(1995) 09 KAR CK 0042

In the Karnataka High Court

Case No : Writ Petition Nos. 19049 and 19050 of 1989 connected with Writ Petition Nos. 2802 and 2803 of 1989

M/s. Sushil Industries, Baikampady, Mangalore and Another — APPELLANT

Vs

The Additional Assistant Commissioner of Commercial Taxes (Assessments), Mangalore and Others — RESPONDENT

Date of Decision : 07-09-1995

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 5(1), 5A(1)

Citation : (1997) 42 KarLJ 120

Hon'ble Judges : R. V. Raveendran, J

Judgement

1. The petitioners in all these petitions are manufacturers of Veneers, registered as dealers under the Karnataka Sales Tax Act, 1957 ("Act" for short). In the course of their business, they purchased timber and converted the same into Veneers and sold such Veneers applying the concessional rate of tax of 4%, against Form No. 37 furnished by the purchasers, under Section 5-A of the Act. Petitioners in Writ Petition Nos. 19049 and 19050 of 1989 have been served with proposition notices dated 26-9-1989 and 6-10-1989 (Annexures-A and B) in regard to assessment for the year 1986-87, under Section 12(3) of the Act by their respective Assessing Authorities proposing to reject the contention of the petitioner that Veneers sold against Form No. 37 are entitled to exemption and proposing to tax the said goods under Entry 45 of the Second Schedule. Petitioner in Writ Petition Nos. 2802 and 2803 of 1989 have been served with a notice dated 17-11-1988 (Annexure-A) under Section 29(1)(e) of the Act alleging that they have committed an offence by not maintaining proper accounts (that is by failing to collect tax at 13% under Entry 45(b) of Second Schedule) in regard to sale of Veneers for the years 1986-87 and 1987-88 and offering the petitioner an opportunity to compound such offence. Petitioners contend that Veneers is not an item which is listed under any of the entries in the schedules to the Act; and therefore the turnover relating to Veneers will have to be subjected to tax under Section 5(1) of the Act. Feeling aggrieved by the respondent''s

attempts to deny them the benefit of sales against Form No. 37 under Section 5-A and proposal to tax the turnover, under Entry 45(b) of the Second Schedule, petitioners have filed these petitions and sought quashing of the said proposition notices under Section 12(3) (Annexures-A and B in Writ Petition Nos. 19049 to 19050 of 1989) and show-cause notice under Section 29(1)(e) (Annexure-A in Writ Petition Nos. 2802 and 2803 of 1989). They have also sought quashing of Clarification No. CLR.CR. 51/87-88, dated 5-1-1988 to the extent that it declares splints and Veneers cannot be purchased against Form No. 37.

2. Reference to the relevant provisions of the Act during the relevant years (1986-87 and 1987-88) is necessary. Veneers and wood are not found listed under any of the entries in the Schedules. "Timber" is listed under Entry 45 in the Second Schedule in respect of which, single point tax was leviable on the first or earliest of successive dealers in the State under Section 5(3). The said Entry 45 (of old Second Schedule) is extracted below:

"Entry No. Description of Goods Rate of Tax

45 (a) Timber, Rosewood and Sandalwood in log form; 13%

(b) Timber, Rosewood and Sandalwood in cut or manufactured form of all sizes and shapes:

(i) obtained from out of material which has already suffered tax; 3%

(ii) in other cases 13%"

3. Sub-section (1) of Section 5-A at the relevant time read as follows:

"Notwithstanding anything contained in Section 5, the tax payable by a registered dealer in respect of sale of any industrial input liable to tax under the Act, to another registered dealer for use by the latter as a component part or raw material of any other goods which he intends to manufacture inside the State for sale, shall be at the rate of 4% or the rate specified in Section 5 whichever is lower, on the turnover relating to such sale". Explanation I to Section 5-A during the relevant period, reads as follows:-

"For the purpose of this Section, the expression "industrial inputs" or "input" mean either the "component part" or "raw material", but did not include..... wood, bamboo and timber.....".

Explanation I to Section 5-A was amended by addition of the words "(other than Veneer)" after the words "wood, bamboo and timber" by Act 15 of 1988 with effect from 1-4-1988. There is thus no doubt that after 1-4-1988, Veneer could be sold against Form No. 37 to have the benefit of concessional rate of tax under Section 5-A. The Revenue took the view that the addition of the words "(other than Veneer)" from 1-4-1988 necessarily meant that before insertion of the said words, Veneer was considered part of timber and therefore, it could not be sold against Form No. 37. The petitioners contend that Veneer, not being either wood or timber, was never excluded under the explanation and the amendment adding the words "(other than Veneer)" with effect from 1-4-1988 was only clarificatory and even though the said amendment which came into effect from 1-4-1988 was not retrospective, the addition of those words will have to be taken as an aid to understand the position as it existed even prior to 1-4-1988; and if so done "Veneers" will not be excluded from the inputs in respect to which the benefit of Section 5-A was available.

4. On 25-5-1987, the Commissioner of Commercial Taxes issued a clarification that Veneers and splints were taxable under Section 5(1) at 7% and they could be sold against Form No. 37. A subsequent clarification dated 5-1-1988 (Annexure-C) issued by the Commissioner stated that Veneers and splints made of soft wood and which could be used only in a match industry, is no doubt not timber falling under Entry 45 but a commodity covered by Section 5(1), insofar as the question of concessional rate against Form No. 37 is concerned under Section 5-A; and that splints and Veneer being wood (even if not timber), would get excluded from Section 5-A and consequently, the clarification dated 25-5-1987 was withdrawn; and that splints and Veneer could not therefore be purchased against Form No. 37.

5. The petitioners contend that Veneer was always considered as a commodity commercially different from either wood or timber and therefore an item which fell under Section 5(1); and when it was sold to another registered dealer for use as a component part or raw material for manufacturing other goods, the rate of tax was only 4% subject to the purchaser furnishing a declaration in Form No. 37. The petitioners contended that only after the Commissioner''s clarification given on 5-1-1988, the Department took the stand Veneers could not be purchased against Form No. 37. They contend that having regard to the fact that Veneer is neither wood nor timber, the benefit of a concessional rate under Section 5-A was available in regard to sales to registered dealers who furnished Form No. 37; and therefore, notices alleging that collection of tax at 4% is an offence, are both without jurisdiction.

6. Hence the following points arise for consideration:

(a) Whether "Veneer" is "timber" in the ordinary sense; if "Veneer" is not timber, in its ordinary sense, whether it will fall under Entry 45 of the Second Schedule, as it stood during 1-4-1986 to 31-3-1988.

(b) Whether the "Veneers" could be sold against Form No. 37 by applying the concessional rate of tax under Section 5-A between the period 1-4-1986 and 31-3-1988.

7. Re: Point (a):

(7.1) There is no dispute that "Veneer" is a thin layer or sheet of "choice wood" cut by a rotary machine, used to cover a commoner or ordinary surface. It can also refer to the thin layers of wood which are glued together to form plywood. The learned Counsel for the petitioner referred to some decisions which indicate how words used in a taxing statute should be understood to contend that "veneer" should not be treated as "timber".

(7.2) In M/s. Mukesh Kumar Aggarwal and Company v State of Madhya Pradesh and Others, AIR 1988 SC 563, the question considered was whether wood heaps sold by the Forest Department consisting of subsidiary parts of "eucalyptus wood" after separating poles and ballies was "timber"; the Supreme Court held that it would be somewhat of a strain on the popular meaning of the expression

"timber" with the sense, size and utility implicit in the idea, to call such wood heaps as "timber" as persons conversant with the subject-matter will not call such "wood heaps" as timber, whatever else it may be; timber had certain association of ideas as to size, stability, utility, durability, unit of measure of quantity and of valuation etc., and by these standards, subsidiary part of eucalyptus tree sold in heaps after the poles and ballies are separated could not be called as timber. The Supreme Court held:

"In a taxing statute, the words which are not technical expressions or words of art, but are words of every day 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". The particular terms used by the legislature in the denomination of articles are to be understood according to 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".

(7.3) In M/s. Sterling Foods v State of Karnataka and Another, 1986(30) Kar. L.J. 174 (SC), the Supreme Court held that the test to be applied for the purpose of determining whether a commodity subjected to processing retained its original character and identify is to find out whether the processed commodity is regarded in the trade by those who deal in it as distinct in identity from the original commodity or regarded, commercially and in the trade, the same as the original commodity.

(7.4) He next relied on the decision in Vasantham Foundry v Union of India and Others, 1996(40) Kar. L.J. 299 (SC), wherein while considering the question whether "cast iron" included "cast iron castings", the Supreme Court held that the test is whether the goods in question are being bought and sold, i.e., dealt with and understood in common parlance as cast iron or as different goods, e.g., manhole covers, pipes, etc.

(7.5) In State of Orissa and Others v Titaghur Paper Mills Company Limited and Another, AIR 1985 SC 1293, the Supreme Court held that logs, planks, rafters, beams were all timber. This was followed by this Court in Bangalore Wood Industries, Gavanahalli, Chickmagalore v Assistant Commissioner of Commercial Taxes (Assessment), Hassan and Another, 1993(37) Kar. L.J. 447 and Shreepad Vallabha Industries v Deputy Commissioner of Commercial Taxes (Appeals), Hubli, District Dharwad and Others, 1991(35) Kar. L.J. 33.

(7.6) Let me examine whether Veneer can be called as timber on the basis of the principles laid down in the above case. In common parlance, "timber" is normally used to refer to logs, rafters, planks or other cut sizes. The word "timber" is not used to refer to an item manufactured out of timber. While planks and cut sizes of timber would be called as "timber", once they are shaped or used in the manufacture of furniture, like chairs or tables, they ceases to be timber and are not called as timber. Similarly, the thin slices or sheets manufactured from out of timber for providing the facing layers, is not called as "timber", but is called as "Veneer". No one in the trade, when he sees such a thin layer of wood intended as a facing layer, refers to it as "timber". It is referred as "Veneer". Hence it has to be held that "Veneer" is not "timber" in the ordinary sense.

(7.7) But "Veneer" will however fall under the description "timber" in cut or manufactured form of all sizes and shapes. Entry 45(a) of the old Second Schedule deals with timber in log form. Entry 45(b) deals with timber in cut or manufactured form of all sizes and shapes. For the purpose of Entry 45(b), whether "Veneer" is called as "timber" or not was totally irrelevant. All items of timber either in log form or in cut form or in manufactured form in all sizes and shapes, were brought into the fold of Entry 45. Veneer may not be timber in log form or cut form, but Veneer will fall under "timber in manufactured form of all sizes and shapes". Hence, Veneer, though could not be termed as "timber" as such, it was still an item that fell under Entry 45(b). In fact, for the purpose of Entry 45(b), it is academic whether Veneer is considered as "timber" or not; so long as Veneer is manufactured out of timber, it fell under Entry 45(b)

of old Second Schedule. All items manufactured out of timber, (except items that may fall under specific items like wooden furniture falling under Entry 108) fell under Entry 45(b) during the relevant period. Consequently, the stand of the Department that Veneer is timber falling under Entry 45(b) cannot be found fault with.

8. Re: Point (b):

The addition of the words "other than Veneer" with effect from 1-4-1988 after the words "wood, bamboo and timber" in the Explanation I to Section 5-A makes it clear that prior to 1-4-1988, Veneer was considered as timber. This derives support from the description of timber in Entry 45 of Second Schedule. The term "timber" used in the explanation to Section 5-A should be understood with reference to the use of the words "timber" elsewhere in the Act. In Entry 45 of Second Schedule, the term "timber" is used not only with reference to logs and cut sizes, but also with reference to timber or wood manufactured form of all sizes and shapes. Thus, the expression exclusion of ''Veneer'' by the addition of the words "other than Veneer" from 1-4-1988 makes it clear that till 1-4-1988, Veneer was in fact treated as a part of "timber" under the Act. Thus Veneer was not an industrial input in respect to which Section 5-A was applicable, until the amendment with effect from 1-4-1988. For the purpose of interpreting the word "timber" occurring after "wood, bamboo", the word "timber" used in Entry 45 had to be taken note of, that is timber in log form, cut form and manufactured form of all sizes and shapes. Thus the word "timber" included Veneers till 1-4-1988 is underlined by the specific exclusion of "Veneer" by the Legislature, from 1-4-1988. Hence, upto 31-3-1988, having regard to the explanation to Section 5-A, the benefit of sale of goods used as industrial inputs against Form No. 37 at a concessional rate of 4% under Section 5-A was unavailable in regard to Veneers. There is no merit in the contention that addition of the words other than "Veneer" from 1-4-1988 was only a clarification of the position that existed prior to 1-4-1988. While it is true that a subsequent amendment can be looked into to ascertain the meaning of the words used in the statute in certain circumstances, that is not helpful in all cases.

9. It is however to be noticed that if Veneer is manufactured or obtained from out of material which has already suffered tax, then the tax would be only 3% under Entry 45(b)(i) and in other cases the tax would be 13% under Entry 45(b)(ii). This is a matter that will have to be gone into by the Assessing Authority at the time of completing the assessment by considering and deciding whether the Veneer in question is from out of tax suffered timber or not.

10. Hence the petitioners are not entitled to any of the reliefs sought. Petitions are rejected subject, however, to the observations in para 8 above. Petitioners are however granted eight weeks time to file objections to the notices which are the subject-matter of these petitions and the Assessing Authority shall consider the objections and decide the matter in accordance with law.