(2009) 06 KAR CK 0117

In the Karnataka High Court

Case No : C.R.P. No''s. 83 of 2009 (Tax) connected with 84 and 85 of 2009

Essar Project Ltd. APPELLANT

Vs

Commissioner of Commercial Taxes RESPONDENT

Date of Decision : 09-06-2009

Acts Referred:

Citation : (2013) 63 VST 49

Hon'ble Judges : V. Gopalagowda, J;Ravi Malimath, J

Bench : Division Bench

Advocate : T.N. Keshavamurthy, for the Appellant; Geetha Menon, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

V. Gopalagowda, J.—These civil revision petitions are filed by the assessee questioning the order passed by the revisional authority in relation to the assessment made under the Karnataka Tax on Entry of Goods Act, 1979 (hereinafter referred to as, "the KTEG Act", in short) for the years 2003-04, 2004-05, 2005-06, respectively, framing following questions of law:-- 10. (a) Whether levy of entry tax in respect of bitumen, emulsion, which is a product manufactured from processing bitumen and certain other chemicals, is authorised and legally justified under entry serial No. 1(viii) of Government Notification No. FD 11 CET 2002 dated March 30, 2002 as in annexure D?

(b) Whether Government Notification No. FD 11 CET 2002 dated March 30, 2002 as in annexure D authorises levy of tax in respect of petroleum products other than those specifically enumerated therein?

(c) Whether the respondent-revision authority is legally justified in considering that bitumen emulsion as the same commercial commodity as bitumen (asphalt) and therefore liable to entry tax at five per cent. under Government Notification No. FD 11 CET 2002 dated March 30, 2002 as in annexure D?

(d) Whether the revision order dated February 9, 2009 as in annexure A levying tax at five per cent in respect of bitumen emulsion is otherwise legally justified?

If the answer to first point is given/the answer to other points is not required as they are interlinked. Hence, we have taken up the above question of law No. 1 for our consideration. 2. Sri T.N. Keshavamurthy, learned counsel appearing on behalf of the petitioner-assessee, placed strong reliance upon the State Government notification enumerating the goods for the purpose of levying entry tax by the assessing authority. He has invited our attention to the notification dated March 30, 2002 published in the Karnataka Gazette, Extraordinary pertaining to serial No. (viii) petroleum products that is to say:--

(a) Lubricating oil,

(b) Transformer oil,

(c) Brake fluid and clutch fluid,

(d) Bitumen (asphalt),

(e) Tar and others.

3. At serial No. 1(viii)(d) in the table of the notification item (viii) bitumen (asphalt) is the commodity notified for the purpose of levying entry tax at five per cent. The rate of tax is prescribed by the State Government in exercise of its power under sub-section (1) of section 3 of the KTEG Act. The learned counsel for the petitioner has contended that "bitumen" (asphalt) is different from bitumen "emulsion" which is totally different and distinct commodity, which involves various manufacturing process as stated in the chart obtained from internet, which is made available to this court for its perusal, wherein the bitumen "emulsion" has got various stages of manufacturing process through different production equipments and its manufacturing process is entirely different from that bitumen. He has invited our attention to other literature obtained through internet chart, where Bharat Petroleum Corporation Ltd., Mumbai refineries products has shown the refinery process of oil product is produced, which involves the various process. Therefore, he would submits that goods bitumen (asphalt) is different and distinct from bitumen "emulsion". The learned counsel submits that levy of entry tax in respect of bitumen "emulsion" which is a sticky chemical component used for the purpose of formation of road and the same cannot be construed as bitumen. Therefore, the commodity of bitumen emulsion cannot be compared with that of bitumen (asphalt). In support of this, the learned counsel has invited our attention to the decision of the Supreme Court in the case of Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh, wherein the apex court under commodity classification has held that "coal" will include charcoal also since both dealer and consumer would regard coal not in its geological sense but only in ordinarily understood sense. Further in support of his submission that under rules of interpretation of statute that popular meaning and commercial sense meaning should prevail over scientific or technical meaning and further placed reliance on

the decision of the Division Bench of this court in the case of Business Forms Ltd. Vs. Commissioner of Commercial Taxes, Karnataka, Bangalore, wherein the words and phrases used in the entries in the Schedule with reference to commodity "paper" is considered and interpreted with reference to the levy of sales tax under the Central Excise and Salt Act. It is also held that the teleprinter rolls, adding machines roles and computer output papers could be classified as "paper" falling within the scope of entry 125 of the Second Schedule to the Karnataka Sales Tax Act, 1957. In popular parlance the word "paper" is understood to mean as substance which is used for writing, printing, packing or for drawing, decorating or covering the wall. The learned counsel strongly placed reliance on the above said decision where the Division Bench of this court has referred to the said interpretation made by the apex court in the case of State of Uttar Pradesh and Another Vs. Kores (India) Ltd., in support of the case of the petitioner contending that the question of law referred to supra would arise for our considerations. Therefore, he submits that the substantial question of law at 10(a) is required to be answered in favour of the petitioner-assessee as the revisional authority has seriously erred both on facts and in interpreting the commodity "bitumen (asphalt)" is equivalent to bitumen "emulsion" by borrowing entries from the entry in the Central Excise Act, which could not have been borrowed by the revisional authority when the statute provides for entries in the Schedule for the purpose of levy of entry tax. Therefore, he submits that this court has to answer the above question in favour of the assessee.

4. The learned Additional Government Advocate Mrs. Geetha Menon has sought to justify the order of the revisional authority and placed reliance upon the literature obtained from the website, namely, "panchakanya" wherein bitumen and bitumen "emulsion" are defined. She further contends that the use of "bitumen asphalt" and "bitumen emulsion", though the process of manufacture of the abovesaid goods has to undergo different process at different stages using different machineries and units, however the utility of both commodities is one and the same. Therefore, the petroleum product at entry serial No. 1(viii), sub-entry (d) of the notification should be given broader and enlarged interpretation of the commodity keeping in view the utility of both the commodities. She has also placed reliance upon the judgment of the Supreme Court in the case of Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh, and also the Division Bench decision of this court in the case of Business Forms Ltd. Vs. Commissioner of Commercial Taxes, Karnataka, Bangalore, The decision of the apex court referred supra rightly interpreted the "words and phrases" in a popular sense of the word "paper" and the same has been considered and interpreted after referring to different meanings and she submits that the said decision in all fours is applicable in support of the finding and reasons recorded by the assessing authority in levying entry tax in respect of bitumen "emulsion" from the point of its utility though the same is different from bitumen (asphalt). Therefore, she has in these revision petitions, does not arise for our consideration, hence she has requested this court to answer the same against

the assessee by affirming common order impugned in these revision petitions.

5. With reference to the above rival legal contentions, we have carefully examined the submissions made at the Bar with a view to find out as to whether the question of law 10(a) framed in these petitions would arise for our consideration. Since the question of law framed in these petitions is one and the same, therefore we answer the same against the assessee after careful consideration of the relevant literature regarding the manufacturing process and their use with reference to the findings and reasons recorded by the revisional authority in the back-drop of entry of petroleum products as stated in the notification to Schedule 1(a). The definition of "bitumen" and "bitumen emulsion" and briefly stated in the material collected from panchakanya website, produced by the learned Additional Government Advocate which reads as under:--

Bitumen.--Bitumen is exclusively used as binder in road construction and maintenance.

Bitumen.--Bitumen is exclusively used as binder in road construction and maintenance. NBBUL imports 80/100 prime grade bitumen, direct from the refinery in bulk and refills it in its self produced 160 litres capacity drums of 0.63 mm thickness. Its automatic filling plant equipped with photo-censored device has efficient and accurate filling capacity. NBBUL is the only industry to supply bitumen in the kingdom. It provides test certificate along with every consignment. It can also arrange site delivery on request.

Bitumen emulsion.--Bitumen emulsions are dispersion of very fine bitumen particles in an aqueous medium. These liquid products are functional in use and find a wide application in road construction and maintenance, water proofing soil stabilisation and in many other special circumstances where cold application of bitumen is desirable. Bitumen emulsion may be of canonic or anionic type. Cationic bitumen emulsion, nowadays, has become more popular in use because of its better qualities than that of bitumen.

6. The decision relied upon by the learned counsel for the petitioner in the case of Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh, and the decision of the High Court of Madhya Pradesh Commissioner of Sales Tax Vs. Jaswant Singh Charan Singh, wherein after interpretation of word "coal", it has been held that under commodity classification that the popular meaning and commercial sense meaning should prevail over scientific or technical meaning and held that "coal" will include charcoal also. The said decision has been referred in the decision of the Division Bench of this court in the case of Business Forms Ltd. Vs. Commissioner of Commercial Taxes, Karnataka, Bangalore, At para 9 in the said decision the Division Bench of this court has referred to the decision of the apex court, namely, State of Uttar Pradesh and Another Vs. Kores (India) Ltd., wherein the apex court had considered the meaning of word "paper" used in the Uttar Pradesh Sales Tax Act. The apex court after referring to various shades of the meaning, finally observed at page 11, thus "it is clear that in

popular parlance, the word ''paper'' is understood as meaning a substance which is used for bearing writing or printing, or for packing or for drawing on, or for decorating or for covering the walls".

7. Having said so in the said decision, further the apex court has stated that this should be the meaning with which we have to understand the scope of entry 125 in that case also. The apex court has further held that if the goods sold by the assessee are generally used for writings printing packing or for drawing, decorating or covering the wall, then they must be classified as "paper" as popularly understood and further held that the paper may be presented in plain sheets or in exercise books or in rolls. Paper may be in small pieces or in big rolls. It may be thick or thin, light or heavy, bleached or coloured, according to the requirements of purchasers. The apex court has substantially considered the same for the purpose of levying tax to the commodity entered in the Schedule by way of notification. The notification dated March 30, 2002 referred to supra no doubt clearly provides at serial No. 1(viii) the petroleum products. Under, the said heading between bitumen (asphalt) is the commodity specified for the purpose of levying entry tax. The use of bitumen (asphalt) and bitumen "emulsion" is for one and the same purpose. Bitumen "emulsion" is used for road and construction and maintenance, water proofing soil stabilisation and in many other special circumstances where cold application of bitumen is desirable. Whereas the bitumen (asphalt) is exclusively used as binder in: road construction and maintenance. Therefore, bitumen (asphalt) and bitumen "emulsion" are used for road construction. Therefore, the decision of the Supreme Court referred to above which is followed by the Division Bench of this court in the case referred to supra, with regard to the common parlance, the meaning of bitumen (asphalt) bitumen "emulsion" keeping in view the use of both commodities is for the same purpose and therefore the above decisions with all fours are applicable to the facts of the case in support of the assessing officer as the apex court in the case referred to supra placed reliance upon the entry from the Central Excise Act. The conclusion arrived at by the revisional authority is supported by the Supreme Court decision and the Division Bench of this court referred to supra. Accordingly, we answer the above substantial question of law against the assessee and confirm the order of the revisional authority. For the foregoing reasons, the civil revision petitions are accordingly dismissed.

