(1989) 08 KL CK 0017

In the High Court Of Kerala

Case No : T.R.C. No''s. 124 and 125 of 1988

Pankaj Agencies APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 10-08-1989

Acts Referred:
Kerala General Sales Tax Act, 1963 — Section 5

Citation : (1990) 77 STC 14

Hon'ble Judges : K.S. Paripoornan, J;K.A. Nayar, J

Bench : Division Bench

Advocate : S.A. Nagendran, for the Appellant; L.G. Potti, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Paripoornan, J.—Identical questions of law arise for consideration in these two cases. The revisions are filed by an assessee under the Kerala General Sales Tax Act (in short, "the Act"). They are filed against a common order dated 8th December, 1987, rendered by the Sales Tax Appellate Tribunal in sales tax appeals Nos. 530 and 531 of 1984, for the assessment years, 1982-83 and 1983-84. The assessments relate to the period April to November for the year, 1983-84, and the assessment for the whole year, 1982-83. Both are provisional assessments. "Nirma" is a widely marketed washing powder. The petitioner (assessee) is engaged in the sale of "Nirma". The sole controversy that arises for consideration is whether "Nirma" can be taxed under entry 82 of the First Schedule to the Act, or will it attract liability only at the general rate u/s 5 of the Act ?

2. Entry 82 of the First Schedule to the Act provides as follows ; "Goods in respect of which single point tax is leviable under Sub-section (1) or Sub-section (2) of Section 5.

Sl. No. Description of goods Point of levy Rate of tax.

(1) (2) (3) (4)

82. Detergent powders, flakes and liquid and laundry brighteners. At the point of first sale in the State by a dealer who is liable to tax u/s 5. 8."

The assessee''s counsel in a very persuasive argument contended that there is a difference between "washing powder" and "detergent powder", and that "Nirma" marketed by the revision petitioner (assessee) is only a washing powder, and not a detergent powder. The composition of the goods (Nirma) as could be gleaned from the chemical analysis report filed before the Appellate Assistant Commissioner and adverted to in paragraph 3 of the Tribunal''s order, shows that "Nirma" will not fall under any grade specified in I.S. Specification--I.S. 4955-1982 (Second Revision) for household laundry detergent powders. Nearly 70 per cent of the product is comprised of sodium carbonate, otherwise known as "soda ash". This aspect was highlighted to contend that there is a difference between "washing powder" and "detergent powder" and "Nirma" is only a washing powder, which does not conform to I.S.I, standard. In this perspective the plea was that "Nirma", the washing powder, marketed by the revision petitioner, will not fall under entry 82 of the First Schedule to the Act.

3. Counsel for the Revenue Mr. Potti contended that in entry 82 of the First Schedule to the Act, the specification of "detergent powder" will take within its fold all washing powders. The connotation of the word "detergent powder" only means, that it is a "cleanser" and a "washing powder". In construing the relevant entry in the Act one has only to approach the question as to how in common parlance the entry is understood. The fact that the manufacturer or the assessee has marketed the goods as washing powder will not determine under which entry the goods fall under the Act.

4. On hearing the rival contentions, we are of the view that "Nirma" marketed by the revision petitioner is a "detergent powder". The words "detergent" and "washing powder" have been given very many shades of meanings in standard dictionaries. Per "The Concise Oxford Dictionary", New 7th Edn., 1988 reprint, page 261, the word "detergent" bears the following meaning :

"cleansing (agent), esp. substance used with water for removing dirt, etc. (usually a synthetic substance other than soap)".

In the same dictionary at page 1212, "washing powder", has been stated to be "of soap or detergent for washing clothes, etc.". In "Chambers 20th Century Dictionary", New Edn., 1985 reprint, page 338, the word "detergent" has been given the following shades of meaning :

"that which cleanses : a cleansing agent, as an abrasive, a solvent or mixture of solvents, and certain water-soluble oils, esp. (commonly) a soapless cleanser".

"Washing powder" means : "a powdered preparation used for washing clothes".

In "Webster''s Third New International Dictionary" 1969 Edn., page 616, the following shades of meaning are given for the word "detergent":

"a cleansing agent : as a : soap b : an inorganic alkali, an alkaline salt (as a sodium phosphate or a sodium silicate), or a mixture of such compounds for use esp. in cleaning metals (as in dairy equipment)-- called also alkaline detergent c : any of a large number of synthetic water soluble or liquid organic surface-active agents for use in washing that resemble soaps in the ability to emulsify oils and hold dirt in suspension but differ in other respects...d : 3 an oil-soluble substance that holds insoluble foreign matter in suspension and is used in lubricating oils and dry-cleaning solvents".

Washing powder means :

"a powder of washing (as a soap powder or a powder containing a synthetic detergent and alkaline builder)".

5. On a review of the dictionary meaning, it is fairly clear that when the words "detergent powder" are used in entry 82 of the First Schedule to the Act, all that is meant is : "it is a powder, which cleanses or is used for washing purposes". In substance, it is a powder used for removing dirt, etc., other than a soap for washing purposes. In that perspective, we have no doubt that "Nirma" the washing powder will be taken in by the relevant entry 82 of the First Schedule to the Act. The fact that the goods are marketed by stating that "it is a washing powder" cannot determine the real nature of the goods. The commodity, "washing powder" is really, and in substance, a "detergent". The Appellate Tribunal was justified in holding so.

6. We see no merit in these two revisions. They are dismissed. There shall, however, be no order as to costs.