

(1980) 03 KL CK 0014

In the High Court Of Kerala

Case No : T.R.C. No"s. 142 and 159 of 1979

Deputy Commissioner

APPELLANT

Vs

Equipment Agencies

RESPONDENT

Date of Decision : 06-03-1980

Acts Referred:

Constitution of India, 1950 — Article 133

Citation : (1980) 03 KL CK 0014

Hon'ble Judges : V. Balakrishna Eradi, C.J;G. Balagangadharan Nair, J

Bench : Division Bench

Advocate : The Government Pleader, for the Appellant; T. Karunakaran Nambiar and M.C. Nambiar, for the Respondent

Final Decision : Dismissed

Judgement

Balakrishna Eradi, C.J.—The State has preferred these two tax revision cases against a common order passed by the Sales Tax Appellate Tribunal in two appeals preferred before it, one by the assessee and the other by the department, both arising out of the assessment to the Kerala General Sales Tax Act made against the assessee (respondent herein) for the year 1974-75. The assessee is a firm dealing in various types of machineries and accessories such as pumpsets, wet grinders, lathes, rotaries, electrical motors, etc. While making the assessment to sales tax under the Kerala General Sales Tax Act against the assessee for the year 1974-75 the Sales Tax Officer included in the taxable turnover an amount of Rs. 900.27 separately shown in some of the sale bills as "postages collected". He also treated the turnover relating to the sale of polythene pipes as falling within the scope of entry 26A of the First Schedule to the Act—water supply and sanitary fittings—and applied the rate of 7 per cent while charging the said portion of the turnover to tax rejecting the contention of the assessee that the polythene pipes sold by it were liable to be taxed only at the general rate of 4 per cent. While effecting sales of wet grinders, flour-milling machinery, drilling machines, lathes, etc., the assessee had in some instances

simultaneously sold also electric motors to the purchasers along with the aforesaid items of machinery. The assessing authority took the view that the machineries in question such as wet grinders, flour-milling machinery, air-compressors, pump-sets, lathes, etc., were intended to be worked with the aid of electricity and hence they were liable to be regarded as "electrical goods" falling within entry 26 of the First Schedule, so as to attract liability to be taxed at the higher rate of 7 per cent which was the ruling rate mentioned in the schedule against entry 26 at the relevant time. The assessment was finalised on the aforesaid basis.

2. The assessee took up the matter in appeal before the Deputy Commissioner of Sales Tax, Kozhikode. The Deputy Commissioner allowed the appeal to the extent of holding that the amount of Rs. 900.27 representing "postages collected" was not liable to be included in the taxable turnover of the assessee since postage had been separately charged in the sale bills issued by the assessee to its customers. In respect of the other two questions raised by the assessee concerning the rate of tax applicable to the turnover of sale of polythene pipes and of machineries like pumpsets, grinders, etc., the Deputy Commissioner confirmed the assessment made by the Assistant Commissioner. Against the said decision rendered by the Deputy Commissioner, second appeals were filed before the Tribunal both by the assessee as well as by the department. In T. A. No. 920 of 1977 filed by the assessee, the assessee reiterated its contentions that polythene pipes could not be regarded as falling within the scope of entry 26A, namely, water supply and sanitary fittings-that -was how the entry stood at the relevant time-so as to attract charge of tax at the higher rate of 7 per cent and that likewise pumpsets, v/et grinders, lathes and other machineries sold by it to customers were not "electrical goods" falling within the scope of entry 26 of the First Schedule. In the appeal-T.A. No. 16 of 1978-filed by the department, the contention taken was that the Deputy Commissioner had erred in excluding "postal charges" from the taxable turnover of the assessee. The Tribunal allowed the appeal filed by the assessee upholding both the contentions taken by the assessee and dismissed the appeal filed by the State affirming the conclusions recorded by the Deputy Commissioner that the "postal charges" separately shown in the sale bills were not liable to be included in the taxable turnover of the assessee. The State has brought these two tax revision cases questioning the legality and correctness of the aforesaid decision rendered by the Tribunal in the two appeals.

3. The first question urged before us by the learned Government Pleader is whether the Tribunal was right in holding that the "postal charges" collected by the assessee from the customers were liable to be excluded from the taxable turnover. The expression "turnover" has been defined in Section 2(xxvii) in the following terms:

Turnover" means the aggregate amount for which goods are either bought or sold, or supplied or distributed, by a dealer either directly or through another, on

his own account or on account of others, whether for cash or for deferred payment or other valuable consideration, provided that the proceeds of the sale by a person of agricultural or horticultural produce grown by himself or grown on any land in which he has an interest, whether as owner, usufructuary mortgagee, tenant or otherwise, shall be excluded from his turnover.

Explanation (1).-"Agricultural or horticultural produce" shall not include--

(i) such produce as has been subjected to any physical, chemical or other process for being made fit for consumption, save mere cleaning, grading, sorting, drying or dehusking;

(ii) tea, coffee, rubber, cardamom or timber.

Explanation (2).-Subject to such conditions and restrictions, if any, as may be prescribed in this behalf,-

(i) the amount for which goods are sold shall include any sums charged for anything done by the dealer in respect of the goods sold at the time of, or before, the delivery thereof;

(ii) any cash or other discount on the price allowed in respect of any sale and any amount refunded in respect of articles returned by customers shall not be included in the turnover; and

(iii) where for accommodating a particular customer, a dealer obtains goods from another dealer and immediately disposes of the same to the said customer, the sale in respect of such goods shall be included in the turnover of the latter dealer but not in that of the former.

It is clear from the order of the Tribunal that the amount of Rs. 900.27 which the assessing authority described as "postages collected" represents the charges realised by the assessee from its customers in recoupment of the expenditure incurred by it for the despatch by post of the documents of title of the goods sold. The Tribunal has taken the view that the said despatch of documents of title is part and parcel of the process of delivery and hence the expenditure incurred by the assessee in that connection and recouped by the assessee from its customers is really in the nature of charges for delivery. On the facts of this case as disclosed by the findings of the Tribunal we consider that the said conclusion reached by the Tribunal is perfectly in accordance with law. We do not find it possible to uphold the contention taken by the Government Pleader that the amounts collected by the assessee under the head "postal charges" form part of the sale consideration and are therefore liable to be included in the taxable turnover of the assessee. In the unreported judgment in T. R. C. Nos. 113 of 1978, 1, 3, 5, 6 and 7 of 1979, a Division Bench of this Court consisting of Gopalan Nambiyar, C.J., and one of us (Balagangadharan Nair, J.) had occasion to consider whether value-payable-post charges incurred by the assessee in that case who was dealing in medicines for despatching the medicines by post were liable to be included in the taxable turnover. Rejecting the contention put forward

on the side of the State that the postal charges formed part of the sale price, the Division Bench held that the disputed amounts represented freight that had been separately specified and charged for in the bills and that hence they did not form part of the sale price of the goods in question. In the case before us the only difference is that the disputed amounts of postal charges had been incurred not for the despatch of the goods as such but for the despatch of the relative documents of title such as way-bills, etc., after the goods were consigned to the purchasers. We are clearly of opinion that such postal charges incurred for despatching the documents cannot be regarded as forming part of the sale price. The contention put forward by the Government Pleader will accordingly stand rejected.

4. The next point to be considered is whether the turnover relating to the sale of polythene pipes is liable to be taxed at the higher rate of 7 per cent under entry 26A of the First Schedule to the Act which, at the relevant time, read as "water supply and sanitary fittings". In *Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes) Vs. G.S. Pai and Company*, this Court, while considering the question whether the turnover of the assessee in that case relating to the sale of G. I. pipes fell within the scope of the aforesaid entry, held that the two expressions "water supply" and "sanitary fittings" in entry 26A of the First Schedule are not to be understood disjunctively and that the court would not be justified in completely divorcing the term "water supply" from the content of the expression "sanitary fittings". Accordingly, it was held that all things connected with water supply could not automatically be brought within the scope of entry 26A of the First Schedule. The matter was carried in appeal by the State before the Supreme Court and the decision of the Supreme Court is reported in *Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. G.S. Pai and Co.*, Upholding the correctness of the interpretation placed by this Court on the expression "water supply and sanitary fittings" the Supreme Court held that the words "water supply...fittings" must receive colour from the immediately following words "sanitary fittings" and that, consequently, the G. I. pipes sold by the assessee would fall within the description of "water supply and sanitary fittings" only if it could be shown that they were meant for use in lavatories, urinals or bathrooms and the burden of so doing would be on the revenue.

5. In the case before us there is nothing on record to show that polythene pipes sold by the assessee were meant for use in lavatories, urinals or bathrooms. Such being the factual situation disclosed by the materials available on record, we do not find it possible to accept the contention put forward by the Government Pleader that the Tribunal was wrong in holding that the turnover relating to the sale of the polythene pipes did not fall within the scope of entry 26A.

6. The last point urged on behalf of the State concerns the question whether the pumpsets, grinders, air-compressors, rotaries, etc., sold by the assessee are liable to be regarded as "electrical goods" falling within entry 26 of the First

Schedule to the Act. The expression "electrical goods" is not defined in the Act ; but going by its ordinary connotation as also its meaning as understood in commercial parlance it will take within its scope only appliances which are exclusively dependant upon the use of electrical energy for their working, and which cannot be put to any use except in relation to the utilisation of electrical energy. It is also necessary that intrinsically the goods in question must be susceptible of being classified as electrical goods in the sense that they by their very nature answer the said description. This is the view that has been taken by the Madras High Court in *William Jacks and Co. Ltd. v. State of Madras* [1960] 11 S.T.C. 340 where it was held that a lathe fitted with electrical motor was not by itself electrical goods. That decision was subsequently followed by the Andhra Pradesh High Court in *State of Andhra Pradesh v. Indian Detonators Ltd.* [1971] 28 S.T.C. 84, by the Madhya Pradesh High Court in *I. B. Advani-Oerlikon, Electrodes, Pvt. Ltd. v. Commissioner of Sales Tax* [1972] 30 S.T.C. 337 and by a Division Bench of this Court in *Deputy Commissioner of Sales Tax v. Anand Wire & Allied Industries* [1979] 43 S.T.C. 273. We are in respectful agreement with the principle laid down in the aforesaid rulings.

7. Applying the aforesaid test it cannot be said that the pumpsets, grinders, air-compressors, lathes, etc., sold by the assessee are either goods which intrinsically fit in with the description of electrical goods or that they can be put to use only by the use of electrical energy. The mere fact that the assessee had simultaneously sold to the purchasers electrical motors also will not create any difference in the legal position mentioned above with respect to the character of the aforementioned goods such as pumpsets, grinders, etc. Pumpsets, grinders, etc., can be worked either with electricity or by diesel or steam power. The Tribunal was, therefore, perfectly right in holding that the aforesaid items of machinery sold by the assessee did not fall within the scope of entry 26 of the First Schedule to the Act.

8. The result that emerges from the foregoing discussion is that no interference is called for by this Court with the order passed by the Tribunal and that these tax revision cases have only to be dismissed. We accordingly dismiss these two tax revision cases and direct that the revision petitioner shall pay the costs of the respondent.

ORDER

Immediately after pronouncement of this judgment, the learned Government Pleader prayed for the grant of certificates under Article 133(1) of the Constitution for enabling the State to carry these matters in appeal before the Supreme Court. We do not however consider that these are fit cases for the grant of such certificates since no substantial question of law of general importance on which a pronouncement by the Supreme Court can now be said to be necessary is involved. The prayer for the grant of certificates is accordingly declined.