(1989) 12 KAR CK 0013

In the Karnataka High Court

Case No : S.T.R.P. No''s. 14, 15, 46, 52, 53 and 54 of 1986

R.N. Dongare and Another — APPELLANT

Vs

State of Karnataka — RESPONDENT

Date of Decision : 12-12-1989

Acts Referred:

Citation : (1990) 77 STC 462

Hon'ble Judges : S. Rajendra Babu, J;K. Shivashankar Bhat, J

Bench : Division Bench

Advocate : B.P. Gandhi, for the Appellant; M.R. Achar, Government Advocate, for the Respondent

Judgement

Shivashankar Bhat, J.—In all these cases the question pertains to the turnover of laminated sheets which according to the petitioners fall within entry 110 of the Second Schedule to the Karnataka Sales Tax Act as it stood during the relevant period, while the revising authority held that the laminated sheets come under entry 78 in the course of exercising its revisional power. The Tribunal upheld the view taken by the revising authority.

2. It is not necessary to state elaborately the other facts except to extract the 2 entries which have come up for consideration.

Entry No. 78 : Cement and asbestos sheets, straw boards, hardboards, plywood and the like .... 10% Entry No. 110 : Plastic sheets and all articles made of plastic polythene or polyvinyl chloride material 8%

3. The Tribunal as well as the revising authority approached the problem by applying the test of user and held that laminated sheets were put to similar uses for which hardboards and plywoods were used. The dealers challenged this approach by pointing out entry No. 110 and the manner in which laminated sheets are produced.

4. Before the Appellate Tribunal, the State representative seems to have

explained the process of manufacturing laminated sheets; that the laminated sheets consisted of transparent plastic on top, printed paper underneath to show the designs and a thin a layer of plywood-like substance (which is explained by Mr. Gandhi, learned counsel for the petitioners, that the plywood-like substance is kind of resin) at the bottom to which adhesives were applied before fixing the sheets on table tops, partitions, etc. The petitioners, in the reply sent to the notice proposing revision has described that laminated sheets are made up of paper resin and decorative paper, impregnated with transparent plastic sheets. Thus it is clear that these laminated sheets are nothing but plastic articles. Whatever may be the manner of process, the basic raw material is plastic for the manufacture of laminated sheets and, therefore, it cannot be said that laminated sheets are not plastic articles. If so, just because these articles could be used like hardboards and plywoods, can it be said that laminated sheets fall within entry No. 78 ?

5. There is no specific reference to laminated sheets under entry No. 78. But, Entry No. 110 categorically declares that plastic sheets and all articles made of plastic polythene or poly-vinyl chloride material would fall within the entry. When legislation specifically covers all articles made of plastic, it should necessarily include the article called laminated sheets, when it is clear that these sheets are one kind of articles made of plastics. If so, entry 110 covers these articles which necessarily would exclude them from entry No. 78. The Tribunal has also stated that -

"According to Interpretation of Sales Tax Commodities, page 227, to laminate means to ''manufacture by placing layer on layer'' or ''to form or press into a thin sheet or layer, to separate into thin sheets or layers to cover with thin layers, to make by building up in layers as plywood''. It is therefore clear from the above that the decorative laminated sheets consists of different layers glued together into a sheet like different layers forming hardboard or plywood and this fits into the entry No. 78 within the words ''and the like''."

What is stated by the Tribunal as above also shows that laminated sheet are made of plastic layers. The test of use which was applied to attract entry No. 78 by the Tribunal cannot be the sole test, when such a test is not applied for the goods coming under entry No. 110. For the interpretation of entries under Second Schedule, the user test cannot be the sole test.

6. In Porritts and Spencer (Asia) Ltd. Vs. State of Haryana, the Supreme Court had to consider the meaning of "textiles" under similar entries in Punjab General Sales Tax Act. Cotton and woollen "dryer felts" manufactured by the dealer which were woven textile felts of a kind commonly used in paper-making machinery were held as textile fabrics. These dryer felts were used absorbents of moisture in the process of manufacture of paper, but it was held that this peculiar use of the article would not militate against "dryer felts" falling within the category of textiles it otherwise they satisfy the description of "textiles".

7. The "entry" to be interpreted here is in a taxing statute; full effect should be given to all the words used therein. If a particular article would fall within a description, by the force of words used, it is impermissible to ignore that description, and denote the article under another entry, by a process of reasoning.

8. In the instant case, entry No. 78 is attracted by the Revenue, only by a process of interpretation of the words "and the like" in the said entry. But, entry No. 110 is clearly attracted by the application of a simple and direct test giving full meaning to the words used therein, that is to say, by giving due weight and effect to the meaning conveyed by the words "all articles made of plastics .....". Therefore, we are of the view that the approach of the revising authority as well as of the Tribunal in applying entry No. 78 was not proper. Further, if there is any doubt as to which entry a particular article would fall, the benefit of doubt should be extended to the assessee in view of the well-established principle governing the interpretation of a taxing statute.

9. Consequently, these revision petitions are allowed. The orders of the revising authority and of the Tribunal are set aside to the extent of turnovers of laminated sheets.

10. Petitions allowed.