**(2016) 01 KAR CK 0077**

**In the Karnataka High Court**

**Case No :** Writ Petition Nos. 32684-32685/2015 (T-EYT)

Mysore Polymers and Rubber Products Ltd. APPELLANT

Vs

Assistant Commissioner of Commercial Taxes (Audit)-2 and Others RESPONDENT

**Date of Decision :** 06-01-2016

**Acts Referred:**
Karnataka Tax on Entry of Goods Act, 1979 — Section 3(1), Section 5(4), Section 6(1)

**Citation :** (2016) 01 KAR CK 0077

**Hon'ble Judges :** Anand Byrareddy, J.

**Bench :** Single Bench

**Advocate :** T.N. Keshava Murthy, Advocate, for the Appellant; S.V. Giri Kumar, Additional Government Advocate, for the Respondent

**Final Decision :** Allowed

## Judgement

Anand Byrareddy, J.—1. Heard the learned counsel for the petitioner and the learned Government Advocate.

2. The petitioner is a Company engaged in the manufacture and sale of automotive tubes and other rubber products at its factory in Mysore. It is a registered dealer under the provisions of the Karnataka Value Added Tax Act, 2003 (hereinafter referred to as the "KVAT Act", for brevity) and also under the Karnataka Tax on Entry of Goods Act, 1979 (hereinafter referred to as the "KTEG Act", for brevity). It has filed monthly returns in Form VAT-100 declaring value of goods liable to entry tax and paid the tax as admitted therein. The 1st respondent is said to have verified the statement of accounts produced and concluded the re-assessment under Section 6(1) of the KTEG Act dated 30.06.2015 in respect of the year 2009-10 by considering that Rubber Process Oil of the value of Rs. 2,86,59,985/- as being liable to entry tax at 5%. Similarly, in respect of the year 2010-11, assessment is concluded under Section 5(4) of the KTEG Act dated 30.06.2015 and levied entry tax at 5% on the value of Rubber Process Oil of Rs. 2,80,60,569/-. The 1st respondent, according to the

 

petitioner, has without any independent application of mind, merely referred to and relied upon the clarification issued by the 2nd respondent dated 05.12.2012 to the effect that Rubber Process Oil, which is used as a lubricating agent in the manufacture of rubber products was liable to entry tax at 5% under notification No. FD 11 CET 2002(I) dated 30.03.2002. The 1st respondent has also levied and demanded interest. The said assessment orders are enclosed.

3. It is the argument of the Counsel for the petitioner that the tax under the KTEG Act on the value of goods that are listed under the First Schedule to the said Act are at the rates specified in the notification issued. The Rubber Process Oil purchased by the petitioner and used by it as an input is one of the goods listed in the First Schedule to the KTEG Act and is not covered by Government Notification No. FD 11 CET 2002 (I) dated 30.03.2002 at Annexure ''C''. The levy of entry tax at 5% on the value of Rubber Process Oil is lacking in jurisdiction and opposed to law and therefore, the impugned assessment orders lack jurisdiction and are opposed to law.

4. The central point in issue is whether the clarification issued by the Commissioner of Commercial Taxes holding that Rubber Process Oil is a lubricating agent is justified. In this regard, the learned Government Advocate has made available the file pertaining to the matter leading to the clarification issued by the Commissioner of Commercial Taxes. The note sheet maintained in the file reveals that the Deputy Commissioner of Commercial Taxes has recorded that on enquiry with the applicant, the applicant claimed that he was merely a trader not having enough knowledge regarding Rubber Process Oil, but he was aware that it was a petroleum product. In view of the entry relating to Sl. No. 1(viii) of the table of the notification issued under Section 3(1) of the KTEG Act dated 30.03.2002 listing the following petroleum products, namely, (a) Lubricating oil (b) Transformer oil (c) Brake fluid or clutch fluid (d) Bitumen (asphalt) and (e) Tar and others excluding Liquefied Petroleum Gas (LPG), Aviation fuel and Kerosene, the Deputy Commissioner has concluded that Rubber Process Oil could be classified under Sl. No. 1(viii)(e), namely, "Tar and others". Therefore, it has been opined that Rubber Process Oil would be liable for levy of entry tax at 5% under the said serial number. This reasoning has been adopted by the Commissioner in issuing the clarification. As seen from the notification issued under the Central Excise Tariff, Rubber Process Oil is not one of the petroleum products. Therefore, the opinion that it could be classified along with "Tar and others" is also not justified.

5. A Division Bench of this Court in Carl Bechem Lubricants (India) Pvt. Ltd., v. The State of Karnataka, TAET No. 7/2011 decided on 17.04.2013, while dealing with a similar situation when TPOL Cylinder Oil 1200'' was sought to be treated as a petroleum product with reference to the notification issued under the Central Excise Tariff, has opined that the classification under the Central Excise Act would have no application under the KTEG Act. By the same token of reasoning, it could straightaway be said that the relevance placed on the

notification issued under the Central Excise Tariff could not be the basis to conclude that the Rubber Process Oil could be classified as a petroleum product falling under "Tar and others".

6. The other significant circumstance in coming to a conclusion that the classification made is apparently off the mark and without basis are the opinions furnished by two bodies, namely, Indian Rubber Institute and Indian Oil Corporation Limited. The certificate issued by the Indian Rubber Institute reads as follows:

"Rubber Process Oil (RPO) is formulated from highly refined solvent extracted base stock of low sulphur content and is manufactured by distillation, solvent extraction and subsequent re-waxing high base oil, specifically for use in the manufacture of rubber products. RPO contains Hydro carbon at 30-55% that is saturates contained in the oil and polar content 4-10% by weight.

RPO is used in the manufacture of rubber products to serve primarily as a processing aid and constitutes a necessary ingredient in the manufacture of rubber products - both natural and synthetic rubbers and without the use of which it is not possible to manufacture rubber products.

RPO in the manufacture of rubber products acts as a plasticizer, increases fluidity of material and thereby increases the blend and dispersion of fillers and improve flow characteristics of a compound. Thus RPO used in rubber formulation serves primarily as a processing aid and as an input in the manufacture of rubber products.

Lubricating agents are those that are used for keeping surfaces separate under all loads, temperature and speed, thereby minimizing friction. Lubricants are used to minimize friction between metal contacts which ultimately reduces heat generated when surfaces move. This property is known as Lubricity. However RPO is not a lubricating agent at all, but a plasticizer in the manufacture of rubber products. Additives used in the manufacture of lubricants are detrimental to performance of rubber products.

It is certified that RPO is used in the manufacture of rubber products not as a lubricating agent but as an input for plasticizing qualities."

The Indian Oil Corporation Limited has also issued a certificate, which reads as follows:--

"Rubber Process Oils (RPO) RPO are broadly classified into three groups as follows.

1) Aromatic - ASTM - 101 Type 2) Paraffinic - ASTM - 104 Type 3) Naphthenic - ASTM - 103 Type,

2) The above oils are derived from petroleum by various primary and secondary processes in petroleum refineries all over the world. These are in the product portfolios in all oil companies under various commercial names.

 

3) All the above types are used as inputs in the manufacturing process for making various rubber products including automotive tyres, tubes, rubber foot wear, toys etc.

4) These Rubber process oils help in dissolution of rubber (both synthetic as well as natural) and also in improving dispersion of fillers and flow properties of rubber compounds during processing.

5) Depending upon the type of rubber and the end product applications, anyone of the above mentioned type suitable for a particular end product is used.

6) Paraffinic type is recommended for use as plasticizer in the manufacture of various rubber products, both natural as well synthetic rubber, mainly for automotive tube manufacturing units.

7) Rubber process oil is not a lubricating oil and totally different from Lubricants used in machineries. Rubber process oils intended use and the only use is dissolution medium for rubbers and fillers.

8) Paraffinic Rubber process oil is a product processed out of base oil."

7. Given these opinions and juxtaposed with the reasoning that has been adopted by the Commissioner of Commercial Taxes in arriving at a conclusion that the Rubber Process Oil could be treated as a "Petroleum Product" falling under the classification of "Tar and others" cannot be readily accepted. The clarification is held to be bad in law and shall not bind the petitioner.

Accordingly, the petitions are allowed. The impugned Annexures ''A'' and ''A1'' stand quashed to the extent of levy of tax and the interest on Rubber Process Oil on the basis that it could be classified under ''Tar and other products'' being a petroleum product. Consequently, Annexure ''B'' clarification also stands quashed. It is open for the authorities to reconsider the matter and proceed in accordance with law.