
(1977) 03 OHC CK 0012
In the Orissa High Court
Case No : S.J.C. No's. 186 and 187 of 1975

Shantilal Kalidas	Vs	APPELLANT
State of Orissa		RESPONDENT

Date of Decision : 28-03-1977

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 24(1), 5(1)

Citation : (1977) 43 CLT 555 : (1978) 42 STC 9

Hon'ble Judges : S.K. Ray, J; P.K. Mohanti, J

Bench : Division Bench

Advocate : B.P. Chandgotia, for the Appellant; A.K. Roy, Standing Counsel, Sales Tax, for the Respondent

Judgement

S.K. Ray, J.—Both these cases have been taken up together as they involve an identical question, but relate to different assessment years 1968-69 and 1969-70.

2. On an application being made u/s 24(1) of the Orissa Sales Tax Act (hereinafter referred to as the "Act") by the assessee for a reference to this court, the Member, Additional Sales Tax Tribunal, has referred the following question for opinion of the court :

Whether, on the facts and in the circumstances of the case, glass bangles (glass chudies) would be covered by entry No. 38 of the taxable list of goods other than luxury goods framed under the Orissa Sales Tax Act or they will be treated as unclassified goods ?

3. The assessee-petitioner is a registered dealer and carries on business in glass bangles at Sambalpur town. His gross turnover of sales for the years 1968-69 and 1969-70 is not in controversy. Tax, however, was imposed on the sale of glass bangles for these two years at the rate of 7 per cent as specified goods under entry No. 38 against his claim that the sales should be taxed at the rate of 5 per cent as unclassified goods. Accordingly, there was an excess demand of tax of Rs. 1,839.47 and Rs. 2,053.05 for the assessment years 1968-69 and

1969-70 respectively by the Sales Tax Officer. The assessee was unsuccessful in his first and second appeals and hence he applied to the Tribunal for a reference on the question aforesaid.

4. During the relevant assessment years the general rate of tax payable by a dealer u/s 5(1) of the Act was 5 per cent. This Sub-section contains a number of provisos, but the first two provisos authorise the State Government to vary the general rate of tax by notification. The first proviso empowers the State Government from time to time by notification, subject to such conditions as they may impose, to fix a higher rate of tax not exceeding 10 per cent or any lower rate of tax payable under, the Act on account of sale or purchase of any goods or class of goods as specified in such notification. Pursuant to the first proviso to Sub-section (1) of Section 5 of the Act, the State Government issued Notification No. 33927-F. dated 30th December, 1957. Under item No. 38 of this notification glassware and china-clay goods excepting bottles, lamps and lantern chimneys and earthenware pottery were made subject to a rate of tax at 7 per cent. Those goods which are not specified under any notification issued under the provisos to Section 5(1) of the Act are liable to general rate of tax u/s 5(1) as unclassified goods. The controversy, therefore, is as to whether glass bangle is a specified article covered under item 38 and thus liable to higher rate of tax at 7 per cent or is an unclassified article liable to general rate of tax of 5 per cent, as claimed by the assessee.

5. The first principle of construction is that if the provision of a statute is found to be unambiguous it must be construed literally. In construing a fiscal statute and in determining the liability of a subject to tax, one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law. If a case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter. In case of a reasonable doubt, the construction most beneficial to the subject is to be entertained. Even so, as already indicated above, the fundamental rule of construction is the same for all statutes whether fiscal or otherwise, namely, that the meaning and intention of a statute must be collected from the plain and unambiguous expression used therein, rather than from any notions which may be entertained by the court as to what is expedient.

6. In the aforesaid context item No. 38 is to be construed. It reads as follows:

Glassware and china-clay goods excepting bottles, lamps and lantern chimneys and earthenware pottery.

7. Mr. B.P. Chandgotia, the learned counsel of the assessee, contends firstly that since glassware has not been defined in the statute, its dictionary meaning is not helpful and, accordingly, common parlance theory is to be invoked and when such a theory is invoked, the following considerations must be taken into account : (a) Glass bangles are manufactured exclusively at Ahmedabad and U.P.

and are not treated by the mercantile community as an item of glassware, (b) whether the consuming public or section of the people treats the bangles as an item of glassware and (c) whether in general, when glassware is referred to one's mind, bangle would occur to it or not. His second contention is that the Government issued two notifications on 23rd April, 1976, one u/s 6 of the Act containing a list of tax-free goods and the other under the first proviso to Section 5(1) of the Act containing a schedule of specified articles for which a revised and a higher rate of tax has been fixed. Both the notifications came into effect on 1st May, 1976. Entry No. 1 of the schedule of tax-free goods refers to bangles and provides that when the cost of the bangle is less than one rupee per pair," it will be tax-free. Entry No. 39 of the schedule of specified taxable goods of the other notification which is identical with entry No. 38 in question provides for a revised rate of tax of 10 per cent. Comparing entry No. 1 with entry No. 39 he argues that if bangle is treated as coming within entry No. 39, when all types and varieties of bangles, irrespective of their cost, would come within that entry. If so, it would run contrary to entry No. 1. As there will, thus, be a direct conflict between entry No. 39 of the schedule of taxable articles and entry No. 1 of the schedule of tax-free articles, it will be reasonable to hold that the legislative intent was to exclude glass bangles from the purview of "glassware" in entry No. 39.

8. Glassware has no statutory definition. In Chambers's Twentieth Century Dictionary "glassware" means "articles made of glass". In Webster's New Twentieth Century Dictionary "glassware" means "articles or utensils of glass". "Glassware" in the sense of articles made of glass has a greater sweep than in the sense of mere utensils made of glass. It is a generic word implying all articles made of glass in its widest sense. In the restricted sense, it means only utensils made of glass. In either case, glassware does not signify any particular article. There is no evidence in the case that glassware has acquired any mercantile connotation excluding glass bangles and when glassware is referred to one's mind in general it does not invoke a picture of any one article or of utensils in general or of excluding even bangles therefrom. In popular sense, it would ordinarily refer to articles made of glass. In construing this entry common parlance theory is to be invoked. This court, in the case of *State of Orissa v. Janata Medical Stores* [1976] 37 S.T.C. 33, construed that entry by employing this doctrine of common parlance and held that "glassware" in popular sense would ordinarily refer to articles made of glass. A plain reading of entry No. 38 also leads to the same result. The language of entry No. 38 indicates that bottles, lamps and lantern chimneys made of glass would be glassware if they were not excepted expressly therefrom. Obviously, bottles, lamps and lantern chimneys even according to common parlance theory cannot be considered as utensils, the restricted meaning attributed to glassware in the dictionary. This would indicate the legislative intent that "glassware" is to be understood in its widest sense and not in its restricted sense. If it had been otherwise, there would have been no necessity of expressly excluding bottles, lamps and lantern

chimneys from the purview of "glassware". Merely because bangles are manufactured only by a special class of people at Ahmedabad and U.P., even if true, would not indicate that bangles are not within the ambit of "glassware" in entry No. 38. Similarly, merely because some merchants deal in some category of glassware excluding bangles and some others deal in bangles exclusively, that would not constitute a deciding factor in attributing the restricted meaning to the word "glassware" in entry No. 38. The internal indication in the entry by excluding certain class of articles made of glass from the ambit of glassware coupled with the popular sense clearly establish that all articles made of glass would be glassware for the purpose of that entry.

Coming to the second contention, it will be seen that this schedule of tax-free list came into force with effect from 1st May, 1976. The assessment years in question are 1968-69 and 1969-70. Any interpretation of this schedule will not, therefore, be relevant and this line of construction by referring to a later notification of a schedule of tax-free articles does not lead to any conclusive finding as to the earlier legislative intent in respect of the expression "glassware" in entry No. 38 under consideration. This second contention also is of no assistance to the learned counsel for the assessee.

9. In the case of *Haji Jamaluddin Manguji v. State* [1955] 6 S.T.C. 141, the question which arose for consideration was whether glass bangles were glassware within the meaning of entry No. 15. Entry No. 15 ran as "glassware, domestic pottery and china excepting bottles and lamp and lantern chimneys". Their Lordships held that the expression "glassware" was wide enough to include all articles made of glass. They further added :

If there was any doubt whatsoever about the matter it must now be deemed to have been removed by the addition of the words "excepting bottles and lamp and lantern chimneys" in entry No. 15.

In the case of *Commissioner of Sales Tax, U.P. v. Manohar Glass Works* [1971] 27 S.T.C. 51, entry No. 10 of the U.P. Sales Tax Act was being construed. This entry ran as "glassware other than hurricane lantern chimneys, optical lenses and bottles". Their Lordships were considering the question whether glass tubes and glass rods manufactured and sold by the assessee came within this entry and held that, in commercial sense, the term "glassware" will comprehend only such articles of glass as are finished articles capable of being sold to the consumer.

In the case of *State of Orissa v. Janata Medical Stores* [1976] 37 S.T.C. 33, this court, construing the expression "glassware" in entry No. 38, said that, in popular sense, glassware would ordinarily refer to articles made of glass, but while dealing with the question whether thermometers, lactometers, syringes, eye-wash glasses and measuring glasses would be glassware or not, they held that these special items would not be glassware for two reasons, namely, that these are not purely made of glass but mixed with other materials and that these articles are not sold in ordinary shops and only to be found in medical shops.

In this case, glass bangles are finished articles wholly made of glass and capable of being sold to consumers. They are also sold in ordinary shops. Merely because some merchants exclusively deal in bangles or manufacture them or that certain shops exclusively sell bangles, would not legitimately influence the ordinary popular meaning of glassware in entry No. 38 as including glass bangles.

10. For the aforesaid reasons, we would agree with the conclusion of the Tribunal that in the facts and circumstances of the case glass bangles (glass chudies) would be covered by entry No. 38 of the taxable goods framed under the Orissa Sales Tax Act and cannot be treated as unclassified goods and, in our judgment, the answer would be in the affirmative.

In the peculiar circumstances, there will be no order as to costs.

P.K. Mohanti, J.

11. I agree.