

(1992) 09 KL CK 0039
In the High Court Of Kerala
Case No : T.R.C. No. 163 of 1991

New Prasanthi Automobiles Co.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 26-09-1992

Acts Referred:

Citation : (1992) 09 KL CK 0039

Hon'ble Judges : T.L. Viswanatha Iyer, J; L. Manoharan, J

Bench : Division Bench

Advocate : K.B. Mohamed Kutty, for the Appellant; T. Karunakaran Nambiar, Special Government Pleader for Taxes, for the Respondent

Judgement

T.L. Viswanatha Iyer, J.—These Tax Revision Cases at the instance of the Assessee pertain to the assessments made on him under the Kerala General Sales Tax Act, 1963 (the Act) for the assessment years 1986-87 and 1987-88. The Assessee is a dealer with registration for carrying on sales in automobile spare parts, mill stores, hardwares, marine engine spares, rubber goods and tractor parts. We are concerned in these cases with the rate of tax applicable to sales of nuts and bolts, and (automobile) jacks (described by all the statutory authorities as "jackies"). While the Assessee contended that these are items assessable at 6 per cent as iron and steel articles not mentioned elsewhere in the First and Second Schedules to the Act and therefore falling under Entries 45 or 99 of the First Schedule as they stood before and after July 1, 1987, the revenue assessed them at 15 per cent or 10 per cent as spare parts or accessories of motor vehicles or tractors under the relevant entries during the two periods, 15 per cent being charged on part of the turnover apportioned, to automobiles and 10 per cent on the rest of the turnover apportioned to tractors. In other words, the assessing authority assessed the very same goods, at different rates by apportioning the turnover as pertaining either to automobiles or to tractors. The assessing authority, the first appellate authority and the Tribunal refused to treat the nuts and bolts as iron and steel articles as contended by the Assessee. The

jack was treated as an accessory to motor vehicles and hence Assessee as such at 15 per cent.

2. The question that falls for consideration is whether the nuts and bolts sold by the Assessee are iron and steel articles or spare parts of automobiles/tractors, and whether the jack is an accessory of automobiles or an iron and steel article.

3. It is not in dispute that the nuts and bolts in question are not of any special kind or nature, fitted only for use in automobiles. On the other hand, they are just ordinary nuts and bolts, like any others which could be used for any purpose whatsoever wherever nuts and bolts are required. The Tribunal itself found that the manufacturers of these goods, namely Sundaram Fasteners Ltd. manufactured different types of fasteners which find application in various industries. What we seek to emphasise is that the nuts and bolts in question are not manufactured specially for use as automobile spare parts, but are of general nature liable to be used in any industry.

4. What appears to have prevailed with the Tribunal is that the Assessee was a dealer in automobile and tractor spare parts and therefore he will be dealing only in those fasteners which are specifically manufactured for use in automobiles. This premise is not acceptable for more than one reason. There was no case for either the assessing authority or the first appellate authority that the Assessee was dealing only in those fasteners which were specifically suited or adapted for automobiles. In fact, the materials produced before the Tribunal show that the manufacturers were supplying components of a wide range of application in the general engineering industry. The materials produced show only that the nuts and bolts dealt with were just like any others and there was nothing to show that they were exclusively meant for the automobile industry. The Tribunal also overlooked the fact that the Assessee was also a registered dealer in hardwares. The basic assumption made that he was a dealer in automobile spare parts was itself an erroneous one, as he was a dealer in hardwares as well. We have therefore to proceed on the basis that the nuts and bolts sold by the Assessee were of general use, and not merely in automobiles.

5. The question involved pertains to the realm of interpretation of entries in the first schedule to the Act. It is well established, having regard to the dictum of the Supreme Court in *Ramavatar Budhaiprasad v. Asst. Sales Tax Officer* (1981) 12 S.T.C. 288, and the catena of decisions following it, that when a word has not been defined in the statute, and it is a word of everyday 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. It has to be construed as understood in common parlance or language.

6. This test laid down in *Ramavatar's* case (1981) 12 S.T.C. 288 has been repeated in innumerable decisions of the Supreme Court and of the High Courts in cases arising under the sales tax enactments as also under the Central Excises and Salt Act. It is unnecessary to multiply authorities inasmuch as the Supreme

Court has affirmed the principle of this decision all along, without any departure from it. The Supreme Court has given the ratio behind this principle of interpretation in their decision in *State of West Bengal v. Washi Ahmed* (1977) 39 S.T.C. 378 by referring to the dictum of Story J, in *200 Chests of Tea* (1824) 9 Wheton (U.S.) 430 at 435 where the learned Judge said that the particular words used by the legislature in the denomination of articles are to be understood according to the common commercial understanding of the terms used, and not in their scientific or technical sense, for the legislature does not suppose our merchants to be naturalists or geologists or botanists.

7. We may also refer at this stage to the decision in *Porritts and Spencer (Asia) Ltd. Vs. State of Haryana*, where the Court observed that the use to which any goods may be put is immaterial, and does not bear on its character as a particular category of goods. The reason for the rule is to avoid uncertainty in the categorisation of goods, and the practical impossibility of a dealer following the purchaser to ascertain the purpose for which the goods have been put. The nature or character of any goods does not depend upon the use to which a particular customer may put it. It depends on how a common man viewing or dealing with the goods will understand it to be. The same view was expressed in the decision of this Court in *Deputy Commissioner v. Western India Plywoods Ltd.* (1980) 48 S.T.C. 331, which concerned the question whether firewood ceased to be firewood for purposes of assessment to sales tax because the purchaser used it as raw material for the manufacture of hardboard. This Court held that if what was purchased by the Assessee was firewood as understood in ordinary parlance, it will not cease to be firewood merely because it was subsequently used for some purpose other than as fuel. In the subsequent decision in *Mukesh Kumar Aggarwal and Co. v. State of M.P.* (1988) 88 S.T.C. 424, their Lordships of the Supreme Court reiterated that words which are not Technical expressions or words of art, but 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. 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 and not in their scientific or technical sense. It was further stated that the nature of the goods cannot be determined by the test of the use to which they are capable of being put. The user test is logical but inconclusive. The particular use to which an article can be applied in the hands of a special customer is not determinative of the nature of the goods.

8. A sales tax enactment is one which touches the common man and his everyday life and therefore must be understood in the way in which a common man will understand it. In other words, the test is as to what a common man viewing, or dealing with, the article will understand it to be. In doing so, the particular use to which a particular customer may put it should be eschewed from consideration.

9. We have already pointed out that the nuts and bolts which were sold by the

Assessee did not have any special characteristics, nor were they adapted only for use in automobiles/tractors. They were nuts and bolts simpliciter. Excepting that they were sold by a person who also dealt in automobile spare parts, there was nothing else to connect the nuts and bolts in question with automobiles or tractors. May be some of the purchasers might have used them for purposes of automobiles or tractors, but the use to which any particular customer may put the article is, as pointed out earlier, irrelevant in categorising it. They are as much iron and steel articles as any other. Any man viewing the articles will only understand them as nuts and bolts pure and simple and not as automobile/tractor spare parts. In fact the view taken by the authorities has led to the incongruous result of the same goods being taxed at different rates during the same period, as mentioned by us earlier. When goods as such are classified in the various entries in the schedule to the Act, it cannot certainly be that the same goods are taxed under two different entries depending upon the purchaser or the use to which goods are put.

10. It is the way in which a common man dealing with the article will understand it, that is determinative of the character of the goods. There cannot be any dispute that nobody will understand these bolts and nuts as spare parts of automobiles/tractors, but only as iron and steel articles dealt with in a hardware shop. We therefore hold that the bolts and nuts dealt with by the Assessee cannot be treated as spare parts of automobile or of tractors; on the other hand, they have to be classified only as nuts and bolts which squarely fall as iron and steel articles not otherwise provided under Entry Nos. 45 or 99 of the first schedule during the respective periods.

11. We may also note here that the Board of Revenue which is the supreme statutory authority in the administration of the Act, has itself taken the view that such nuts and bolts fall under the Entry "iron and steel articles". It was so stated by them in the communication which they sent to T.V. Sundaram Iyenger and Sons Limited on June 26, 1986 when they sought clarification on this point. The Board stated:

With reference to your letter cited, I "am to inform you that bolts and nuts will come under Entry 45 of the 1st schedule to the K.G.S.T. Act, taxable at 6 per cent, if it is made out of iron and steel alone.

This authoritative pronouncement of the Board of Revenue is entitled to great weight. But we are not resting our decision on this communication, as we are satisfied on the materials and on the law on the point that the nuts and bolts dealt with by the assessee fall under Entries 45 or 99 during the respective periods. They are therefore assessable to tax only at 6 per cent. We hold accordingly.

12. The next question for consideration is whether jack is an accessory to a motor vehicle liable to tax at 15 per cent or an iron and steel article taxable at 6 per cent as contended by the Assessee. A jack is used for the purpose of hoisting

the vehicle for carrying out repairs or for change of wheels. The availability of a jack and its use undoubtedly add to the comfort and peace of the journey though it is by itself not essential for the running or operation of the vehicle. An "accessory" is an object or device, that is not essential in itself for the operation of that to which it is an accessory, but at the same time, adds to its beauty or convenience or effectiveness, or is supplementary or-secondary , to something of greater primary importance. [M/s. Mehra Bros Vs. The Joint Commercial Officer, Madras, . It was held in that case that car seat covers and upholstery manufactured and sold in the course of his business by a dealer were "accessories" to motor vehicles. In holding so, the Court followed its earlier decision in Annapurna Carbon Industries Co. v. State of A.P. (1978) 37 S.T.C. 378, and formulated the correct test to be whether the article in question would be an adjunct or an accompaniment or an addition for the convenient use of another part of the vehicle, or adds to the beauty, elegance or comfort in the use of motor vehicle. In Black's Law Dictionary, accessory is defined as meaning "anything which is joined to another thing as an ornament, or to render it more perfect, or which accompanies it, or is connected with it as an incident, or as subordinate to it, or which belongs to or with it, adjunct or accompaniment".

13. Jack does not form part of the motor vehicle itself. It is not essential for its operation, but it is something which is used as subordinate to the vehicle, and essential for its effectiveness. It certainly adds to the utility of the automobile and contributes comfort and enjoyment to its operation. The use of a motor vehicle or of any automobile will become uncomfortable and bothersome in the absence of jack.

14. A person seeing an automobile jack is not likely to understand it as a mere iron and, steel article. He is likely to understand it only as an adjunct to the automobile necessary for its proper and effective use. He will view it as something which is sold by an automobile dealer and as something which every user of an automobile should necessarily possess. Being so, we find it difficult to accept the contention of the Assessee that the jack is a mere iron and steel article and not an accessory to a motor vehicle. The statutory authorities were right in holding that the jack was an accessory falling under entries 138 and 125 respectively of the first schedule before and after July 1, 1987 liable to tax at 15 per cent.

15. We therefore allow the Tax Revision Cases in part, holding that the nuts and bolts sold by the Assessee were iron and steel articles falling under entries 45 and 99 respectively before and after July 1, 1987 and therefore liable to tax only at 6 per cent. We affirm the finding of the Tribunal that jack was an accessory to a motor vehicle, assessable at 15 per cent. The assessing authority is directed to modify the assessments regarding nuts and bolts in the light of the above.

There will be no order as to costs.