(1990) 07 KAR CK 0069

In the Karnataka High Court

Case No : S.T.R.P. No. 69 of 1985

P. Seenappa Setty and Sons — APPELLANT

Vs

State of Karnataka — RESPONDENT

Date of Decision : 11-07-1990

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 21, 23 (1), 5 (1)

Citation : (1991) 83 STC 273

Hon'ble Judges : M. Rama Jois, J;G.P. Shivaprakash, J

Bench : Division Bench

Advocate : S.G. Shivaram for K. Srinivasan, for the Appellant; H.L. Dattu, High Court Government Pleader, for the Respondent

Judgement

M. Rama Jois, J.—The question of law which arises for consideration in this revision petition resented u/s 23(1) of the Karnataka Sales Tax Act, 1957, is whether or not safety fuse falls within entry 81-B of the Second Schedule to the Karnataka Sales Tax Act and consequently liable to tax at the rate of 6 per cent single point.

2. The facts of the case, in brief, are these : The petitioner is an assessee registered under the Karnataka Sales Tax Act, 1957 ("the Act", for short). The assessment period is the year ending 30th June, 1984. The turnover of the petitioner relating to safety fuse during the assessment year was Rs. 97,470.90. The petitioner claimed exemption from payment of tax on the said turnover on the ground that he was a second and subsequent dealer and as safety fuse comes under entry 81-B of the Second Schedule to the Act only 6 per cent tax at single point was leviable and therefore this turnover should be exempted from payment of tax. The assessing authority accepted the plea of the petitioner. But the Deputy Commissioner in exercise of his suo motu revisional jurisdiction u/s 21 of the Act, revised the order on the ground that safety fuses do not fall under entry 81-B of the Second Schedule, and, therefore, the tax was leviable at multi-point at the rate of 4 per cent u/s 5(1) of the Act. Aggrieved by the said order,

the petitioner preferred an appeal to the Karnataka Appellate Tribunal. The appeal was dismissed. Aggrieved by the said order, the petitioner has presented this revision petition.

3. Sri Shivaram, learned counsel for the petitioner, maintained that the safety fuse squarely falls under entry 81-B of the Second Schedule and, therefore, the tax was leviable only on the first sale at the rate of 6 per cent and any further turnover of second or subsequent sale was not liable to tax.

4. As against this, Sri H. L. Dattu, learned High Court Government Pleader, contended that the safety fuse does not fall under entry 81-B of the Second Schedule and the view taken by the Deputy Commissioner and the Tribunal was correct. It is in view of these rival contentions, the question set out first arises for consideration.

5. Entry 81-B on which the petitioner placed reliance reads :

"Second Schedule Goods on the sale of which a single point tax is leviable on the first or earliest of successive dealers in the State u/s 5(3)(a). Sl. No. Description of the goods Rate of tax 91-B. Blasting gun powder and other Six per cent." mechanical explosives.

The learned counsel for the petitioner submitted that safety fuse was also an explosive and, therefore, falls under entry 81-B. In support of this contention, the learned counsel relied on the definition of "explosive substance" under the Indian Explosives Act, 1984, which reads :

"(d) ''explosive'' means gun powder, nitroglycerine, nitroglycol, guncotton, di-nitro- dinitro toluene,, tri-nitro-toluene, picric acid, dinitrophenol, traitor-resorcinol (symphonic acid), cyclo-trimethylene-trinitramine, pentaerythritol-tetranitrate, tetryl, nitro-guanidine, lead azide, lead styphynate, fulminate of mercury or any other meal, diazo-di-nitrophenol, coloured fires or any other substance whether a single chemical compound or a mixture of substances, whether solid or liquid or gaseous used or manufactured with a view to produce a practical effect by explosion or pyrotechnic effect; and includes fog-signals, fireworks, fuses, rockets, percussioncaps, detonators, cartridges, ammunition of all descriptions and every adaptation of preparation of an explosive as defined in these clause."

The learned counsel submitted that the above definition expressly includes fuses and, therefore, safety fuse must be regard as explosives liable to single point tax under entry 81-B of the Second Schedule to the Act.

6. As against this, the learned counsel for the respondent relied on the definition of "safety fuse" as defined under the Explosives Rules, 1983. It reads :

"2(18). ''safety fuse'' means a fuses of igniting charges of other explosives which burn and does not explode and which does not contain its own means of ignition, and which is of such strength and construction and contains an explosive in such quantity that the burning of such fuse would not communicate laterally with other like fuse;"

Relying on the above definition, the learned counsel maintained that the safety fuse does not fall within entry 81-B of the Second Schedule to the Act. There is no dispute that the safety fuse is a long thread like textile substance in the manufacture of which a small quantity of blasting gun powder is also used. It is a long wick, one end of which is connected to the explosive used for the purpose of blasting. When its other end is ignited it begins to burn and keeps on burning until it ignites the blasting material, which then explodes. The word safety is used for the reason that persons who use the explosives for blasting could ignite the blasting material through the medium of the fuse remaining at a safe distance from the blasting point in view of its length, to avoid injury to them. But the fact remains that the safety fuse itself does not explode, therefore it is no explosive. In fact, the definition of the words "safety fuse" used in the Explosives Rules expressly state that the safety fuse means a fuse for igniting charges of other explosives which burn and by itself does not explode. It is true that a safety fuse also contains a small quantity of explosive substance but it is only for the limited purpose of taking the fire up to and to the blasting material so as to cause explosion, but the fact remains it does not by itself explode.

7. It is well-settled principle that in understanding the real meaning of an item of goods specified for the purpose of tax under any sales tax law, it should be understood in a manner as understood at common parlance. No one considers the safety fuse as an explosive at common parlance. Therefore, we are entirely in agreement with the view expressed by the revisional authority and the Tribunal that the safety fuse is not an explosive and therefore does not fall under entry 81-B of the Second Schedule to the Act.

8. In the result, we make the following order :

The revision petition is dismissed.

9. Petition dismissed.

