(1998) 05 KL CK 0022

In the High Court Of Kerala

Case No : T.R.C. No''s. 62 and 63 of 1997

N.R. Somasundaran Nair — APPELLANT

Vs

State of Kerala — RESPONDENT

Date of Decision : 21-05-1998

Acts Referred:

Citation : (1999) 107 ELT 303

Hon'ble Judges : Om Prakash, C.J;J.B. Koshy, J

Bench : Division Bench

Advocate : N. Muraleedharan Nair, for the Appellant; V.V. Asokan, Special Government Pleader for Taxes, for the Respondent

Judgement

Om Prakash, C.J.—The short question for consideration in these tax revision cases (T.R.C., for brevity) is whether plastic storage tanks fall under Entry 145 or 217 of the First Schedule appended to the Kerala General Sales Tax Act, 1963.

2. Entry 145 runs as under :

"145. Plastics and articles made of plastics including plastic pipes."

Entry 217 if extracted below :

"217. Water supply and sanitary equipments and fittings."

3. The contention of the revision-petitioner before us is that the Sales Tax Appellate Tribunal was wrong in holding that plastic water tanks fall under Entry 217. It is contended that plastic tanks being articles of plastic, fall under 145.

4. The Appellate Tribunal found as follows :

"4. These plastic containers are traded in the market as water tanks. It is made up of plastic. A water tank can be made by different materials. Therefore if we apply the commercial parlance test or even the predominant functional test, it is found that the plastic tanks sold by the appellants are plastic water tanks. Water tanks are necessarily related to water supply system. Therefore, the assessing officer has rightly brought the plastic water tank under Entry 217 of the First Schedule to the Kerala General Sales Tax Act, 1963."

[Emphasis supplied]

5. First we proceed on the basis of the finding, recorded by the Appellate Tribunal. The Appellate Tribunal clearly found that plastic tanks sold by the petitioner are plastic water tanks, that is, the water tank is an article made of plastic. Entry 145 clearly refers to the articles made of plastics. Any article made of plastic, will fall under Entry 145. The Appellate Tribunal found that the plastic tanks sold by the petitioner are nothing but plastic water tanks, meaning thereby, an article made of plastic. If it is an article made of plastic as found by the Appellate Tribunal, then, undoubtedly, it will fall under Entry 145.

6. Then, we come to the reasoning given by the Appellate Tribunal that the plastic tanks fall under Entry 217. The main finding of the Appellate Tribunal is that water tanks are necessarily related to water supply system and, therefore, they will fall under Entry 217. The reasoning given by the Appellate Tribunal is that whatever is related to water supply system that will fall under Entry 217. This approach of the Appellate Tribunal cannot be countenanced and that runs counter to the decision of the Supreme Court in the case of Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. G.S. Pai and Co., In this decision, the Supreme Court interpreted Entry 26A of the First Schedule to the Kerala General Sales Tax Act, 1963, corresponding to Entry 217. The question before the Supreme Court was whether G.I. pipes sold by the assessee would fall under the corresponding Entry 26A. In that context, the Supreme Court observed as under :

''"Sanitary fittings'', according to the popular sense of the term, mean such pipes or materials as are used in lavatories, urinals or bath-rooms of private houses or public buildings. The G.I. pipes sold by the assessee would, therefore, fall within the description of ''sanitary fittings'' only if it can be shown and the burden of so doing would be on the revenue, that they were meant for use in lavatories, urinals or bath-rooms.... If the G.I. pipes were heavy and intended to be laid underground for carrying supply of water from one place to another, they would obviously not be ''sanitary fittings''.... Moreover, the words ''water supply ... fittings'' do not occur in isolation, but they are used in juxtaposition of the words ''sanitary fittings''. The entire expression ''water supply and sanitary fittings'' is one single expression and the words ''water supply...fittings'' must receive colour from the immediately following words ''sanitary fittings''."

7. From the aforesaid decision of the Supreme Court it is clear that the words "water supply", occurring in Entry 217, will have the same shade and colour which the succeeding words in the entry get. The Supreme Court categorically found that the words "water supply", are used in juxtaposition of the words "sanitary fittings", meaning thereby, the former will have the same meaning which the latter expression has. Sanitary fittings are those which are meant for

use in lavatories, urinals or bath-rooms. Water storage tank made of plastic, as the common experience shows, are not used only in lavatories, urinals and bath-rooms. They are used even to store potable water and for other purposes and, therefore, it cannot be said that the water storage tank made of plastic are sanitary fittings within the meaning of Entry 217. Any item relating to water supply system cannot be characterised as santary fittings, but if an item is of such use which is restricted to lavatories, urinals or bathrooms, that will partake the character of sanitary fittings.

8. For the above reasons, we are of the view that water storage tanks made of plastic, being the articles of plastic, fall under Entry 145 and not under 217. The reasoning given by the Appellate Tribunal that any item relating to water supply system will necessarily be in the nature of sanitary fittings, is fallacious otherwise also. Entry 145 includes plastic pipes as well, which are ordinarily used for water supply system. If the reasoning of the Appellate Tribunal is taken to be correct, then the Legislature would not have included "plastic pipes" in Entry 145. Inclusion of plastic pipes under Entry 145 clearly indicates that all items relating to water supply system are not in the nature of sanitary fittings within the meaning of Entry 217.

For the above reasons, the revisions succeed and are allowed and the order of the Sales Tax Appellate Tribunal, in so far as it holds that the water storage plastic tanks, being sanitary fittings, fall under Entry 217 of the First Schedule is set aside.