(1987) 08 AHC CK 0023

In the Allahabad High Court

Case No : Sales Tax Revision No. 464 of 1986

Sharpedge Limited — APPELLANT

Vs

Commissioner of Sales Tax — RESPONDENT

Date of Decision : 31-08-1987

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 3A(1)(e)

Citation : (1989) 73 STC 90

Hon'ble Judges : Om Prakash, J

Bench : Single Bench

Advocate : Bharatji Agrawal, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Om Prakash, J.—Raising a small but interesting question, this revision is filed by the dealer, engaged in the business of manufacture and sale of Erasmic blades for the assessment year 1979-80 against the Tribunal''s order dated 28th February, 1986.

2. The sole question for determination in this revision is whether the turnover of Erasmic blades is liable to be taxed as an unclassified item at the rate of 8 percent u/s 3-A(1)(e) of the U.P. Sales Tax Act, 1948 (for short "the Act, 1948") or at the rate of 10 per cent as classified item under the entry 102 of the Notification No. ST-II-10853/X-6(23)-79 dated 7th December, 1979, which runs as follows :

Articles made wholly or principally of stainless steel, except surgical instruments.

3. The assessing officer in the reassessment order took the view that the product of the assessee, i.e., the Erasmic blades, is covered by the aforesaid entry 102.

4. The submission of Sri Bharatji, learned counsel for the assessee, is that the blades manufactured by the assessee though professed to be stainless steel

blades to make it more popular and attractive in the market and to augment sales thereof, but, in fact, the Erasmic blades do not constitute an item of stainless steel, as popularly known in common or commercial parlance. He submits that the Erasmic blades neither possessed the characteristics of the stainless steel, nor they are purchased by the customers believing that they are items of stainless steel.

5. The Tribunal, however, observed :

Erasmic blades in the common market, are, undoubtedly, referred to as ''stainless steel blades'' and ''stainless steel'' is also printed on the packages for sale....Thus the commodity manufactured and sold by them was ''stainless steel blades'' and has rightly been treated as such by the lower authorities.

6. It appears from the order of the Tribunal that the words "stainless steel" being printed on the packages of the blades weighed too much with the Tribunal.

7. Whether or not the product of the assessee is covered by the entry 102 of the notification dated 7th December, 1979, reproduced above, this question will not be decided merely by the fact that on the packages of blades, the words "stainless steel" are being printed. No doubt, the item which is not defined under the Sales Tax Act, the meaning of that item has to be discovered from the fact as to how that is understood in ordinary or commercial parlance by the traders and the customers. To support this proposition, learned Standing Counsel relied on State of Uttar Pradesh v. Indian Hume Pipe Co. Ltd. 1977 UPTC 289 (SC), Chiranjit Lal Anand v. State of Assam 1985 UPTC 1133 (SC) and British India Corporation Ltd., Kanpur v. Commissioner of Sales Tax, U.P. 1987 UPTC 394 (All.) [FB]. These authorities consistently say that in interpreting items in statues like the Sales Tax Act, resort should be had not to the scientific and technical meaning of the terms or expression used but to their popular meaning, i.e., the meaning attached to them by those dealing in them. So, the interpretation of the Erasmic blades has to be made on the ground as to how this item is understood by those who deal in it, i.e., by the traders and customers. Applying these principles, it can be said that Erasmic blade is not an item of stainless steel, as this concept is understood in common or commercial parlance. To test it, a simple question can be raised whether a common customer asks shop-keeper to supply stainless steel blade. It is a matter of common knowledge that nobody stresses on the fact of stainless, when one goes to buy blades of any brand. Generally the blades are sold by a brand name. A customer straightway asks the shop-keeper to supply a blade of a particular brand. The stainless steel is known for certain characteristic and that is more in demand due to the peculiar characteristic. The notable characteristic of the stainless steel is that it does not get rusted and the stainless items like the stainless steel utensils continue to being untrusted for ever and that is why more and more customers are after them. This concept is obviously absent in regard to the blades. Still the customers do not buy the blades having an impression that they do not get rusted and that they remain intact like other stainless steel items. So, popular

concept of the stainless steel items still lacks in the blades, though they are sold in the market as stainless steel blades. The Tribunal referred to a test report in its order on which the assessee relied on. The test report is at page 42 of the paper book. It is given by the Government of India Regional Testing Centre (North), Ministry of Industry, Okhla, New Delhi, at the instance of the assessee. It runs as follows :

1. Per cent by wt. (a)Carbon 1.14 (b) Chromium 0.24 (c) Nickel Nil 2. Whether magnetic or Magnetic non-magnetic 3. Whether susceptible Susceptible to to corrosion/rust corrosion/rust (one week in humidity in 24 hrs. chamber)

8. There is nothing in the order of the Tribunal to controvert the aforesaid report. It shows that the blade manufactured by the assessee is magnetic and susceptible to corrosion/rust in 24 hours. These characteristics are never found in the stainless steel goods. Stainless steel is defined in the Encyclopedia Americana, Volume 25, as "an alloy steel that has excellent resistance to rusting". According to Encyclopaedia Britannica, Volume IX, the most important element of stainless steel is Nickel, which is according to the test report at page 42 of the paper book is "nil" in the product of the assessee. So the Erasmic blade manufactured by the assessee neither amounts to stainless steel item that can fall in the entry 102 of the notification dated 7th December, 1979, in the common or commercial parlance, nor does it possess the characteristics of stainless steel, as required scientifically.

9. The Tribunal, no doubt, recorded a finding that "Erasmic blades in the common market are, undoubtedly, referred to as ''stainless steel blades''...; but there is no basis of this finding, rather this finding is contrary to the common experience and contrary to the popular concept of the stainless steel goods. The question for consideration is what is the true interpretation of the entry 102 of the notification dated 7th December, 1979 and whether Erasmic blades can fall within the ambit of that entry. As already pointed out the Erasmic blade cannot be said to be an article of stainless steel, as that is not understood in common parlance by the persons who deal in it. The Tribunal having given a finding, which is wholly contrary to common concept of the stainless steel articles and contrary to the scientific meanings, it is difficult to endorse the same. Ordinarily, a finding of fact recorded by a Tribunal, which is a last fact finding body, cannot be disturbed, but the finding given in the instant case being contrary to the popular concept of the stainless steel articles, as they are commonly understood in commercial parlance, cannot be accepted and that has to be set aside.

10. The legislature also never treated blades as stainless steel articles. In the Notification No. ST-II-332/X-1012-1971 dated 15th November, 1971, entry 26(d) so far as relevant, was as follows :

Shaving sets (with or without contents), safety razors, shaving blades....

11. From this entry, it appears that the shaving blades were included in cosmetic and toilet items. Vide Notification No. ST-II-2956/X- 6(17)-76 dated 20th May,

1976, the entry 26 of the notification dated 15th November, 1971 was amended as follows :

26. All kinds of cosmetics and toilet preparations for beautification or care of the face... but not including soaps, safety razor blades....

12. Thus, the safety razor blades, which was classified items under the entry 26(d) in the notification dated 15th November, 1971 was unclassified by virtue of the notification dated 20th May, 1976. This history shows that the safety razor blades were classified under the notification dated 15th November, 1971 in the entry 26(d) and then entry 102 existed juxtaposition as follows:

102. Wares made of stainless steel.

13. If the stainless steel blades were the wares made of stainless steel and if they were so regarded by the legislature, then the blades would not have been classified in the entry 26(d) of the notification dated 15th November, 1971. This gives a sufficient clue that the shaving blades do not partake the character of stainless steel articles.

14. Looking to the ordinary meaning of the blades as commonly understood in the commercial parlance, considering the scientific requirement of stainless steel and scanning the legislative history, the only reasonable conclusion that can be reached at is that Erasmic blades, though marked as stainless steel blades, are commercially not the stainless steel articles, that can be covered by entry 102 of the notification dated 7th December, 1979.

15. For the reasons, it is held that the Erasmic blades manufactured by the assessee are liable to tax as unclassified item at the rate of 8 per cent.

16. In the result, the revision is allowed, the judgment of the Tribunal dated 28th February, 1986 is set aside and the Tribunal is directed to pass a conforming order u/s 11(8) of the Act, 1948. No order as to costs.