(2010) 12 CHH CK 0025

In the Chhattisgarh High Court

Case No : Writ Petition (T) No''s. 6975, 6976, 6977, 6978 and 6979 of 2008

Kamesh Traders APPELLANT

Vs

State of Chhattisgarh and Another RESPONDENT

Date of Decision : 02-12-2010

Acts Referred:
Chhattisgarh Value Added Tax Act, 2005 — Section 70, 8

Citation : (2011) 1 CG.L.R.W. 110 : (2012) 52 VST 120

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Sunil Otwani, for the Appellant; A.S. Kachhawaha, Deputy Advocate-General, for the Respondent

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.—W.P. (T) Nos. 6975, 6976, 6977, 6978 and 6979 of 2008, involve the same question of law as to whether or not the products of cello company, i.e., serving tray, flask, stainless steel tiffin with plastic body, water jug and hotpot (casserole) would fall within the meaning of ''''utensils" under entry No. 13 of Part II of Schedule II of the Chhattisgarh Value Added Tax Act, 2005 (for short, "the Act, 2005"). The facts of all the writ petitions are common and, as such, they are being disposed of by this common order. However, for the purpose of this order the facts, as mentioned in W.P. (T) No. 6975 of 2008, are being referred. By these writ petitions, M/s. Kamesh Traders (petitioner in all the writ petitions) seek quashing of the order dated January 31, 2007 passed by respondent No. 2, Commissioner, Commercial Tax, whereby and where-under the petitioner was directed to pay the value added tax (for short, "the VAT") at the rate of 12.5 per cent as per entry No. 1 of Part IV of Schedule II of the Act, 2005.

2. The facts, in nutshell, as projected by the petitioner, for proper adjudication of the cases, are that the petitioner is the distributor of cello products. The petitioner is registered under the provisions of the Act, 2005. The State Government imposed the VAT at the rate of 12.5 per cent on the serving tray,

flask, stainless steel tiffin with plastic body, water jug and hotpot (casserole). According to the petitioner, the aforesaid products will fall under entry No. 13 of Part II of Schedule II of the Act, 2005, therefore, the petitioner is required to pay the VAT at the rate of four per cent only.

3. Against the aforesaid action of the respondent-authorities, the petitioner moved an application u/s 70 of the Act, 2005 before the Commissioner, Commercial Taxes. In the said appeal, the Commissioner by order dated January 31, 2007 directed the petitioner to pay the VAT at the rate of 12.5 per cent as per entry 1 of Part IV of Schedule II of the Act, 2005. Thus, these petitions.

4. Shri Otwani, learned counsel appearing for the petitioner, would submit that respondent No. 2 failed to appreciate the fact that the reason given by respondent No. 2 in the order dated January 31, 2007 is not just and proper. Respondent No. 2 failed to appreciate that it is not necessary that the term utensils has to be limited to cover only those utensils, which are generally used in kitchen. Shri Otwani would further submit that serving tray, flask, stainless steel tiffin with plastic body, water jug and hotpot (casserole) come within the definition of "utensils". Thus, the petitioner is not liable to pay the VAT at the rate of 12.5 per cent. The petitioner is liable to pay the VAT only at the rate of four per cent. Even the State of Madhya Pradesh is imposing the VAT at the rate of four per cent on the aforesaid articles. Thus, the impugned order dated January 31, 2007 may be quashed and the respondent-authorities may be directed to impose the VAT at the rate of four per cent only.

5. Shri Kachhawaha, learned Deputy Advocate-General appearing for the State, would submit that though the hot pot (casserole) is used for keeping the food, it is not made of metals only, therefore, it does not come within the category of kitchen utensil and there is no such commodity named as hot pot in the Schedule. The Commissioner after appreciating the facts and circumstances of the case in its letter and spirit rightly passed the impugned order and the same does not warrant any interference of this court. Shri Kachhawaha, would further submit that the impugned order was passed by the Commissioner on January 31, 2007 whereas the petitioner preferred the instant petitions on December 11, 2008, i.e., after lapse of more than 22 months without assigning sufficient and cogent reasons for causing delay in filing the present petitions. Thus, the petitioner is not entitled to arty relief and the present petitions may be dismissed.

6. It is useful to refer the relevant entries of Schedule II, Part II and Part IV to section 8 of the Act, 2005, which reads as under :

Sl. No.

Description

Rate of tax u/s. 8(i)(percent)

Rate of tax u/s. 8(ii) (per cent)

(1).

(2)

(3)

(4)

13.

All utensils including pressure cookers/pans except utensils made of precious metals.

4

Sl. No.

Description

Rate of tax u/s. 8(i) (per cent)

Rate of tax u/s. 8(ii) (per cent)

(1)

(2)

(3)

(4)

1.

All other goods not covered by Schedule I and Schedule II

12.5

7. The question for consideration before this court is that whether the above-stated articles, i.e., serving tray, flask, stainless steel tiffin with plastic body, water jug and hotpot (casserole) come within the definition of "utensils" and fall within entry 13 of Part II of the Second Schedule of the Act, 2005. Entry 13 starts with the word "all utensils". Utensils have a very wide connotation. It further states that all the utensils except utensils made of precious metals. There is no dispute that the above-stated articles are not made of precious metals and there is no distinction whether it is made of stainless steel, plastic or any other metal and as such all utensils come within entry 13 of Second Schedule wherein VAT payable at the rate of four per cent. The contention of the learned counsel for the Revenue that since some of the articles are not made of metals only, therefore they would not come within the category of kitchen utensils, deserves to be rejected on a simple ground that entry does not distinguish utensils on the basis of materials for making of utensils, except precious metals.

8. Stroud''s Judicial Dictionary of words and phrases, Volume 3, Sixth Edition, defines the word "utensils" as under :

UTENSIL. ''Utensil, anything necessary for our use and occupation; household stuffe'' (cowel).

9. Chambers list Century Dictionary, Revised Edition, defines the word "utensil" as under :

utensil ''ju''tensil''-noun an implement or tool, especially one for everyday or domestic use. Cooking utensils. 14c : from French utensile, from Latin utensilis "fit for use" or "useful", from uti to use.

10. The New International Webster''s Comprehensive Dictionary of English Language, Encyclopedic Edition, defines the word "utensil" as under :

11. The Oxford English Dictionary, Second Edition, Volume XIX, defines the word "utensil" as under :

2. Any article useful or necessary in a household; a domestic implement, vessel or article of furniture, now esp., an instrument or vessel in common use in a kitchen, dairy, etc. : +freq. pl., = household goods.

12. On reading of the definitions given by the various dictionaries, it is clear that all the articles which are useful for kitchen and domestic purposes, come within the definition of "utensils". The distinction has already been made in the entry itself that the articles aforestated, made of precious metals would not fall within entry 13 and would fall under other entry.

13. It is trite law that in case of imposition of taxes, the word should be construed in the same way in which it is understood in ordinary parlance in the area in which the law is in force. The above-stated articles may not be used on day-to-day basis but understood as utensils and used as articles of kitchen and for domestic purposes.

14. The Supreme Court, in Annapurna Biscuit Manufacturing Co. v. Commissioner of Sales Tax, U.P., Lucknow [1981] 48 STC 254 (SC), observed as under (page 255 in 48 STC) :

4. It is a well-settled rule of construction that the words used in a law imposing a tax should be construed in the same way in which they are understood in ordinary parlance in the area in which the law is in force. If an expression is capable of a wider meaning as well as narrower meaning the question whether the wider or the narrower meaning should be given depends on the context and the background of the case.

15. Thermal flask/vacuum flask is known in common parlance as article used for storing beverages like coffee, tea, milk, etc., at a particular temperature which is frequently and commonly used in the household. The hotpot (casserole) is also used for keeping the vegetables, chapatis, rice and other food-stuff hot to be delectable. Serving tray is used regularly for serving dishes and other food-stuff. Water jug and stainless steel tiffin with plastic body, are also frequently used in kitchen and for domestic purposes.

16. For the reasons mentioned hereinabove, there is no dispute that the above stated articles are utensils and are used regularly for domestic purposes.

17. A Division Bench of the High Court of Karnataka, in Stovekraft Pvt. Ltd. v. State of Karnataka [2006] 147 STC 329 (Karn), observed as under (page 336 in 148 STC) :

20. In view of the aforesaid discussion we are of the view that the phrase ''utensils'' used in entry No. 5 includes the stainless steel LPG stove, kerosene stove and vacuum flask which are of common utility in a household and the same fall within entry No. 5 and liable to be taxable only at four per cent.

18. In view of the foregoing, the articles in question are taxable only at the rate of four per cent. Accordingly, the authorities are directed to reassess and pass appropriate order in accordance with law. All the petitions are allowed to the above extent. No order as to costs.