(2002) 08 KL CK 0004

In the High Court Of Kerala

Case No : O.P. No''s. 3687 and 3780 of 2002

Magna Tek Enterprises APPELLANT

Vs

State Tax Inspector RESPONDENT

Date of Decision : 02-08-2002

Acts Referred:

Citation : (2003) 1 KLT 176

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

Bench : Single Bench

Advocate : S.K. Devi, for the Appellant; Georgekutty Mathew, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—The common petitioner in both the cases is engaged in the manufacture of medical equipments at Hyderabad. The petitioner challenges Ext. P2 notices produced in both O.Ps. demanding entry tax in respect of surgical table treating the same as furniture, an item in respect of which entry tax is payable under the Kerala Tax on Entry of Goods into Local Areas Act. The item involved in O.P. No. 3880/2002 is Olympus 2000 Mobile C-Arm Multi Procedure Table with accessories costing Rs, 3,10,000/-and the item involved in O.P. No. 3687/2002 is described as Table for the Department of Orthopaedics and Urology costing Rs. 2,50,000/-. The items were detained at Sales Tax Check Post, Walayar while on transport to hospitals in Kerala. The petitioner contends that the items in both the cases do not constitute furniture in the ordinary sense of the term, but are medical equipments or hospital equipments used only for the purpose of surgery. The leaflet describing the item and its detailed description are contained in Ext. P3 produced along with O.P. The Olympus 2000 Mobile C-Arm Multi Procedures Table referred in O.P. 3780/2002 is power operated and remote controlled. Its essential features are the following:

"High stability 4 cylinder design (Un-attainable with 1 or 2 cylinders)

Large imaging area with Radio - lucent table top

Adjustable and swivelling perineal column, available for

the first time, allows easy patient positioning

Specially designed frame gives excellent hip lateral view

All tilts and vertical movements automatic power controlled

Stainless steel Telescopic design Orthopaedic attachment"

A photograph of the same is also produced at page 9 of the O.P. On the face of it, it is a highly modern equipment used by surgeons in an operation theatre and is fitted with various gadgets electrically operated.

2. The position in O.P. 3687/2002 is also not very different. The item is one and the same but with additional accessories which are orthopaedic attachments and urology attachments which are referred to in page 14 of the O.P. Therefore, essentially both the equipments are one and the same. The item in O.P. 3687/2002 has the following additional accessories for orthopaedic and uro purposes:

"C-arm Mobile Fluoroscopy

Neurology Procedures

Orthopaedic Procedures

Vascular Procedures

Urology Procedures

Mattress 50 mm thick 1 No.

Detachable Flat Head Plate 1 No.

Detachable Radioluscent Hip supports 2 Nos.

Swivelling arm rest w/pads 2 Nos.

Adjustable body supports w/pads 2 Nos.

Adjustable shoulder supports w/pads 2 Nos.

Spare clamps 2 Nos.

Knee lift attachment for tibia proc. 1 No."

It is unnecessary to go into further details.

3. The contention of the petitioner is that these are high value medical equipments which are used only by hospitals for the purpose of surgery. According to counsel, the essential purpose is not that of furniture, but that of the facilities provided thereto. It is held by the Allahabad High Court in Imperial

Surgico Industries Vs. Commissioner, Sales Tax, that the term furniture is not to be given any artificial or technical definition, but should be given a meaning which is known to the trader as well as the consumer dealing with the item. That was also a case where the Allahabad High Court held hat hospital equipments cannot be classified as furniture. Counsel for the petitioner has also relied on two decisions in Commissioner of Sales Tax v. Associated Dental and Medical Supply Company 37 STC 337 and in The State of Gujarat Vs. Lax Tools Manufacturers, wherein the High Courts of Bombay and Gujarat have held that dental chair cannot be treated as an item of furniture.

4. The Government Pleader appearing for respondents on the other hand relied on the decision of the this Court in Deputy Commissioner of Agricultural Income Tax and Sales Tax Vs. E.V. Industries, wherein this Court has held that various items of furniture used in hospital has to be classified as steel furniture. However, that was not a case involving any special hospital item or equipment, but was only ordinary furniture used in the hospitals. It is nobody''s case that furniture like coat, table, chair or similar items used in a hospital do not answer the description of the term furniture. Obviously the items referred to above by virtue of its purpose and character cannot be treated as furniture and are not used as furniture by anybody. Another decision cited by the Government Pleader is that of the Madras High Court in State of Tamil Nadu Vs. Arun Sankar Agencies, wherein it was held that the term furniture should not be given a restricted meaning and a specially designated furniture for the purpose of factory also should be treated as furniture. That was the case of a table specially designed for a match factory. The Madras High Court held that it is an item of furniture even though it is designed for the purpose of the factory. Of course the item involved in that case cannot be compared to that of a surgical table involved here with modern electronic accessories used in the assistance of surgery and treatment. It is a well settled position in series of decisions of the Supreme Court and various High Courts that the entries in the Schedule to the Act has to be given their popular meaning ie. the meaning attached to the item by traders dealing in the goods and consumers using the same. None can procure a surgical table from a furniture shop. Furniture means articles used in houses, offices, factories etc. such as chair, table, shelves etc. for the purpose of use by the people and also for keeping the goods in an arranged and orderly manner.

Therefore, I am of the view that the word furniture assembled or unassembled referred to in item 23 (now 24) of the Schedule to the Entry Tax Act introduced by S.R.O. No. 1096/99 with effect from 1.1.2000 does not cover the kind of equipments referred to in the O.Ps. Therefore, Ext. P2 notice in both the O.Ps. are liable to be quashed and I do so. I make it clear that this judgment should not be understood as saying that all items used in a hospital cannot be treated as furniture. The ordinary furniture used in a hospital such as table, chair etc. even though of a special type may be categorised as furniture, but certainly not the surgical tables referred to above the value of which is essentially attributable to the gadgets and equipments attached to it. The O.Ps. are therefore allowed declaring that the surgical tables above referred do not attract entry tax and consequently the impugned proceedings are quashed.

