
(1996) 08 KL CK 0013
In the High Court Of Kerala
Case No : T.R.C. No. 230 of 1992

Marbles India

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 16-08-1996

Acts Referred:

Citation : (1996) 3 ILR (Ker) 621 : (2003) 133 STC 405

Hon'ble Judges : V.V. Kamat, J;P.A. Mohammed, J

Bench : Division Bench

Advocate : Arikkat Vijayan Menon, for the Appellant; V.C. James, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

P.A. Mohammed, J.—The main question involved in this tax revision case is whether magnesite powder used by the assessee for manufacture of mosaic tiles would come within entry 84 of Schedule I of the Kerala General Sales Tax Act, 1963, which deals with fertilisers. This question assumes importance because if the item is treated as "fertiliser" it is taxable at the first point of sale within the State at the rate of 2 per cent. On the other hand, if the item is treated as marble article coming within entry 72 of the said Schedule it is taxable at the point of first sale at the rate of 10 per cent. This tax revision case is coming before us to resolve the above dispute between the assessee and the department.

2. The assessee in this case is a manufacturer of marble tiles and the assessment year involved is 1986-87. Before the assessing authority the assessee pleaded that magnesite powder which is otherwise known as "dolomite" is a fertiliser liable to be taxed at the rate of 2 per cent. However, the officer proposed to treat the item as a raw material used for the manufacture of mosaic tiles which would attract entry 72 of First Schedule as it stood then. Therefore, the turnover in respect of the said article was assessed at the rate of 10 per cent. Dissatisfied with the said conclusion the assessee went up in appeal before the Appellate Assistant Commissioner, but in vain. The matter did not end there.

The assessee preferred further appeal before the Sales Tax Appellate Tribunal as T.A. No. 58 of 1989. There also the assessee met with failure. Hence it wants this Court to adjudicate the matter in its favour.

3. Heard learned counsel for the assessee and also the Government Pleader for the State.

4. Item 84 of First Schedule to the Act as relevant for the year 1986-87 deals with items of "fertilisers manufactured". The said item is taxable at the point of first sale within the State by a dealer who is liable to tax u/s 5 of the Act at the rate of 2 per cent. Clause (xxiii) thereof describes the item as "dolomite", which according to the assessee is a magnesite powder. Neither "dolomite" nor "magnesite" is defined in the Act. According to Oxford dictionary "magnesite" is "a native double carbonate of lime and magnesia occurring crystalline and in granules masses, white or coloured", whereas "dolomite" is "a kind of rock (double carbonate of lime and magnesia)". Though dictionary meaning has no decisive role in interpreting a taxing entry, it can be looked into for the purpose of understanding the ordinary meaning of the word. The "common parlance" theory propounded by the Supreme Court in *Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola*, cannot be applied straightaway in this case because magnesite or dolomite cannot be said to be an article of "every day use" by common man. What the Supreme Court observed in that case is :

"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"."

Here what is relevant in the present context is as to how the people dealing with this article would mean it by constant use. In this case the distinctive characteristic feature of article could be determined only with reference to its use. If "dolomite" is used as a fertiliser and it is so established in the enquiry it may be a case of levy of sales tax at the rate of 2 per cent. On the other hand if it is used as a raw material for manufacture of mosaic tiles it will attract the rate of tax at 10 per cent. When there is such dispute it cannot be said that the assessing authority has no power to conduct an enquiry in that behalf. It is essentially for the dealer to explain as to how the article has been used by him.

5. The Sales Tax Officer in this case had made enquiries with regard to the use of magnesite powder in view of the objection raised by the assessee with regard to the rate of tax applicable. During the enquiry the assessee itself admitted that it is a raw material used for the manufacture of mosaic tiles. This article is used in the present case to soften the raw materials mixed with cement, sand, oxide, etc., while manufacturing mosaic tiles. Therefore, the Sales Tax Officer treated the goods as a raw material used for the manufacture of mosaic tiles and thereby applied the rate of tax at 10 per cent. This is a finding of fact which is approved by the first appellate authority. The Tribunal found that magnesite powder is used as colour and polishes which will come under entry 72 of the First Schedule

which is taxable at 10 per cent. Our conclusion therefore is that the rate of tax applied by the authorities below is correct and proper in the facts of the present case. Accordingly, we confirm the order of the Tribunal. The tax revision case is dismissed.

Order on C.M.P. No. 3216 of 1992 in T.R.C. No. 23 of 1992 dismissed.