(2004) 02 KAR CK 0075

In the Karnataka High Court

Case No : STRP No''s. 32 and 33 of 2003

B. Danmal APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 05-02-2004

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 12 A, 23 (1)

Citation : (2004) 3 KCCR 265 SN : (2008) 11 VST 384

Hon'ble Judges : R.V. Raveendran, J;H. Billappa, J

Bench : Division Bench

Advocate : E.R. Indra Kumar, for the Appellant; B. Anand, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R.V. Raveendran, J.—Petitioner is a registered dealer under the Karnataka Sales Tax Act, 1957 ("the Act", for short) dealing in ceramic tiles, brass Articles and fittings, sanitary fittings, PVC pipes and fittings, GI pipes and other allied goods. In these petitions, we are concerned with one range of items dealt with by the petitioner, described by the petitioner as Chromium Plated Brass fittings ("CP fittings", for short) such as bibcocks, pillar cocks, CP stopcocks, taps, showers, etc. In regard to assessment periods 1994-95 and 1996-97, assessing authority originally passed assessment orders dated April 7, 1997 and April 9, 1997 treating the chromium plated brass fittings as Articles made of brass falling under entry 8(iii) of Part B of the Second Schedule, subsequently, the assessing authority passed orders dated September 25, 1998 and September 28, 1998 u/s 12A of the Act in regard to the said two years reopening the assessments and bringing to tax the said CP fittings at 13 per cent by treating them as sanitary fittings falling under entry 3 of Part S of the Second Schedule.

2. Feeling aggrieved, petitioner filed appeals before the Joint Commissioner of Commercial Taxes (Appeals), Mysore Division, and the appeals were dismissed by common order dated July 19, 1999. Further appeals filed by the petitioner

before the Karnataka Appellate Tribunal in S.T.A. Nos. 868 of 1999 and 869 of 1999 were also dismissed by common order dated July 5, 2002. Feeling aggrieved, petitioner has filed these two revision petitions u/s 23(1) of the Act, contending that "CP brass fittings" are Articles of brass and fall under entry 8(iii) of Part B of the Second Schedule. It is contended that these fittings are used mainly in bathrooms, and also in other areas where water is used, that is, kitchens, gardens and toilets; and therefore they cannot be considered as "sanitary ware" falling under entry 3 of Part S of the Second Schedule.

3. The question that therefore arises for consideration is whether chromium plated brass fittings (taps, showers, bibcocks, pillarcocks and CP stopcocks) are "sanitary fittings".

For convenience, we may extract the relevant entries from the Second Schedule to the Act:

Entry 8 of Part B of the Second Schedule,-

Brass, that is to say,-

(i) Brass circles, sheets and strips

(ii) Brass utensils (kitchen ware)

(iii) Articles made of brass, including brass rods, rounds, squares and flats but excluding those specified in items (i) and (ii) above and those specified elsewhere.

...

Entry 3 of Part S of the Second Schedule.--Sanitary fittings of every description excluding pipes and fittings of stoneware, cement and iron and steel.

4. Entry 3 of Part S of the Second Schedule used the words "sanitary fittings of every description". On the other hand, entry 8(iii) of Part B of the Second Schedule refers to "articles made of brass, excluding those specified elsewhere". Therefore, if an "article of brass" is a "sanitary fitting", it would fall under entry 3 of Part S and not under entry 8(iii) of Part B.

5. We will next consider whether CP fittings (taps, showers, bibcocks, pillarcocks and CP stopcocks) can be said to be sanitary fittings. The term "sanitary" means "concerned with and promoting hygiene, good health and the prevention of disease". The term "sanitary engineering" is defined as the branch of civil engineering concerned with the provision of pure water supply, the disposal of waste and conditions of public health. Bibcock, pillarcock, CP stopcock and showers are nothing but faucets/taps used mainly in bathrooms for supply of water. In common parlance and trade circles they are considered as bathroom fittings or sanitary fittings. The words "bathrooms fittings" and "sanitary fittings" are loosely interchangeable. The question whether such items are sanitary ware or not arose for consideration before a division Bench of the Bombay High Court

in Ceramics v. State of Maharashtra [1995] 98 STC 528 Bom. It was held that (i) stopcocks, bibcocks, concealed stopcocks, sinkcocks, anglecocks, (ii) round showers, wall mixers and inlet connections; and (iii) pillar cocks, are all sanitary ware. It held:

The case of the assessee is that the stopcock, bibcock, concealed stopcock, sinkcock, anglecock, round shower, wall mixer, inlet connection and pillar cock are bathroom fittings and not ''sanitary wares''.... In our opinion, there is nothing on record to show that in common parlance or trade or commercial parlance, the word ''sanitary wares'' bears such a restricted meaning as is sought to be attributed to it by the assessee.... The word ''ware'' means goods of a specified type made for a particular purpose. Appearing in composition with the word ''sanitary7, it would mean goods or Articles made for use in toilets.

Moreover, the items in question are items which are available with and sold by persons dealing in sanitary ware. The predominant use of these items is bathroom ware. Both in common parlance and trade parlance stopcock, bibcock, concealed stopcock, sinkcock, anglecock, round shower, wall mixer, inlet connection and pillar cock are known as sanitary ware both by the persons who want to purchase them and the merchants dealing them. In fact, one who wants to purchase these items would normally go only to a shop which deals in sanitary wares. The fact that these items might be used for some other purposes also does not militate against their classification as ''sanitary ware''. Thus looked from the common parlance or trade or commercial test also, these items have to be held to be ''sanitary wares''.

6. To know whether such CP fittings are known as sanitary fittings in common parlance and trade circles, there cannot be any more telling and persuasive evidence than the trade brochure given by the petitioner, when we requested his learned Counsel to furnish any brochure containing a pictorial depiction and description of these CP fittings. The brochure furnished by him shows bibcocks, pillar cocks, CP wall mixers, CP stopcocks and describes them as "sanitary fittings". This makes it clear beyond doubt that in common parlance and in trade circles, these items are considered as sanitary fittings.

7. Learned Counsel for the petitioner next relied on two decisions of the Supreme Court and three decisions of the Kerala High Court to contend that CP fittings should not be treated as sanitary fittings. We will refer to them briefly.

8. In State of U.P. and Others Vs. Indian Hume Pipe Co. Ltd., , the question that arose for consideration of the Supreme Court was whether hume pipes can be considered as sanitary fitting which was liable to tax at 7 per cent. The Supreme Court held:

In these circumstances, therefore, we have to construe the expression ''sanitary fittings'' in the popular sense of the term as it is used in our every day life. Thus construing, it would be manifest that there could be no question of use of R.C.C. or hume pipes, which are generally laid underground and are extremely heavy, for the purpose of use in lavatories, urinals or bathrooms, etc. By ''sanitary fittings'' we only understand such pipes or materials as are used in lavatories, urinals or bathrooms of private houses or public buildings. Even where a hume pipe is used for carrying the secreted material from the commode to the septic tank that may be treated as sanitary fittings. In the instant case, as there was absolutely no material before the Sales Tax Officer to show that any of the hume pipes manufactured and sold by the respondent were meant for use in lavatories, urinals or bathrooms and, in fact, the material was used entirely the other way, the Sales Tax Officer was not at all justified in holding that they were sanitary fittings. Of course, we must make it clear that if at any time the material produced before the sales tax authorities establishes that in a given case the hume pipes were meant for use in a bathroom, lavatory, urinal, etc., then the notification of the Government would be attracted and the assessee must be liable to be taxed at the rate of seven per cent.

9. The decision in State of U.P. and Others Vs. Indian Hume Pipe Co. Ltd., , was followed in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. G.S. Pai and Co., , wherein the Supreme Court considered whether GI pipes would fall under the entry "water supply and sanitary fittings" under the Kerala General Sales Tax Act. It was held that GI pipes would not fall under the description of "sanitary fittings" unless it is specifically shown by the Revenue that they were meant for use in bathroom, urinals and lavatories.

10. In Deputy Commissioner of Agricultural Income Tax and Sales Tax Vs. Kerala Premo Pipe Factory Ltd., , the Kerala High Court held that prestressed and reinforced concrete pipes meant for use in engineering and construction purposes, water supply schemes, road culverts, drainage schemes, etc., were not "water supply and sanitary fittings". It was held that the words "water supply and sanitary fittings" in common parlance refer to Articles used for water supply and sanitary purposes in private and public buildings. In N.R Somasundaran Nair v. State of Kerala [1999] 112 STC 214 ker the Kerala High Court held that "plastic water tanks" were taxable as "articles made of plastic" and not as "water supply and sanitary equipment and fittings". It reiterated that sanitary fittings are those which are meant for use in lavatories, urinals and bathrooms. In State of Kerala Vs. M.T. Aboobacker, , Kerala High Court held that "stainless steel kitchen sinks" did not fall under "water supply and sanitary equipments and fittings".

11. In these cases, it was held that hume pipes, GI pipes, prestressed and'' reinforced concrete pipes, plastic water tanks and stainless steel kitchen sinks were not sanitary ware or fittings. Entry 3 of Part S of the Second Schedule to the Karnataka Sales Tax Act, 1957, itself excludes pipes and fittings of stoneware, cement and iron and steel from sanitary fittings. There is also no dispute that plastic water tanks and stainless steel kitchen sinks may not be sanitary fittings. The said five decisions are not therefore of any assistance to the assessee to contend that CP fittings are not sanitary fittings. But, the test laid

down by the Supreme Court in State of U.P. and Others Vs. Indian Hume Pipe Co. Ltd., , reiterated in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. G.S. Pai and Co., , to find out what are sanitary ware supports the view of the Revenue. The Supreme Court has categorically stated that any material (including pipes) used in lavatories, urinals or bathrooms of private houses and public buildings are sanitary ware. The word "used" necessarily refers to main use. Merely because, a sanitary ware is sometimes used outside lavatories, urinals and bathrooms, it will not cease to be a sanitary ware. For example a wash basin is a sanitary fitting. Many wash basins are fixed in dining rooms or in wall niches near kitchens or dining areas. Can it therefore be said that wash basins cease to be sanitary ware? Similarly taps/cocks which are mostly used in bathrooms as also in toilets will not cease to be sanitary fittings because they are also used in kitchens. As held by the Supreme Court, what is relevant is the meaning of the term "sanitary fittings" in the popular sense, in common parlance and in trade circles. In common parlance and in trade circles CP fittings (bibcocks, pillar cocks, CP stopcocks, showers and taps) are considered as items used in bathrooms and that they are sanitary fittings.

12. We are therefore of the view that decision of the assessing authority as confirmed by the appellate authority and the Tribunal does not call for'' interference. Petitions are therefore dismissed.

