(1997) 12 MAD CK 0055

In the Madras High Court

Case No : Tax Case (Appeal) No. 379 of 1993

Lawrence and Mayo India (Private) Ltd. APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision : 04-12-1997

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 3

Citation : (1997) 12 MAD CK 0055

Hon'ble Judges : M.S. Janarthanam, J;K.P. Sivasubramaniam, J

Bench : Division Bench

Advocate : C. Natarajan, for N. Inbarajan, for the Appellant; K. Elango, Government Advocate (Taxes), for the Respondent

Judgement

M.S. Janarthanam, J.—This appeal, at the instance of the assessee - Lawrence and Mayo India (Private) Ltd., No. 68, Anna Salai, Madras

600 002, is directed against the order dated November 25, 1992 in suo motu revision proceedings in Ref. No. M1/62015/92 of the Joint

Commissioner (SMR) of Commercial Taxes, Madras 5.

2. The assesses, it is said, are dealers in scientific instruments, telescope, magnifiers, microscope, etc. The assessing officer, viz., the Commercial

Tax Officer, Triplicane-I, Assessment Circle, Madras, in his assessment proceedings for the year 1988-89, levied tax at 15 per cent on the sales

turnover of ""theodolite"" to the tune of Rs. 2,71,458 for want of ""C"" and ""D"" forms. The assessing officer treated the ""theodolite"" - a survey

instrument, as falling under entry 8 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act No. 1 of 1959 - for

short ""the TNGSTA""). Entry 8 included in its fold, ""binoculars, telescopes and opera glasses"". The assessee-dealers'' claim is that : theodolite"", a survey instrument is not at all falling under entry 8 of the First Schedule to the TNGSTA and consequently, the sales turnover of ""theodolite"".

amounting to Rs. 2,71,458 is liable to be taxed at multi-point at the appropriate rate, falling u/s 3(1) of the TNGSTA.

(a) This sort of a claim made by the assessee was not at all accepted by the assessing officer and he construed ""theodolite"" as falling under entry 8

of the First Schedule to the TNGSTA and got the sales turnover, relatable to ""theodolite"", as stated above, assessed to tax at appropriate rate, as

aforesaid, in the absence of production of ""C"" and ""D"" forms.

3. The aggrieved assessee-dealers filed appeal in C.S.T. No. 276 of 1991 before the Appellate Assistant Commissioner (C.T.) IV, Madras-108

(for short ""the AAC""), who, in turn, after taking into consideration the relevant materials placed on record, and, of course, after hearing the

arguments of learned representatives on either side, accepting the case of the assessee, allowed the appeal, by order dated January 22, 1992.

4. The Joint Commissioner (SMR) of Commercial Taxes, Madras-5, in his suo motu revision proceedings, after complying with the requisite

formalities, set aside the order of the AAC and restored the order of the assessing officer, in the sense of the turnover relatable to ""theodolite

amounting to Rs. 2,71,458 getting assessed to tax at the appropriate rate for want of ""C"" and ""D"" forms.

5. The aggrieved assessee-dealers resorted to the present action - Tax Case (Appeal) No. 379 of 1993.

6. From the pith and submissions of the arguments of Mr. C. Natarajan, learned Senior Counsel appearing for, the assessee-dealers and Mr. K.

Elango, learned Government Advocate (Taxes) representing the Revenue, the one and only point that crops up for consideration is as to :

Whether, the order of the Joint Commissioner (SMR) of Commercial Taxes, Madras-5, construing ''theodolite'' as falling under entry 8 of the

First Schedule to the TNGSTA, and therefore, exigible to tax at the appropriate rate for want of ""C"" and ""D"" forms, on the facts and in the

circumstances of the case, is sustainable in law ?

7. Three goods with specific names are included in entry 8 of the First Schedule to the TNGSTA, viz., ""Binocular, telescope and opera glasses"".

The contention of the Revenue is that ""theodolite"" in nothing, nut an improved version of a ""telescope"" and, therefore, the said instruments falls

under entry 8 of the First Schedule, exigible to tax, at the appropriate rate. We have already noticed that the assessee-dealers, with all vehemence,

contended that ""theodolite"" used for survey purpose, can, by no stretch of imagination, be construed to fall under entry 8 of the First Schedule and

it is an item of goods liable to be taxed at multipoint, as falling u/s 3(1) of the TNGSTA.

8. In the process of determination of the tenability or otherwise of the rival submissions, as above, we may now try to explore the synonym or

meaning of the expression, ""telescope"" sandwiched between ""binocular"" and ""opera glasses"" and the expression ""theodolite"" as given in the

dictionaries, as well as in other commercial literatures.

9. (a) The Shorter Oxford English Dictionary, Third Edition, at page 2255, gives the meaning of the expression ""Telescope"", and it reads as under :

Telescope (te-liskop) sb. 1648 - (It, telescopio (Galilei) or mod. L. telescopium (Porta); see Tele-Scope). An optical instrument for making

distant objects appear nearer and larger, consisting of one or more tubes with an arrangement of lenses, or of one or more mirrors and lenses, by

which the rays of light are collected and brought to a focus and the resulting image magnified. Telescopes are of two kinds : refracting, in which the

image is reproduced by a lens (the object-glass) and reflecting in which it is produced by a mirror or speculum; being magnified in each case by a

lens or combination of lenses (the eye-piece). The smaller hand-telescopes are always refracting, and consist of two or more tubes made to slide

one within another for convenience of packing into a narrow compass and for adjusting the lenses as required for focussing the image, b. Astr. A

constellation south of Sagittarius 1891.

(b) It also gives the meaning of ""theodolite"", at page 2279, as below :

Theodolite (pi-o-doleit). 1571. [First in mod. L. form theodelitus (Leonard or Thomas Digges, its probable inventor); of unkn. origin] A portable

surveying instruments, orig. for measuring horizontal angles, and consisting essentially of a planisphere or horizontal graduated circular plate, with an

alided or index bearing sights; subsequently variously elaborated with a telescope instead of sights, a compass, level, vernier, micrometer, and

other accessories, and now often with the addition of a vertical circle or arc for the measurement of angles of altitude or depression. Hence

theodolitic a. of, pertaining to, done, or made with a.t.

10. The New Encyclopaedia Britannica, Volume 18, 15th Edition, at page 97, gives the meaning of ""telescope"", as below :

A telescope is an instrument used to view distant objects. The word is derived from the Greek tele, ''far'' and skopein, ''to see''. Modern

telescopes are of two types, optical and radio. In optical telescope light is collected and focussed so that it can be magnified and either examined

through an eye piece or photographed. The light may also be directed into an auxiliary device, such as a spectrograph (see also optics, principles

of; optical engineering). A radio telescope may consist of a single wire, a pattern of wires, a spherical or parabolic dish, or a number of dishes

arranged in a pattern of wires, a spherical or parabolic dish, or a number of dishes arranged in a pattern. Very sensitive electronic detectors and

amplifiers have been developed for radio telescopes, which are usually much larger and more complex than optical telescopes. In one such

telescope, the long-baseline radio interferometer, the two elements may be separated by hundreds or even thousands of miles.

11. The New Encyclopaedia Britannica, Volume 17, 15th Edition, gives the meaning of ""theodolite"", at page 830, under the heading ""Angle-

measuring equipment"", and it reads, as under :

Angle-measuring equipments. The theodolite is the basic instrument for measuring horizontal and vertical angles. It consists essentially of a sighting

tube in the form of a telescope, and horizontal and vertical scales so set up that horizontal and vertical angles of the object sighted in the telescope

can be read from the scales.

12. (a) The New Lexicon Webster''s Dictionary of the English Language, 1991 Edition, at page 1017, gives the meaning of the ""telescope"" and it

reads as below :

tel-e-scope (teliskoup) 1. n. an optical device that focuses light (objective) from distant objects so that the image formed may be observed

(eyepice). Telescopes are usually tubular in form and vary in size from easily portable to very large instruments mounted so that they can be

focused and turned on several axes by means of electric motors and fine gears. They are classified according to function.

(b) It also gives the meaning ''theodolite'' at page 1025, as below :

The-odo-lite (Oi-od-lait) n. an instrument used by surveyors to measure vertical and horizontal angles, consisting of a small telescope moving

along a graduated scale. (origin unknown).

13. Bureau of Indian Standards issued specifications as respects vernier theodolite. The foreword to the specifications so issued reads as under :

Foreword - This Indian Standard (First Revision) was adopted by the Bureau of Indian Standards, after the draft finalised by the Optical and

Mathematical Instruments Sectional Committee had been approved by the Light Mechanical Engineering Division Council.

Theodolite is an instruments for precise measurement of horizontal and vertical angles. The vernier theodolite is provided with graduated horizontal

and vertical circles and two small vernier scales. The vernier scales are movable and remain in sliding contact with the graduated circles. The

vernier theodolite is not so precise as other advanced designs, such as optical theodolite but is still used largely due to lower cost and simplicity of

design. Vernier theodolite may be used for all types of surveys required for small and large scale mapping.

This standard is one of a series of Indian Standards dealing with surveying instruments. A separate Indian Standard has also been prepared to

cover the requirements of optical theodolites (IS 2976 : 1964 ''Optical theodolite'').

The standard was originally published in 1965 and since then three amendments have issued. There have been changes in the referred Indian

Standard. In the present revision, besides, incorporating all the amendments and updating the reference of Indian Standards, the sensitivity of

azimuth bubble and altitude bubble have been modified. Jolting test has been renamed as drop test for better understanding.

This standard is intended chiefly to cover the technical provisions relating to vernier theodolite and it does not include all the necessary provisions

of a contract.

For the purpose of deciding whether a particular requirement of this standard is complied with, the final value, observed or calculated, expressing

the result of a test or analysis, shall be rounded off in accordance with IS 2 : 1960 ''Rules for rounding off numerical values (revised)''. The number of significant places retained in the rounded off value should be the same as that of the specified value in this standard.

14. Our attention had also been drawn to Explanatory notes issued by Customs Co-operation Council, Brussels as respects Harmonized

Commodity - Description and Coding System. The Explanatory notes so issued, it is said, had been adopted by Customs and Excise Tariffs in

India. Various commodities had been grouped under one heading with a particular code number. Main code number is given to specific

commodities grouped together under one heading and sub-divisions of the main code number are given to specific articles under the coding system

adopted.

(a) Under code No. 90.13, various items are grouped together at page 1478 of volume 4 of the said Explanatory notes. The sub-divided code

No. 9013.10 refers to telescopic sights for fitting to arms; periscopes; telescopes designed to form parts of machines, appliances, instruments or

apparatus of this Chapter or section XVI.

(b) Under code No. 90.15, at page 1481 thereof, certain items of goods are grouped together. Sub-divided Code No. 9015.20 refers to

theodolites and tacheometers. This sort of coding system had been adopted internationally. It appears to refer to different and distinct articles

grouped together under a common code and identify the specific article coming under the common code.

15. ""Binocular and opera glasses"" are used generally for seeing distant objects. The terms ""telescope"" sandwiched between the ""binocular"" and

opera glasses"" and the immediate expression following the telescope, being opera glasses, the expression, ""telescope"" takes colour and meaning

from the company of words, getting associated with it. In this view of the matter, the restricted meaning given to the word ""opera glasses"" following

the word ""telescope"" has to be ascribed to the ""telescope"" and such a meaning, in the very nature of things, as rightly pointed out by learned

counsel for the assessee-company, cannot at all be given to ""theodolite"".

16. ""Theodolite"" is essentially a survey instrument. It can measure vertically, horizontally and circle reading is also possible. The said instrument

theodolite"" consists of several component parts. It consists of metallic base, vertical scale, and also fitted with the telescope. This sort of a thing is getting revealed from the meaning given to ""theodolite"" by the Shorter Oxford English Dictionary, already extracted. The present day version of

theodolite"" is the improved version of yesterdays, fitted with a telescope and that is all. From the meaning ascribed to ""telescope"" and ""theodolite"",

as given above, the question that now falls for consideration is whether the two goods, ""telescope"" and ""theodolite"" can commercially be construed

to be two distinct and different objects or one and the same object of a particular class.

17. Under various entries of the First Schedule of the TNGSTA, goods or articles of trade or commerce are included for levy of tax at a specified

and appropriate rate. To determine the guiding principles for inclusion of such goods in various entries in the Schedule is, of course, a difficult and

onerous task. Goods, going by different names, may be classified and included under one entry. Certain goods, not specifically included in an

entry, by a specific trade name, may also be sought to be included in the entry, at times by the tax authorities, giving rise to disputes, requiring

decision at the hands of the higher tax authorities and also before the judicial forums, as prescribed under the TNGSTA. In such process, there had

been evolution of law, as respects the interpretative approach to be adopted in construing the entries specified in the Schedule to the TNGSTA.

The interpretative approach evolved by courts of superior jurisdiction - apex Court and High Courts - may, if penned down here, will serve as a

useful guide in determination of the question posed for consideration, in the instant case, viz., as to whether ""theodolite"", and instrument used for

survey purposes, will fall under entry No. 8 of the First Schedule to the TNGSTA ?

18. (a) In William Jacks and Co., Ltd. v. State of Madras [1955] 6 STC 301, the question posed for consideration before a Division Bench of this

Court in revision was whether the articles specified in lists 1(a), 1(b) and 1(c) were electrical goods within the meaning of section 3(2)(viii) of the

Madras General Sales Tax Act.

(b) In answering the said question, the Division Bench formulated a rule, as is getting reflected at page 304, which reads, as under :

For purposes of taxation the unity of the goods sold should not be impaired and that if the machine taken as a whole did not fall within the

category of ''electrical goods'', a component part thereof, which was not sold as an independent item of goods could not be treated as the goods

sold; such a fictional sale could not furnish any basis for a computation of taxable turnover.

19. In Ramavatar Budhaiprasad v. Assistant Sales Tax Officer [1961] 12 STC 286, the Supreme Court was called upon to consider the meaning

of the word ""vegetables"" in item 6 of Schedule II of the C.P. and Berar Sales Tax Act, 1947. What the Supreme Court, in this context said, is thus

reflected :

The word ''vegetables'' in item 6 of Schedule II of the C.P. and Berar Sales Tax Act, 1947, 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 therefore to be understood as denoting class of vegetables which are grown in a kitchen garden or in a farm and are used for the table.

Consequently ''betel leaves'' are not vegetables and would not be exempt from sales tax under item 6 of Schedule II of the C.P. and Berar Sales

Tax Act, 1947.

20. (a) In Deputy Commissioner of Commercial Taxes v. Iyanar Coffee and Tea Co. [1962] 13 STC 457, the question that came up for

consideration before a Division Bench of this Court was as to whether ""coffee"", as found in section 5(v) of the Madras General Sales Tax Act,

1939 would include French coffee ?

(b) The Deputy Bench, in answering the question so posed, said, as below :

When the statute provided for a single point levy of tax at a higher rate and described the commodity as merely coffee, it is axiomatic that a

specific commodity was intended and not any commodity going by the name of coffee. When, in addition, we find that there are several enactments

dealing with coffee which define coffee in a particular manner, confined only to pure coffee, there is no reason why a similar connotation to the

expression ''coffee'' in the absence of any particular definition thereof in the Madras General Sales Tax Act, should not be adopted. It is also

noteworthy that in the amended Act 1 of 1959, various varieties of coffee are specifically described and made subject to different rates of rates of taxation. In the First Schedule to Act 1 of 1959 is listed the goods in respect of which a single point tax is leviable under sub-section (2) of section

3 of that Act. One of the items is chicory and that is taxable at five per cent at the point of first sale in the State. Another item is coffee defined as

''any one of the forms of coffee such as coffee beans, coffee seeds (raw or roasted), coffee powder but not including coffee drink''. This is also

taxable at five per cent at the point of first sale in the State. Yet another item is French coffee which is taxable in the same manner subject to the

condition that the coffee portion of the French coffee has not already suffered tax in this State under the earlier item. Prior to the passing of this

Act, chicory was one of the general items taxable at the ordinary rate and for the first time the Legislature, considering the extensive use of chicory

in its admixture with coffee powder, has brought it within the scheme of single point levy of tax at the same rate as coffee.

(c) So saying, the Bench ultimately held that the expression ""coffee"", as found in section 5(v) of the Madras General Sales Tax Act, 1939 would

not include French coffee, which is made by an admixture of coffee powder and chicory powder.

21. (a) In British India Corporation Ltd. v. State of Uttar Pradesh [1962] 13 STC 459 the question that fell for consideration before the Allahabad

High Court was as to whether, on the face of ""woollen carpet yarn"" being included in the entry, ""woollen goods and knitting wool"" in List I of

Notification No. S.T. 117/X-923-1948 dated 8th June, 1948, the other classes of woollen yarn should be deemed to have been excluded from

that description.

(b) What their Lordships of the Division Bench of this Court said, which is relevant, runs as under :

''Woollen carpet yarn'', which is yarn made of wool for use in the manufacture of carpets is a variety of ''woollen goods''. Therefore, ''woollen

carpet yarn'' is included in the entry ''woollen goods and knitting wool'' in List I of Notification No. S.T. 117/X-923-1948 dated 8th June, 1948

issued by the State Government u/s 3-A of the U.P. Sales Tax Act, 1948, and is chargeable at six pies per rupee and not at three pies. Merely

because ''knitting wool'', which is a particular kind of woollen yarn, has been specifically added to the general description of ''woollen goods'', it does not follow that the other classes of woollen yarn should be deemed to have been excluded from that description.

Sometimes, expressions or descriptions are used by the Legislature merely by way of abundant caution which are not strictly necessary to convey

the meaning. They are used only for the sake of clarity and to dispel doubt and uncertainty.

22. (a) In State of Madras v. SF Products India Ltd. [1972] 29 STC 454 the question that arose for consideration was whether spray booths,

dust collectors and textile humidification plants are air-conditioners within the meaning of entry 4 of the First Schedule to the Madras General Sales

Tax Act, 1959. The entry is ""refrigerators, air-conditioning plants, component parts of refrigerators or air-conditioning plants"".

(b) A Division Bench of this Court, ultimately held that spray booths, dust collectors and textile humidification plants are not air-conditioners within

the meaning of entry 4 of the First Schedule to the Madras General Sales Tax Act, 1959.

(c) While so holding, the Division Bench said that refrigerators or air-conditioners in entry 4 of the First Schedule to the Madras Act should not be

given a strained or strange meaning, but that they should be understood as normally people would understand in the commercial sense.

23. (a) in Scientific and Glass Laboratories Vs. The State of Gujarat, , the question that fell for consideration before the High Court of Gujarat was

as to whether glass ""ampules"" manufactured for the purpose of filling them with injections or liquid medicines and hermetically sealing them are not

bottles"" within the meaning of entry No. 6(vii) of Schedule C of the Bombay Sales Tax Act, 1959.

(b) The said High Court, in answering the question so posed, said :

Glass bottles are manufactured in a particular manner so that the opening of the bottle can be closed by a cork or a stopper. Glass ampules are

hermetically sealed and cannot be opened except by breaking that seal. It cannot therefore be said that in the commercial world, ''glass ampules''

are known as ''glass bottles''.

24. (a) In English Electric Co. v. Superintendent, Central Excise (1975) II MLJ 479 (Mad.), the petitioner, the English Electric Co. of India Ltd.,

engaged itself in manufacturing equipment useful in the distribution of electricity at its works at Pallavaram near Madras. One of the items of

manufacture is High Rupturing Capacity Cartridge Fuselink.

(b) The question is whether this will attract excise duty under entry 23-B in the First Schedule to the Central Excises and Salt Act, 1944.

(c) The entry reads as follows :

23-B. Chinaware and porcelainware. - All sorts - (1) Tableware, (2) Sanitaryware, (3) Glazed tiles, (4) Not otherwise specified.

(d) In answering the question, what their Lordships of the Division Bench said, as is getting reflected at page 482 is relevant. It reads as under :

No doubt, the heading of the entry covered porcelainware of all sorts. If we stop there, there is no difficulty in stating that any kind of

porcelainware will fall within the entry. But then, when one looks into the itemisation of articles in the entry, doubt arises whether an article like high

rupturing capacity fuselinks will be within the ambit of the entry. The enumeration of the articles consists of tableware, sanitaryware and glazed tiles.

Fuselink of the type we have here has no possible analogy at all to any things mentioned there. It is no doubt true that the fourth item of entry 23-B

is ''not otherwise specified'' and this phraseology read with ''all sorts'' may perhaps justify a contention that porcelain of all sorts, although not

''tableware'' sanitaryware and glazed tiles'' will fall within the scope of entry 23-B. But the pointed argument of Mr. Utham Reddi, before us is that

high rupturing capacity fuselink as such is not and cannot be described as porcelainware. We have already noted the meaning of the word ''ware''

and this word ''ware'' occurs as part of tableware, sanitaryware and glazed tiles. To our minds, it is difficult to regard high rupturing capacity

fuselink as porcelainware merely because one of its components is made of porcelain. The whole thing, namely, high rupturing capacity fuselink, is

a manufactured article and one of its components is porcelain. But merely because that component forms part of the finished article, we cannot

take it that by itself will come within entry 23-B, for, it must be a porcelainware as such. Hardly, high rupturing capacity fuselink can be described

as a porcelainware as we commonly understand the phrase. That the Legislature is familiar with a fuselink like the one we have before us is clear

from the fact that in item No. 73(1) of the First Schedule to the India Tariff Act, 1934, the article is described as follows :

Electrical control gear and transmission gear, namely, switches - (excluding switch boards), fuses and current breaking devices of all sorts and

descriptions, designed for use in circuits of less than ten amperes and at a pressure nor exceeding 250 volts. ?

This is an article which will fall possibly under that entry 73(1). By no stretch of imagination, we can say that merely because an article described

under entry 73(1) contains, as a component, a piece of porcelain it becomes a porcelainware for purposes of that entry. No less can it become

porcelainware for purposes of entry 23-B in the First Schedule to the Central Excises and Salt Act, 1944.

(e) So saying ultimately, the Bench held that the high rupturing capacity fuselink will not be liable to excise duty under entry 23-B.

25. From the various precedents referred to above, we are able to discern that courts in this country - High Courts and apex Court - construed the

meaning of articles or goods listed in an entry either in a taxing statute or other statutes for purposes of levying tax or duty of excise. The goods

listed in a particular entry had been construed in a commercial or popular sense in the sense of the goods, as understood by the people in the

market and not in a technical or scientific sense. One more thing, which is discernible from the survey of the various decisions is that when a goods

or product consists of various component products, what was intended for sale was the product as an integrated whole and not its component

parts. The survey instrument ""theodolite"", consisting of different component products, therefore, must have to be viewed a product as a whole, in

the sense of a distinct article of trade, commercially understood by the people in the market, as different from telescope, a distinct article of trade.

In this perspective, we are of the view that ""theodolite"", an instrument used for survey purposes, can, by no stretch of imagination, be stated to fall

within entry No. 8 of the First Schedule appended to the TNGSTA.

26. The order of the Joint Commissioner (SMR) of Commercial Taxes, Madras-5, therefore, cannot at all be stated to be sustainable in law. This

point is answered accordingly.

27. In fine, the appeal is allowed. The order of the Joint Commissioner (SMR) of Commercial Taxes, Madras-5 setting aside the order of AAC,

restoring the order of the assessing officer, viz., the Commercial Tax Officer, Triplicane-I Assessment Circle, is aside and the order of AAC is

ordered to be restored. There shall, however, be, in the circumstances, no order, as to costs.

28. Appeal allowed.

