. Manoj Mishra, Adv.
Ms. Rashmi Singh, Adv.
Mr. Amit Yadav, Adv.
Mr. Kamlendra Mishra, Adv.

For Intervenor(s) Mr. S.K. Sharma, Adv.
Mr. Mukesh Verma, Adv.
Mr. Manish Shanker, Adv.
Mr. Pankaj K. Singh, Adv.
Mr. Yash Pal Dhingra, Adv.

Mr. Ashok Desai, Sr. Adv.
Mr. S. Ganesh, Sr. Adv.
Mr. M.C. Dhingra, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal stands disposed of in terms of the signed order. No costs.

(J.S. Rawat)
Court Master

(Kanwal Singh)
Court Master

[Signed order is placed on the file].

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2350 OF 2004

M/s. Kumar Paints & Mills Stores

Appellant (s)

Versus

Commissioner of Trade Tax, U.P.

Respondent (s)

O R D E R

The appellant is a retailer/dealer of Asian Paints (herein after 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.

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.

The present appeal is directed against the aforesaid judgment

rendered by the High Court in Trade Tax Revision No. 711/2002.

Subsequent to this decision, Trade Tax Tribunal in II Appeal No. 416/04

(2000-2001) in the case of M/s. Rajdeep Brothers, Rambagh, Agra v. The

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. 1550/05 has been filed and is pending consideration before the

High Court. The Tribunal has distinguished the impugned judgment of the

High Court of Allahabad.

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 TTR No. 1550/05.

Intervention is dismissed. However, the applicants are at liberty to

approach the High Court to intervene in the matter.

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.

The appeal stands disposed of accordingly. No costs.

.....J

(ASHOK BHAN)

New Delhi;J.
December 08, 2005. (S.H. KAPADIA)