(2015) 01 RAJ CK 0246

In the Rajasthan High Court

Case No : Sales Tax Revision Petition Nos. 411 and 413 of 2008

Assistant Commissioner, Anti Evasion — APPELLANT

Vs

Camlin Limited and Others — RESPONDENT

Date of Decision : 09-01-2015

Acts Referred:

Citation : (2015) 4 RLW 3130

Hon'ble Judges : J.K. Ranka, J

Bench : Single Bench

Advocate : R.B. Mathur, for the Appellant; Devendra Kumar and Dinesh Kumar, Advocates for the Respondent

Judgement

J.K. Ranka, J.—Both the revision petitions by the petitioner-revenue are directed against the order of the Rajasthan Tax Board and relate to the Assessment Years 1999-2000 and 2000-2001.

2. Since the facts and the controversy involved in both the revision petitions are similar, the same are being decided by this common order.

3. The brief facts, which can be gathered from the material available on record and the arguments made by counsel for the parties, are that the respondent-assessee is a limited company and is manufacturing stationery items which are being used by the general public, students and others for the purpose of writing etc. The controversy, in brief, relates to four items namely; (i) marker and highlighter, (ii) carbon paper, (iii) stamp pad and ink of stamp pad, (iv) covert (eraser). The Assessing Officer (for short, ''AO'') was of the view that marker and highlighter does not fall in the category of pen and since it is not a pen, it is not exempt and falls in the definition of stationery on which tax @ 4% is leviable. In so far as carbon paper is concerned, the assessee claimed it to be part of the stationery and the tax leviable is @ 4%, however the AO was of the view that since carbon paper/stamp pad is not separately shown anywhere, therefore, the tax @ 10% is applicable which falls in the residuary/general clause. In so far as

the stamp pad and ink of stamp pad is concerned, the assessee claimed it to be stationery with the tax @ 8% which was being charged earlier whereas the revenue claimed it to be falling in the general category with the tax leviable @ 10%.

4. The Deputy Commissioner (Appeals) (for short, ''DC(A)''), after analyzing the evidence on record and having gone through the meaning of stationery in the light of the dictionary meaning and other facts, came to the conclusion that marker as well as highlighter falls within the definition of a pen and accordingly came to the conclusion that the nature of highlighter/marker remains the same as pen and accordingly held that no tax is leviable. In so far as the other three items are concerned, the DC(A), on the basis of evidence available and dictionary meaning, came to the conclusion that all the three items namely; carbon paper, stamp pad and ink of stamp pad and covert (eraser) fall within the category of stationery and therefore, 4% and 8% rate of tax is leviable as against the general rate of 10%.

5. Dissatisfied with the order of DC(A), the petitioner-revenue carried the matter in appeal before the Tax Board who also sustained the order of DC(A). Hence, both these revision petitions by the petitioner-revenue. Both the revision petitions were admitted vide order dt. 13/05/2008.

6. Mr. RB Mathur, ld. counsel for the petitioner-revenue contended that marker or highlighter, by no stretch of imagination, can be said to be used as a pen. It is only for the purpose of highlighting a portion or marking a portion for the benefit of a reader and by a highlighter or a marker, one cannot write words or figures as a pen can do and therefore, it cannot be said to fall within the category of the notification dt. 07/03/1994. He further contended that a question came before this Court as to whether sun glasses fall within the category of spectacles or not and this Court came to the conclusion that sun glasses cannot fall within the category of spectacles and is entirely different item though the spectacles can be used as sun glasses and vice-versa. Therefore, he contended that strict interpretation of the notification is required to be looked into when a notification/ circular is issued by the revenue. He further contended that carbon paper cannot be said to be paper at all and when carbon paper has not been shown under any head, then specific rate would be applicable as against taken by the respondent-assessee as a stationery item levying tax @ 4%. In this regard, he relied upon a judgment rendered by the Hon''ble Apex Court in the case of State of Uttar Pradesh and Another Vs. Kores (India) Ltd., AIR 1977 SC 132 : (1976) 4 SCC 477 : (1977) 1 SCR 837 : (1977) 39 STC 8 : (1976) 8 UJ 876 . He submitted that in the said case, the Hon''ble Apex Court had an occasion to consider as to whether carbon paper is a paper or not and held that it is not a paper.

7. In so far as the stamp pad and ink of stamp pad covert (eraser) are concerned, he further contended that they also cannot be categorized as stationery as it has not been notified at all and therefore, a general rate is applicable. He contended that the Tax Board has gone wrong in taking the last

three items in the category of stationery and therefore, the order of the Tax Board is unjustified. In so far as strict compliance is concerned, he relied upon judgment of Hon''ble Apex Court in the case of Uttam Industries Vs. Commnr. of Central Excise, Haryana, AIR 2011 SC 1520 : (2011) 186 ECR 15 : (2011) 265 ELT 14 : (2011) 2 JT 427 : (2011) 2 SCALE 636 : (2011) 11 SCC 528 : (2011) 2 SCR 1113 . He also placed reliance upon judgment rendered by this Court on 15/10/2013 in the case of Ray Ban Sun Optics India Ltd. Vs. Dy. Commissioner (Appeals), SB Sales Tax Revision No. 78/2012, decided by this Court on 15/10/2013.

8. Per-contra, Mr. Devendra Kumar, ld. counsel for the respondent-assessee, contended that prior to the notification dt. 07/03/1994, a notification had been issued and the earlier notification only stated "pens" whereas vide notification dt. 07/03/1994, the definition of pen was enlarged to mean "all types of pens including parts and accessories thereof, drawing material and poster colours" and therefore, he contended that marker and highlighters are being used for writing purposes as well and it cannot be said that they cannot be used for the purpose of pen. When a thing is highlighted or a portion is highlighted or marked, certainly it will only be by writing and it can be by a pen only. He further contended that the Hon''ble Apex Court, in the assessees'' own case, while considering the issue relating to central excise, has held that they fall within the category of a pen and in this regard he relied upon judgment of the Hon''ble Apex Court in the case of Camlin Limited Vs. Commnr. of Central Excise, Mumbai, (2008) 132 ECC 294 : (2008) 158 ECR 294 : (2008) 230 ELT 193 : (2008) 10 JT 49 : (2008) 12 SCALE 325 : (2008) 9 SCC 82 : (2009) 11 Vat Reporter 28 .

9. With regard to the carbon paper, stamp and stamp ink and covert (eraser), he further contended that a general meaning is required to be looked into and since there was no specific item, therefore, it was rightly taken into the category of stationery. All the three items are certainly part of stationery only and not otherwise. All these items are being either used in the offices or by the students, lawyers, doctors etc. He further contended that the burden was on the revenue to show that it falls within the general category as against the category of stationery. He also relied upon judgments in the case of Centuary Ecka Vs. The State of Rajasthan, (1987) 67 STC 103 ; Commissioner of Commercial Tax Vs. Modern Agency, (2006) 146 STC 1 ; Gopalanand Rasayan Vs. The State of Maharashtra and Others, (2010) 112 BOMLR 1744 : (2011) 263 ELT 381 : (2010) 30 VST 304 ; H.P.L. Chemicals Limited Vs. Commissioner of Central Excise, Chandigarh, (2006) 197 ELT 324 : (2006) 5 JT 101 : (2006) 4 SCALE 479 : (2006) 5 SCC 208 : (2006) 1 SCR 125 Supp and M/s. Bharat Forge and Press Industries (P) Ltd. Vs. Collector of Central Excise, Baroda, Gujarat, AIR 1990 SC 616 : (1990) 26 ECC 114 : (1990) ECR 1 : (1990) 45 ELT 525 : (1990) 1 JT 34 : (1990) 1 SCALE 30 : (1990) 1 SCC 532 : (1990) 1 SCR 60 : (1992) 84 STC 414 : (1990) 1 UJ 511 .

10. I have considered the arguments advanced by counsel for the parties and

have gone through the material available on record including the judgments relied upon by the counsel.

11. As per notification dt. 04/03/1992 the category was "all types of fountain pens, ball pens and accessories thereof" and as per notification No. F.4(8)FDGR.IV/94-49 dated 7.3.1994 it was exchanged to "all types of pens including parts and accessories thereof, drawing materials and poster colours." Therefore, in my view, the scope of pen was enlarged and marker as well as highlighter can fall within the meaning of a pen and by highlighter as well as marker one can certainly write though the flow by writing from a marker or a highlighter may not be to that extent but these are definitely instruments of writings. The Hon''ble Apex Court in the assessee''s own case, while considering the issue in the case of Camlin Limited Vs. Commissioner of Central Excise, Mumbai (supra), observed as under:--

"In view of the above definition of the words "write" and "writing" it reveals that the method by which the ideas are transformed into symbols, characters, letters or words on any surface including paper is to be considered as writing. Accordingly, Fountain pens, Marker Pens, Croquill Lettering Pens, Sketch Pens etc. are the instruments which are being used for transforming the ideas into symbols, characters, letters or words on paper and in that sense these are definitely the instruments of writing.

Even if we see the uses of these instruments, we noticed that they are of multipurpose uses viz., Marker Pens are used for bold writing on notice board, packages, files, envelopes, charts etc. as well the same can be used in drawing also. The same case is with sketch pens, croquill lettering pens also. It can be used for writing purposes also."

12. The word "marker" has been defined in Concise Oxford English Dictionary to mean "a felt tip pen with a broad tip". In the same dictionary, the word "highlighter" has been defined to mean "a broad marker pen used to overlay transparent fluorescent colour on text or a part of an illustration." As per Websters New World Dictionary, the word "fountain pen" has been defined to mean "a pen which is fed ink from a supply in a reservoir or cartridge". As per Chamber Dictionary, the word ''stylographic pen '' has been defined to mean "Stylographic pen, a pencil like pen from which ink is liberated by pressure on a needle point". As per Webster''s Third International Dictionary, the word "stylographic pen" has been defined to mean "Stylographic-2: of relating to or being a fountain pen that has been a fine writing point fitted with a needle which by the pressure of the point on the surface is pushed back to release the flow of ink."

13. Therefore, in the light of the above judgment of the Hon''ble Apex Court as also definition of marker and highlighter as given above in my view marker as well as highlighter will literally fall in the category of "all types of pens" and accordingly, in my view, the Tax Board has rightly considered the said issue in

favour of the assessee and against the revenue and I accordingly hold the same and decide this issue against the revenue and in favour of the assessee.

14. In so far as the other three items namely; carbon paper, stamp pad and ink of stamp pad and covert (eraser) are concerned, the MP High Court in the case of Commissioner of Commercial Tax, Indore Vs. Modern Agency (supra), while considering a case of interpreting entries in Taxation Statutes, observed as under:

"15. As observed supra, in our opinion, it can be so held in favour of dealer. The expression "stationery" is not a legal term but it is a word taken by the Legislature from English language used by common man in commercial world. Though Oxford dictionary explains the meaning of this word to mean "materials for writing--e.g.--paper, pens and envelopes", in our opinion, this definition cannot be construed to mean and confine its operation to what is specified in it. In other words, the definition cannot be read to mean that stationery means only "paper, pen and envelope". This definition has to be taken as illustrative in nature and therefore, anything alike or similar to what is mentioned in the definition or anything which is required to make effective use of these items in day-to-day use would be regarded as stationery. It is for the reason that in daily use, there are hundred of items which can be described as stationery articles and hence, it cannot be said that those items which are not mentioned in dictionary meaning cannot be termed as stationery article.

16. In order to decide the actual utility as also use of commodity in the market and by its user, one is required to take pragmatic view of the whole scenario in its right perspective. In today''s commercial world where technology and science has gone much ahead in every sphere, one cannot see a particular thing in a narrow sense.

17. No one can deny that any office, be that of lawyer or doctor or office executive or student''s study table is complete without a gum bottle. Indeed, it is a necessity for every one who is associated with writing/study/typing, painting, drawing, etc. It is for this purpose, the gum bottle is sold by stationery shops--a most common shop for the commodity in question. We have, therefore, no hesitation in holding that Fevicol MR which is essentially used for pasting envelopes, papers and card paper is a stationery article. It has to be accordingly, taxed as a stationery article under entry 21 of Part IV as per the rate specified for that entry from time to time."

15. This Court in the case of Centuary Ecka Vs. The State of Rajasthan, (1987) 67 STC 103 held as under:--

"It is well settled that in determining the meaning in connotations of words and expressions describing as item or commodity, the turnover of which is issued in a sales tax enactment, if there is one principle, it is this that the words or expressions must be construed in the same in which they are understood in the trade, by the dealer and the consumer. It is they who are concerned with it, and it is the sense in which they are understood in that constitutes definitive index of legislative intentions when the statue was enacted."

16. I have also considered the judgment of the Hon''ble Apex Court in the case of State of Uttar Pradesh and Anr. Vs. Kores (India) Ltd. (supra) and in my view, the Hon''ble Apex Court has not considered the issue with reference to carbon paper as to whether it is a stationery or not. The claim before the Hon''ble Apex Court was whether it is a paper or not and the Hon''ble Apex Court expressed its opinion only restricting the claim whether it is a paper or not and came to the conclusion that carbon paper is not a paper as envisaged by Entry 2 of the aforesaid notification No. F.4(8)FDGR.IV/94-49 dated 7.3.1994. Therefore, the judgment of State of Uttar Pradesh and Anr. Vs. Kores (India) Ltd. (supra) does not help the Revenue.

17. In my view, the claim of the assessee is well justified as in the notification dt. 26/03/1999, the category is "All kinds of paper, stationery, greeting/wedding and other printed cards" and therefore, in my humble view, all three items will fall within the category of stationery. The sales tax enactment is one which touches the common man and his everyday life. Therefore, the terms in the said enactment must be in the manner in which the common man will understand them. In other words, the test is as to what a common man viewing or dealing with the article will understand it to be. In doing so, the particular use to which a particular customer may put in should be eschewed from consideration.

18. The word "stationery" in common parlance is defined in Concise Oxford English Dictionary to mean "paper and other materials needed for writing".

19. Thus, in common parlance, (i) carbon paper, (ii) stamp pad and ink of stamp pad, (iii) covert (eraser) can certainly be called to be the items of stationery and in my view, the argument of counsel for the petitioner-Revenue is wholly unjustified that they form part of the residuary clause rather than the head of "All kinds of paper, stationery, greeting/wedding and other printed cards". In my view, under the taxing statute, the words, which are not technical expressions or words of art, but words of everyday use, must be understood and given a popular meaning not in their technical or strong sense but in a sense as understand in common parlance and sense, which the people conversant with the subject matter, which the statute is dealing would attribute to it. Such words must be understood in their popular sense and at the place in which these are being told. The items namely; (i) marker and highlighter, (ii) carbon paper, (iii) stamp pad and ink of stamp pad, (iv) covert (eraser) will be available in a stationery shop alone and if one has to purchase such items, one will have to go to a shop of stationery only to get these items rather than from a textile or a grocery shop. Therefore, in my view, all these items can be understood according to the common commercial understanding of these terms and in my view, all these form part of stationery items and cannot be termed as falling within the general category.

20. The Hon''ble Apex Court, time and again, has held that while interpreting the

entry for the purposes of taxation, recourse should not be made to the scientific meaning of the terms or expressions used but to their popular meaning, that is to say, the meaning attached to them by those dealing in them. That is what is known as ''common parlance test" Gopalanand Rasayan Vs. The State of Maharashtra and Others, (2010) 112 BOMLR 1744 : (2011) 263 ELT 381 : (2010) 30 VST 304 .

21. In so far as the classification of goods is concerned, the Hon''ble Apex Court in the case of H.P.L. Chemicals Limited Vs. Commissioner of Central Excise, Chandigarh, (2006) 197 ELT 324 : (2006) 5 JT 101 : (2006) 4 SCALE 479 : (2006) 5 SCC 208 : (2006) 1 SCR 125 Supp has held that classification of goods is a matter relating to chargeability and the burden of proof is squarely upon the Revenue. If the Department intends to classify the goods under a particular heading or sub-heading different from that claimed by the assessee, the Department has to adduce proper evidence and discharge the burden of proof. I notice that in the present case, except that the Revenue claims that it falls in residuary/general clause, nothing has been brought on record so as to come to the conclusion that these items are not items of stationery, burden was on the Revenue.

22. The Hon''ble Apex Court, in the case of Union of India and others Vs. Garware Nylons Ltd. etc., (1996) 9 AD 125 : AIR 1996 SC 3509 : (2003) 86 ECC 404 : (1996) 87 ELT 12 : (1996) 6 SCALE 667 : (1996) 10 SCC 413 : (1996) 5 SCR 629 Supp , again observed that the burden of proof is on the taxing authorities to show that the particular case or item in question is taxable in the manner claimed by them. Mere assertion in that regard is of no avail. It further observed that there should be material to enter appropriate finding in that regard and the material may be either oral or documentary. It is for the taxing authority to lay evidence in that behalf even before the first adjudicating authority.

23. In the case of M/s. Bharat Forge and Press Industries (P) Ltd. Vs. Collector of Central Excise, Baroda, Gujarat, AIR 1990 SC 616 : (1990) 26 ECC 114 : (1990) ECR 1 : (1990) 45 ELT 525 : (1990) 1 JT 34 : (1990) 1 SCALE 30 : (1990) 1 SCC 532 : (1990) 1 SCR 60 : (1992) 84 STC 414 : (1990) 1 UJ 511 , the Hon''ble Apex Court again came to the conclusion that only such goods as cannot be brought under the various specific entries in the tariff should be attempted to be brought under the residuary entry. In other words, unless the department can establish that the goods in question can by no conceivable process of reasoning be brought under any of the tariff items, resort cannot be had to the residuary item.

24. The judgment, relied upon by counsel for the Revenue in the case of Ray Ban Sun Optics India Ltd. Vs. Dy. Commissioner (Appeals), in my view, is distinguishable on facts because there the issue was about entirely different item and is wholly inapplicable on the facts and circumstances of the present case.

25. In view of the aforesaid conclusion, both the revision petitions of the

Revenue are hereby dismissed. The question of law is answered in favour of assessee and against the revenue. No costs.

