(2012) 08 DEL CK 0139

In the Delhi High Court

Case No : ST. Application 47 of 2012, C.M. Application 10494 of 2012

M/s. Gunnebo India Ltd. APPELLANT

Vs

Commissioner, VAT, Delhi and Others RESPONDENT

Date of Decision : 22-08-2012

Acts Referred:
Delhi Value Added Tax Act, 2004 — Section 81

Citation : (2012) 08 DEL CK 0139

Hon'ble Judges : S. Ravindra Bhat, J;R.V. Easwar, J

Bench : Division Bench

Advocate : Ashok. K. Bhardwaj and Mr. A.P. Vinod, for the Appellant; Vineet Bhatia, Advocate, for Revenue, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Justice S. Ravindra Bhat

1. This is an appeal u/s 81 of the Delhi Value Added Tax Act, 2004 wherein the appellant challenges the order dated 23.03.2012 passed by the Appellate Tribunal, Value Added Tax, Delhi (Tribunal). The facts necessary for the disposal of this appeal are that the appellant herein was functioning during the relevant Assessment Year (1996-97) as reseller of safes/lockers and other related equipment. The appellant was originally assessed under the Delhi Sale Tax Act, 1975 whereby it deposited tax @ 7%. The Sales Tax Officer (STO) by order dated 28.12.1999 finalized the assessment, taxing sale of safety doors/air ventilators/ lockers etc @ 12% by holding that they were covered by Entry 22 of Schedule 1 to the Delhi Sales Tax Act, 1975 instead of 7% as claimed by the appellant. This view was upheld by all authorities in appeal, including the Tribunal. The following question arises for this court''s consideration:

Whether "safe deposit lockers (lockers)" of the type in which the appellant trades are covered by entry 22 of Schedule I appended to the Delhi Sales Tax Act, 1975 (as it existed during the assessment year 1996-97)?

2. Entry 22 reads as "Iron and steel safes and almirah

3. The majority order of the Tribunal noted that safes and lockers, both are used for the same purpose - keeping valuable items, and thus held that the appellant''s commodity is covered under entry 22. The minority, view, on the other hand, disagreed with the reasoning of the majority and held that in common parlance and in trade circles, "lockers" can neither be understood as "iron and steel safe" nor as "iron and steel almirah".

4. During the hearing of, and are used in strong rooms of banks; that they are also called vaults. He assailed the impugned judgment reasoning that Entry 22 is specifically limited to safes and almirah, and cannot be extended to include within its ambit products not mentioned in the entry merely because their function is similar; moreover, that the said entry was not an "umbrella entry" so as to cover all types of storage goods. Counsel further urged that it is a matter of common experience that the identity of an article is associated with its primary function; when a consumer buys an article, he buys it because it performs a specific function for him; that in case of safe and almirahs, the consumer, while buying them, keeps in mind not only the aspect that they are for storing purposes, but also the fact that he would have a direct control over the product, as the same would be in his custody; but lockers, on the other hand, are bought primarily for commercial exploitation by institutions like banks which give them on hire to their customers. This distinguishing factor, it was argued, necessitates that lockers not be read as being covered under Entry 22.

5. Counsel for the respondent, supported the impugned order mainly on the ground that the functional utility of safes and lockers is same, and also contending that the dictionary meaning of lockers and safes is similar.

6. We have considered the arguments of the parties. The appellant has annexed a copy of its product catalogue with specifications which describes products viz. Steelage Safes, Safe with Safe Deposit Lockers and Safe Deposit Locker Cabinets. The appellant, without any dispute, paid tax @ 12% in respect of the first two products, but with respect to the third product, which is the one in question in the present case, it claims that tax @ 7% is applicable. The appellant submitted the following in relation to the usage of its three products:

Safes - for the secure storage of valuable to.

Safes with SDL - for the storage by banks etc where it is uneconomical to have strong room

Safe deposit locker cabinets (locker) - for the storage by bank by installation in strong rooms

7. It is a settled law that in interpreting entries in statutes like the Excise Tax Acts or Sales Tax Acts, whose primary object is to raise revenue, and for which purpose they classify diverse products, articles and substances, resort should be had not to the scientific and technical meaning of the terms or expressions used

but to their popular meaning, that is to say, the meaning attached to them by those dealing in them. In the absence of any definition being given in the enactment the meaning of the term in common parlance or commercial parlance has to be adopted [ref. Indo International Industries Vs. Commissioner of Sales Tax, Uttar Pradesh, , Dunlop India Ltd. and Madras Rubber Factory Ltd. Vs. Union of India (UOI) and Others,]. The following observation made by the Supreme Court in Mukesh Kumar Aggarwal and Co. Vs. State of Madhya Pradesh and Others, is also pertinent:

4. In a taxing statute words which are not technical expressions or words of art, but are words of everyday use, must be understood and given a meaning, not in their technical or scientific sense, but in a sense as understood in common parlance i.e. ''that sense which people conversant with the subject matter with which the statute is dealing, would attribute to it''. Such words must be understood in their ''popular sense''. The particular terms used by the legislature in the denomination of articles are to be understood according to the common, commercial understanding of those terms used and not in their scientific and technical sense ''for the legislature does not suppose our merchants to be naturalists or geologists or botanists''.

8. Since the words "safe" and "locker" are neither scientific nor technical, their dictionary meanings must be considered to understand their meaning in its popular/commercial sense. Some dictionary references to the meaning of safe and locker are extracted below:

Safe:

? a strong fireproof cabinet with a complex lock, used for the storage of valuables (Oxford Dictionaries. April 2010. Oxford University Press. 25 August 2012 http://oxforddictionaries.com/definition/english/safe)

? a strong container, usually of metal and provided with asecure lock, for storing money or valuables. [Dictionary.com. Collins English Dictionary - Complete & Unabridged 10th Edition. Harper Collins Publishers. http://dictionary.reference.com/browse/safe (accessed: August 25, 2012)]

Locker:

? a small lockable cupboard or compartment, typically as one of a number placed together for public use, e.g. in schools or railway stations. A chest or compartment on a ship or boat for clothes, stores, equipment, or ammunition. Oxford Dictionaries. April 2010. Oxford University Press. 25 August 2012 http://oxforddictionaries.com/definition/english/locker

? a cupboard, often tall and made of metal, in which someone can keep their possessions, and leave them for a period of time (sourced from Cambridge Dictionaries Online accessed on 25th August 2012 at http://dictionary.cambridge.org/dictionary/british/locker''q=locker)

? small compartment or drawer that may be locked, as one of several in a gymnasium, etc, for clothes and valuables [Collins English Dictionary - Complete & Unabridged 10th Edition. Harper Collins Publishers. http://dictionary.reference.com/browse/locker (accessed: August 25, 2012)].

Almirah:

? a wardrobe, cabinet, or cupboard (sourced from the website Dictionary.com accessed on 25th August 2012 at http://dictionary.reference.com/browse/almirah)

9. From the above, it can be generally said that almirahs, safes and lockers are basically used for the same purpose viz. storage and safe keeping. The only significant structural difference between lockers and safes appears to be that unlike safes, a locker is a part of a larger storage structure or cabinet which contains many similar locker compartments. However, the cabinet which contains all the lockers is akin to an almirah. Thus, in its popular sense, a locker would definitely fall within the ambit of safes and almairahs. Whatever difference exists is merely technical. In everyday use, traders as well as consumers dealing in lockers would consider "lockers" to be covered in the ambit of safes and almirahs. Moreover, the fact that even the appellant uses the term "safe" in the title used to describe the product in question supports this observation. Thus, this Court is of the opinion that the product in question is covered by Entry 22 of Schedule I to the Delhi Sales Tax Act, 1975 (as it existed during the assessment year 1996-97). We answer the question in the affirmative. The appeal and pending application are without any merit, and are consequently dismissed.