
(2005) 01 P&H CK 0126

In the Punjab And Haryana At Chandigarh

Case No : General Sales Tax Reference No. 28 of 1997

Bhakra Beas Management Board

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 24-01-2005

Acts Referred:

Haryana General Sales Tax Act, 1973 — Section 15, 16, 16A, 17, 18

Citation : (2006) 147 STC 336

Hon'ble Judges : Viney Mittal, J; G.S. Singhvi, J

Bench : Division Bench

Advocate : Rajesh Garg, for the Appellant; Jaswant Singh, Senior Deputy Advocate-General, for the Respondent

Judgement

G.S. Singhvi, J.—The Sales Tax Tribunal, Haryana (for short, "the Tribunal") has referred the following questions of law for the opinion of this Court :

(1) Whether, on the facts and circumstances of the case, the Tribunal was right in holding that sale of used transformer oil which is sold as waste and scrap at Rs. 5 per litre is liable to tax at first stage of sale being a petroleum product ?

(2) Whether, on the facts and circumstances of the case, the Tribunal was right in holding that the applicant is liable to pay the tax on the sale of used transformer oil even though the applicant is exempted from the payment of tax on the purchase of transformer oil ?

(3) Whether, in the facts and circumstances of the case, the Tribunal is right in maintaining the exigibility to tax of the used transformer oil sold by the applicant even if the applicant pays tax at the first stage while buying the transformer oil ?

2. In the return filed by it under the Haryana General Sales Tax Act, 1973 (for short, "the 1973 Act") for the assessment year 1988-89, the petitioner had shown sale of used transformer oil worth Rs. 2,68,403.85 to registered dealers, but did not pay tax in terms of section 18 read with Notification No. S.O. 156/H.A.20/73/S.18/87 dated December 30, 1987 on the premise that the same does

not fall within the ambit of the expression "petroleum products". The Excise and Taxation Officer-cum-Assessing Officer, Ambala (hereinafter referred to as "the Assessing Authority") rejected the petitioner's plea and levied tax on the sale of used transformer oil by treating it as petroleum product. The first appeal filed by the petitioner was dismissed by the Joint Excise and Taxation Officer (Appeals), Ambala [for short, "JETC (A)"] and the second appeal filed by it was dismissed by the Tribunal by observing that even though, the potential of its lubrication may be substantially reduced, the transformer oil retains its character as a petroleum product.

3. Shri Rajesh Garg, learned Counsel for the petitioner, assailed the impugned orders by arguing that the used transformer oil cannot be subjected to tax u/s 18 of the 1973 Act read with notification dated December 30, 1987 because the same is not a petroleum product. He emphasised that the petitioner had sold the used transformer oil as scrap at a throw-away price of Rs. 5 per litre and, therefore, the same cannot be taxed by being treated as petroleum product. He then argued that after its use in the transformers operated by the petitioner, the transformer oil does not retain its potentiality and character as a lubricant and, therefore, the same cannot be treated as a petroleum product for the purpose of levy of tax u/s 18 read with notification dated December 30, 1987. In support of his argument, Shri Garg relied on the judgments of the Supreme Court in *Indian Express (P.) Ltd. v. State of Tamil Nadu* [1987] 67 STC 474(SC) *State of Kerala Vs. V. Padmanabhan*, and *Associated Cement Co. Ltd. Vs. State of M.P. and Others*, .

4. Shri Jaswant Singh, learned Senior Deputy Advocate-General, Haryana countered the argument of Shri Rajesh Garg and submitted that the Tribunal did not commit any illegality by refusing to interfere with the orders passed by the Assessing Authority and the JETC (A) because the used transformer oil retains its character as a lubricant and as such, the same is covered by item No. 7 of notification dated December 30, 1987 which relates to petroleum product including spirit. He further submitted that even after its use by the petitioner, the transformer oil is known by the same name in the common parlance and is treated as a lubricant of inferior grade by the trading community. Shri Jaswant Singh then argued that the Assessing Officer did not commit any illegality by imposing tax on the sale of used transformer oil because mere reduction in its potentiality cannot be a ground to absolve the petitioner of its liability to pay tax.

5. We have given serious thought to the respective arguments. It is a cardinal principle of interpretation that the words of every day use appearing in the taxing statutes must be understood in the common parlance and not in their scientific or technical sense. In *King v. Planters Nut and Chocolate Company Limited* [1951] CLR 122 the Exchequer Court, while considering the meaning of the term "vegetables", observed as under :

Now the statute affects nearly everyone, the producer or manufacturer, the importer, whole-saler and retailer, and finally, the consumer who, in the last

analysis, pays the tax. Parliament would not suppose in an Act of this character that manufacturers, producers, importers, consumers and others who would be affected by the Act, would be botanists. The object of the Excise Tax Act is to raise revenue, and for this purpose to class substances according to the general usage and known denominations of trade. In my view, therefore, it is not the botanist's conception as to what constitutes a "fruit" or "vegetable" which must govern the interpretation to be placed on the words, but rather what would ordinarily in matters of commerce in Canada be included therein. Botanically, oranges and lemons are berries, but otherwise no one would consider them as such.

6. The above reproduced observations were quoted with approval by the Supreme Court in *Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola*, . While interpreting the word "vegetables" occurring in Central Provinces and Berar Sales Tax Act, 1947, their Lordships of the Supreme Court held as under :

?But this word must be construed not in any technical sense nor from the botanical point of view but as understood in common parlance. It has not been defined in the Act and being a word of every day use it must be construed in its popular sense meaning "that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it." It is to be construed as understood in common language?.

7. In *Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh*, , the Supreme Court considered the meaning of the word "Charcoal" used in Madhya Pradesh General Sales Tax Act and while holding that "charcoal" is included in the word "coal", observed as under :

Now, there can be no dispute that while coal is technically understood as a mineral product, charcoal is manufactured by human agency from products like wood and other things. But it is now well-settled that while interpreting items in statutes like the Sales Tax Acts, resort should be had not to the scientific or the technical meaning of such terms but to their popular meaning or the meaning attached to them by those dealing in them, that is to say, to their commercial sense.

8. The aforementioned rule of interpretation was reiterated in large number of other decisions, but we do not consider it necessary and proper to burden this judgment by making reference to all such judgments.

9. We may now revert to the case in hand. Section 15 of the 1973 Act specifies the rates at which tax is leviable on the taxable turnover of a dealer. Section 16 (omitted vide notification dated March 29, 1996) contemplated levy of surcharge at the rate of 10 per cent on the amount of tax payable by a dealer under the 1973 Act. Section 16-A lays down that the tax on the goods specified in Schedule C shall be leviable and payable on the sale or purchase thereof at the stage and subject to the conditions specified in that Schedule. Section 17 provides for levy

of tax on the declared goods. Section 18 provides for levy of tax at the first stage of sale of goods other than those specified in Schedules "C" and "D". In exercise of the powers conferred upon it by section 18 of the 1973 Act, the State Government issued notification dated December 30, 1987, the relevant extract of which is reproduced below :

Notification No. S.O.156/H.A.20/73/S.18/8 dated the 30th December, 1987

In exercise of the powers conferred by section 18 of the Haryana General Sales Tax Act, 1973 and all other powers enabling him in this behalf, and in supersession of Haryana Government Excise and Taxation Department, Notification No. S.O.98/H.A.20/73/S.18/73 dated the 5th May, 1973, as amended from time to time, the Governor of Haryana hereby directs that the tax u/s 15 of the said Act shall be levied, with effect from the 1st day of January, 1988, at the first stage of sale on the following goods, namely :

1 to 6?.

7. Petroleum products including motor spirit ;

8 to 81?.

10. A reading of the plain language of section 18 along with item No. 7 of 10 notification dated December 30, 1987 makes it clear that tax is leviable on petroleum products including spirit at the first stage of sale. It is not in dispute that the transformer oil purchased by the petitioner for its use falls within the ambit of the term "petroleum products" appearing at S. No. 7 of Notification dated December 30, 1987. It was used by the petitioner as a lubricant for operating transformers. Thereafter, the same was sold to the registered dealers as the used transformer oil and not as any other commodity. It was neither the petitioner's pleaded case nor any evidence was produced before the Assessing Officer to show that the used transformer oil does not retain its character as lubricant and cannot be used as such. Therefore, the mere fact that potentiality or strength of the transformer oil is decreased after its use by the petitioner cannot be made basis for taking it out of the ambit of the expression "petroleum product". In the common parlance and commercial sense, the used transformer oil continues to be a lubricant and falls within the scope of the term "petroleum product". The very fact that it was sold only to the registered dealers and not to any busy body goes to show that the used transformer oil can be used as a lubricant for other purposes.

11. In view of the above, we hold that the Tribunal did not commit any error by sustaining the tax levied on the sale of used transformer oil by the petitioner to the registered dealers.

12. The judgments of the Supreme Court on which reliance has been placed by Shri Rajesh Garg do not have any bearing on this case. In *Indian Express (P.) Ltd. v. State of Tamil Nadu* [1987] 67 STC 474(SC) the Supreme Court considered the question whether the sale of surplus copies of newspapers by

weight as waste paper was liable to be taxed under the Tamil Nadu General Sales Tax Act, 1959. The appellant had unsuccessfully pleaded before the assessing authority, the Appellate Assistant Commissioner, Sales Tax Appellate Tribunal, Madras and the High Court of Madras that the sale of surplus copies of newspapers as waste paper was exempt from sales tax because it formed part of the turnover of the newspapers and not the turnover of the old newspapers or waste paper. While upholding the judgment of the High Court, their Lordships of the Supreme Court observed :

It is also clear from the material on the record that the transactions of sale of the surplus copies must be regarded as a business carried on by the appellant. It was an activity which he pursued regularly, and the motive was to earn a profit. It was incidental to the business carried on by the appellant of printing and publishing newspapers. In the course of carrying on the business of printing and publishing newspapers, it is inevitable that a number of copies should remain surplus and that they should, therefore, be sold as waste paper. The business of selling the surplus copies as waste paper attracted sales tax, having regard to the terms of Clause (d) of Section 2 of the Act, which defines the expression "business", as it stood at the relevant time.

In our opinion, the High Court is plainly right in maintaining the sales tax assessment on the turnover of the surplus copies of newspapers sold as waste paper.

13. In *State of Kerala Vs. V. Padmanabhan*, the Supreme Court considered the question whether the refill of ball point pen can be treated as pen falling within entry 135 of Schedule I of the Kerala General Sales Tax Act, 1963. The Kerala Sales Tax Tribunal held that even though, the refill was a part of the ball point pen, it could not by itself be regarded as a pen. The Kerala High Court reversed the order of the Tribunal and held that refill of the ball pen is liable to be treated as pen. While reversing the order of the High Court, the Supreme Court observed :

We must note immediately that there is no evidence on record before us as to how a refill is regarded by the public or in commercial parlance, but we have used ball point pens for long enough to be able to give an authoritative opinion. As we see it, the ball point refill is the substitute for the ink that is filled from time to time in a fountain pen and it provides the ball or nib thereof. While the refill can write, it is not intended to be used, and cannot conveniently be used, for that purpose without being first inserted in the ball point pen. We do not think, therefore, that the High Court was right in overturning the view taken by the Tribunal that the refill fell outside the scope of the said entry.

14. In *Associated Cement Co. Ltd. Vs. State of M.P. and Others*, , the Supreme Court considered the question whether refractory cement manufactured by the appellant can be treated as covered by the expressions "all types of cement" and "materials made of cement". While upholding the appellant's plea that refractory

cement is different from "various types of cement", the Supreme Court observed as under :

The word "cement" has not been defined in the relevant notification. Therefore it has to be understood in the same way as is understood in common parlance. Cement is exclusively used as a building material and is a commodity of everyday use. Therefore, one has to go only by the popular or commercial meaning of the term. The main property of the refractory is that it can withstand very high temperature, corrosion and abrasion. Cement is used for building roads, bridges and dams, etc., and also by common people for building residential or commercial buildings. Anyone buying cement for building purpose would under no circumstance buy refractory. Similarly a mason or a supervisor would under no circumstance use refractory material in making a normal construction. The refractory is used for entirely different purposes, namely, for furnaces, linings and for insulation. A dealer would not supply refractory to anyone wanting to buy cement. Therefore, it has to be held that refractory material produced by the appellant does not fall within the entry "all types of cement" and consequently it is not exigible to levy of export tax.

15. In none of the aforementioned cases, the Supreme Court was called upon to decide a question similar to the one referred by the Tribunal. Therefore, these judgments cannot be made basis for upsetting the concurrent view expressed by the Assessing Authority, JETC (A) and the Tribunal.

16. As a sequel to the above conclusion, the questions referred by the Tribunal are answered in favour of the department and against the petitioner.