
(2002) 09 KL CK 0025

In the High Court Of Kerala

Case No : O.P. No's. 39114 of 2001 and 28, 1409, 1555, 4469 and 18830 of 2002

Dr. Jnanesh D. Shenoy

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 18-09-2002

Acts Referred:

Citation : (2003) 129 STC 246

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : B. Suresh Kumar, for the Appellant; Georgekutty, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—The petitioners in all these cases are either dental doctors, or hospitals, who have purchased dental chairs from manufacturers located outside Kerala. The dental chairs transported by the suppliers for delivery to the petitioners were detained at the sales tax check-post demanding entry tax on the ground that the dental chair is "furniture" which attracts entry tax under the Kerala Tax on Entry of Goods into Local Areas Act, hereinafter called "the Entry Tax Act". "Furniture" is an item introduced to the Schedule to the Entry Tax Act by Notification SRO No. 294 of 2000 with effect from April 1, 2000. Therefore after the amendment, there will be an entry tax on the entry of furniture from outside Kerala to Kerala for use or sale in Kerala. Of course, there is general exemption under notification for goods transported by "registered dealers" into Kerala for resale of such goods on which sales tax is payable by them in Kerala. However, articles brought by the consumers from outside the State for their own use in Kerala will attract entry tax. The respondents in all these cases who are either sales tax authorities attached to border check-posts or Intelligence Officers of the Sales Tax Department or assessing officers under the Entry Tax Act have issued notices to the petitioners on the ground that dental chairs are "furniture"

and therefore the same attracts entry tax. Of course, if the item answers the description of "furniture" as contemplated under the Entry Tax Act, then of course the petitioners will be liable to pay entry tax as the petitioners are using these articles in their clinics.

2. I heard counsel for the petitioners and also the Government Pleader for the State.

3. Counsel for the petitioners contended that dental chair is a medical equipment, and it is not a furniture as contemplated under the Entry Tax Act. The petitioners have relied on the decision of the Bombay High Court in *Commissioner of Sales Tax v. Associated Dental & Medical Supply Co.* [1976] 37 STC 336(HC) and that of the Gujarat High Court in *State of Gujarat v. Lax Tools Manufacturers* [1980] 46 STC 115. Reliance is also placed on the clarification, Notification G.O. (P.) No. 56/89/TD dated March 22, 1989* issued by the Government of Kerala in the context of the General Sales Tax Act stating that dental chair is not a steel furniture. On the other hand, the Government Pleader relied on the decision of this Court in *Deputy Commissioner of Agricultural Income Tax and Sales Tax v. E.V. Industries* [1974] 33 STC 308, wherein this Court held that hospital table, cots, bedside lockers, etc., are steel furniture. He also relied on the clarification issued by the Commissioner of Commercial Taxes u/s 59A of the Kerala General Sales Tax Act clarifying the position that the dental chair is nothing but "steel furniture". The Commissioner also relied on the decision of this Court referred to by the Government Pleader and clarified the issue against the petitioners.

4. It has been held by the Supreme Court in a large number of cases that while interpreting items in statutes, particularly taxing statutes, resort should not be made to the scientific or technical meaning of the terms and expressions used, but how the product is identified or understood by the class or section of people dealing with or using the product. In other words the meaning available in "common parlance" should be preferred as against the technical meaning unless of course there is specific definition provided in the particular statute or the context justifies the adoption of a technical or scientific meaning. Reference may be had to the decision of the Supreme Court in *Real Optical Co. v. Appellate Collector of Customs* [2001] 122 STC 555. This Court also in *Applico v. State of Kerala* [2000] 118 STC 567, has also taken the same view. It may be pertinent to note that the Entry Tax Act has not given any specific definition for "furniture". Therefore the meaning available in common parlance for furniture should be adopted. No dealer in furniture stocks dental chair and no dentist looks for one in a furniture shop. It is also not to be found as an item of furniture in any house or office. Therefore going by the common parlance understanding of dental chair, it is hard to believe that anyone calls it furniture. It is well-known that dental chair is an item manufactured as a medical equipment for use in clinics and is fitted with various electrical gadgets for cutting, grinding, etc., for repairing of teeth and for other dental services and treatment. It is highly adjustable and

manoeuvrable and is fitted with lighting, water supply, etc. Therefore I feel the decisions of the Bombay and Gujarat High Courts, referred above, lay down the proposition applicable here.

5. The decision of this Court in E.V. Industries case [1974] 33 STC 308 does not pertain to the item "dental chair". The items dealt with in that decision are only hospital table, cots, bedside lockers, etc. Those are nothing but furniture articles used in a hospital. Therefore that decision is not applicable to the facts of this case, and the clarification issued by the Commissioner u/s 59A of the Kerala General Sales Tax Act also does not reflect the correct legal position. The Entry Tax Act does not confer any power of clarification on the Commissioner, and so much so he could not issue a clarification in exercise of the powers u/s 59A of the Kerala General Sales Tax Act. Anyhow, since I do not agree with the clarification issued by the Commissioner, there is no need to go into his jurisdiction to issue the same. In fact the clarification issued by the Government of Kerala in the context of Sales Tax Act referred to by the petitioners appears to be correct and acceptable because the very object of entry tax itself as stated in the preamble, is to prevent evasion of sales tax. Going by the object of the statute, entries in the Schedule to the Entry Tax Act and the Kerala General Sales Tax Act should be given the same meaning. Therefore, I feel that the contention of the petitioners is correct and the respondents have no right to demand entry tax in respect of dental chair brought by them. The original petitions are accordingly allowed. I declare that the petitioners are not liable to pay entry tax or penalty for the import of Dental chair and the assessing officer has no right to demand the same. The impugned proceedings in all the original petitions at whatever stage shall stand cancelled and if at all any appeals are filed, it is made clear that they are unnecessary as the original proceedings stand hereby quashed.

Order oil C.M.P. No. 28 of 2002 in O.P. No, 28 of 2002 dismissed.