
(1989) 06 GAU CK 0025
In the Gauhati High Court
Case No : Civil Rule No. 10 of 1987

Shri Chitta Ranjan Saha

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 09-06-1989

Acts Referred:

Constitution of India, 1950 — Article 226
Tripura Sales Tax Act, 1976 — Section 3

Citation : (1990) 79 STC 51

Hon'ble Judges : J.M. Srivastava, J;B.P. Saraf, J

Bench : Division Bench

Advocate : J.P. Bhattacharjee and A.K. Bhowmik, for the Appellant; S. Barman Roy, Advocate-General and M. Majumdar, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

B.P. Saraf, J.—The question that arises for determination in this writ petition is whether "pea-gravels" supplied by the petitioner falls within the category of goods described as "metals, stone chips, any other products or sub-products arising out of bricks or stones" specified in item 29 of the Schedule of taxable goods attached to the Tripura Sales Tax Act, 1976.

2. The petitioner, a Government contractor, is a dealer registered under the Tripura Sales Tax Act, 1976, hereinafter referred to as "the Act". During the relevant period the petitioner supplied pea-gravels to the Executive Engineer, Public Health Engineering Division No. (III), Udaipur, South Tripura, in pursuance of a work order issued by him. The petitioner submitted his returns of turnover under the Act for the relevant periods to the Superintendent of Taxes, Agartala, showing tax due as "nil" on the ground that pea-gravels supplied by him did not fall in any of the taxable items described in the Schedule of taxable goods attached to the Act. The Superintendent of Taxes, however, did not accept the contention of the petitioner and held that pea-gravels was "sub-product of stone"

and, as such, taxable under item 29 of the Schedule of taxable goods attached to the Act. In view of the above, the Superintendent of Taxes levied tax on the value of pea-gravels supplied by the petitioner. In addition to tax he also levied penalty u/s 13 of the Act at the rate of 10 per cent of the tax for failure of the petitioner to furnish the return in time, and interest u/s 25 of the Act. The petitioner preferred an appeal against the order of assessment and prayed for admission of the appeal without payment of the disputed amount of tax. The prayer was not allowed by the appellate authority in view of the second proviso to Sub-section (1) of Section 20 of the Act which has restricted the power of the appellate authority to issue direction for stay only to the extent of 50% of the tax or penalty. The petitioner was directed to pay the amount specified by the appellate authority in its order which were little over 50% of the demand for the purpose of admission of the appeal. The petitioner did not pay the amount and aggrieved thereby moved the present writ petition before this Court challenging the levy on the ground that the only question involved being whether pea-gravels is covered by any of the items of taxable goods specified in the Schedule and the same can be determined in a writ petition. The petitioner has also challenged the vires of second proviso to Subsection (1) of Section 20 of the Act.

3. We have heard Mr. J.P. Bhattacharjee, the learned counsel for the petitioner and Mr. S. Barman Roy, the learned Advocate-General, Tripura. Mr. Bhattacharjee did not press his submission regarding the vires of the second proviso to Sub-section (1) of Section 20 of the Act as according to him the present petition can be decided simply by interpreting item 29 of the Schedule of taxable goods attached to the Act. It is well-settled by a series of decisions of the Supreme Court that the question as to whether a particular commodity is subject to tax or not can be determined by the High Court in an application under Article 226 of the Constitution. (See *State of Uttar Pradesh and Others Vs. Indian Hume Pipe Co. Ltd.*, and *Shri Nalini Ranjan Sirkar v. Superintendent of Taxes* [1986] 62 STC 21 (Gau); (1986) 1 GLR 186). It is not necessary in such cases that the alternative remedy by way of appeal, etc., should be exhausted. In that view of the matter we shall confine the discussion only to the question whether pea-gravels supplied by the petitioner is taxable under the Act.

4. The Superintendent of Taxes assessed the petitioner in respect of pea-gravels treating the same as "sub-product of stone" falling under item No. 29 of the Schedule of taxable goods attached to the Act. In the counter filed before this Court the stand seems to have undergone a change as it has been contended therein that "pea-gravels" is "stone" and, as such, taxable under the Act. The contention of Mr. Bhattacharjee is that pea-gravels is neither stone nor sub-product of stone and, as such, not covered by item 29 of the Schedule. Mr. Bhattacharjee further submitted that the Revenue itself is not certain as to whether pea-gravels is stone or sub-product of stone and that itself should be enough to hold that the same does not fall under item 29 of the Schedule of taxable goods attached to the Act and as such not taxable. Mr. Barman Roy, the learned Advocate-General, submitted that this Court should interpret item No. 29

of the Schedule uninfluenced by the stand taken by the Revenue and if on such an interpretation it comes to a finding that pea-gravels supplied by the petitioner fall under item No. 29 it should hold the same to be taxable.

5. We have considered the aforesaid submissions of the learned counsel for both the parties. We are of the firm opinion that the question as to whether a particular commodity is subject to tax or not, can be determined by the High Court in an application under Article 226 of the Constitution. We are also of the opinion that the interpretation of taxable item being a pure question of law it should be decided by this Court without giving undue weight to the stand taken by the assessing officer in the assessment order or in the counter.

6. By Section 3, tax has been levied on every dealer in taxable goods on his turnover at the rates specified in column 3 of the Schedule attached to the Act. Dealer has been defined in Clause (b) of Section 2 of the Act to mean any person who sells taxable goods manufactured, made or processed by him in Tripura or brought by him into Tripura from any place outside Tripura for the purpose of sale in Tripura and includes Government and any person making a sale u/s 3A of the said Act. Turnover has been defined in Clause (m) of Section 2 to mean aggregate of sale prices, etc., receivable or if a dealer so elects, actually received by him in respect of sale of goods made by him subject to certain deductions, etc., mentioned in the said clause. "Sale price" has been defined in Clause (h) to mean the amount of money consideration for sale of "taxable goods". Clause (k) of Section 2 defines taxable goods "to mean such goods as are specified in the Schedule attached to the Act". From a conjoint reading of Section 3 and the various definitions referred to above, it is clear that sales tax is leviable on the sale price of "taxable goods" subject to the provisions of this Act. Item 29 of the Schedule attached to the Act [as amended by Tripura Sales Tax (First Amendment) Act, 1978] specifies the following category of taxable goods :

"29. Bricks, brick-bats, jhama, metals, stone chips, any other products or sub-products arising out of bricks or stones and tiles (kiln burnt) other than mosaic (masonry tiles)."

The question for determination, therefore, is whether pea-gravels fall within the category of goods as described in the aforesaid item.

7. The principles of interpretation of items in taxing statutes like the Sales Tax Act are well-settled by a series of decisions of the Supreme Court and this Court. In a taxing statute, words of every day use must be construed not in the scientific or technical sense but as understood in common parlance. If a statute contains language, which is capable of being construed in a popular sense such a statute should not be construed, according to the strict or technical meaning of the language contained in it but it should be construed in its popular sense, meaning of course by the words "popular sense" that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it. If any form or expression has been defined in the enactment then

it must be understood in the sense in which it is so defined. But in the absence of any definition being given in the enactment, the meaning of the term in common parlance or commercial parlance has to be adopted. The words of every day use are to be construed according to their popular sense. When a word has scientific or technical meaning and has also ordinary meaning according to common parlance it is the latter sense in which in a taxing statute the word should be held to have been used unless contrary intention is clearly expressed by the legislature.

8. The aforesaid common parlance test was applied by the Supreme Court in *Ramavatar Budhaiprasad v. The Assistant Sales Tax Officer* [1961] 12 STC 286. In that case the question was whether "betel leaves" were "vegetables". It was held that the word "vegetable" in taxing statute is to be understood as in common parlance, i.e., denoting class of vegetables which are grown in a kitchen garden or in a farm and are used for the table ; and in that view of the matter it was held that "betel leaves" are not "vegetables". The aforesaid test has been followed in a series of later decisions of the Supreme Court as well as various High Courts. It is now well-settled that a word of every day use must be construed in its popular sense. It is to be construed as understood in common language. Applying the common parlance test, in *Indo International Industries v. Commissioner of Sales Tax* [1981] 47 STC 359 the Supreme Court held that clinical syringes cannot be considered as "glassware". It was observed :

"It is true that the dictionary meaning of the expression "glassware" is "articles made of glass". (See Webster's New World Dictionary). However, in commercial sense glassware would never comprise articles like clinical syringes, thermometers, lactometers and the like which have specialised significance and utility. In popular or commercial parlance a general merchant dealing in "glassware" does not ordinarily deal in articles like clinical syringes, thermometers, lactometers, etc., which articles though made of glass, are normally available in medical stores or with the manufacturers thereof like the assessee. It is equally unlikely that a consumer would ask for such articles from a glassware shop. In popular sense when one talks of glassware such specialised articles like clinical syringes, thermometers, lactometers and the like do not come up to one's mind."

Applying the aforesaid test, clinical syringes were held not to be glassware. In *Commissioner of Sales Tax, U.P. Vs. Macneill and Barry Ltd., Kanpur*, it was held that ammonia paper and ferro paper did not fall under the entry "paper" as the same were not employed for any of the purposes and subjected to any of the processes for which a paper as commonly understood is generally used. In *State of Uttar Pradesh and Another Vs. Kores (India) Ltd.*, it was held that "carbon paper" was not "paper" as envisaged by the relevant entry. In this case, however, the test of user was applied to which we shall revert a little later. In the aforesaid decision, the judgment of the Orissa High Court in *State of Orissa v. Gestetner Duplicators (P.) Ltd.* [1974] 33 STC 333 was also referred to with approval where

it was held that "stencil paper" was not "paper" within the meaning of the relevant item of the Schedule. In *Filterco and Another Vs. Commissioner of Sales Tax, Madhya Pradesh and Another*, the Supreme Court while deciding the question whether compressed woollen felts manufactured by the appellant constituted "cloth", held that only those varieties of felt manufactured by the appellants which satisfied the test of pliability would constitute "cloth". For arriving at the aforesaid conclusion the court took into account the meaning given in the dictionary as well as by generally accepted popular connotation to the expression "cloth". In *Thillai Chidambara Nadar v. Additional Appellate Assistant Commissioner* [1985] 60 STC 80 the Supreme Court held that ripened coconut is not fresh fruit or vegetable. It was observed :

"Fresh fruits" and "vegetables" being household articles of every day use for the table, these will have to be construed in their popular sense meaning the sense in which every householder will understand them. Viewed from this angle, the most apposite test would be : Would a householder when asked to bring home some "fresh fruit" and some "vegetable" for the evening meal, bring coconut ? Obviously the answer is in the negative."

There is also a recent decision of this Court in *Kali Kumar Sharma v. Sales Tax Tribunal, Tripura* (1989) 1 GLR 91 where the precise point for determination was whether "betel-nut" can be called "dry or preserved fruit". This Court, following the aforesaid principles, held that betel-nut cannot be understood as fruit. It was observed :

"It is not the technical or dictionary meaning which has to prevail but the common sense view or the popular sense in which the word or expression is understood. In common parlance betel-nut would never be taken as a fruit. The householder would never accept betel-nut as a fruit. The word "betel-nut" cannot be understood, according to us, in the trade or by the dealer or consumer as a fruit."

9. Akin to the common parlance test is trade parlance or commercial parlance test. According to this test items in taxing statutes like sales tax, customs, etc., should be judged and analysed on the basis of how these expressions are used in the trade or industry or in the market or, in other words how these are dealt with by the people who deal in them. This principle was applied in *Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad*, . The reasons for adopting the test of "commercial understanding" expressed by Story, J., in *Two Hundred Chests of Tea* (1824) 9 Whe (US) 430 , that the legislature does not suppose our merchants to be naturalists, or geologists, or botanists, was quoted with approval by the Supreme Court in *State of West Bengal and Others Vs. Washi Ahmed and Others*, The aforesaid principle was applied in *Delhi Cloth and General Mills Co. Ltd. Vs. State of Rajasthan and Others*, where it was held :

"if there is one principle fairly well-settled it is that the words or expressions must be construed in the sense in which they are understood in the trade, by the

dealer and the consumer. It is they who are concerned with it, and it is the sense in which they understand it that constitutes the definitive index of the legislative intention when the statute was enacted."

In *Chiranjit Lal Anand Vs. State of Assam and Another*, adopting the said principle it was held that "meat on hoof" falls within the item "meat". It was observed that "meat on hoof has to be understood in the context of persons who are dealing in it. Since what was intended to be bought was undoubtedly meat for rations, and a reasonable explanation was given as to why instead of meat "meat on hoof was asked to be supplied, the transactions were held to be for "meat". The commercial parlance rule of interpretation was again referred in *Indian Aluminium Cables Ltd. Vs. Union of India and Others*, where it was observed :

"This Court has consistently taken the view that, in determining the meaning or connotation of words and expressions describing an article in a tariff schedule, one principle which is fairly well-settled is that those words and expressions should be construed in the sense in which they are understood in the trade, by the dealer and the consumer. The reason is that it is they who are concerned with it and, it is the sense in which they understand it which constitutes the definitive index of the legislative intention."

In a recent decision in *Collector of Customs, Bombay v. Swastic Woollens (P.) Ltd.* [1989] 72 STC 201 the Supreme Court interpreting an item in the Customs Act reiterated that where no statutory definition is provided in respect of an item in the Customs Act, the trade understanding, meaning thereby the understanding in the opinion of those who deal with the goods in question, is the safest guide.

10. In fact though the common parlance or trade or commercial parlance test is the generally accepted test, the courts have applied from time to time some other tests also to interpret items of taxing statutes. One of such tests is "commonsense test" or "commonsense rule of interpretation". This rule was laid down by the Supreme Court in *Tungabhadra Industries Ltd. v. Commercial Tax Officer, Kurnool* [1960] 11 STC 827 where it was held that hydrogenated groundnut oil continued to be groundnut oil. It was followed in later decisions of the Supreme Court. In *Alladi Venkateswarlu and Others Vs. Govt. of Andhra Pradesh and Another*, the question raised was whether "parched rice" and "puffed rice" fall within the description of rice. The Supreme Court observed : "We think that we must give a broad enough interpretation to the term "rice", in accordance with what may perhaps be best described as the "commonsense" rule of interpretation laid down by this Court in *Tungabhadra Industries Ltd. v. Commercial Tax Officer, Kurnool* [1960] 11 STC 827", and held that the term "rice" as ordinarily understood in English language would include both "parched" and "puffed" rice. This decision was followed by this Court in the case of *Assam Cotton Mills v. Commissioner of Taxes, Assam* [1990] 76 STC 6 ; (1988) 2 GLR 398 . In that case the question was whether "cotton" includes "cotton waste" and whether "cotton yarn" includes "cotton yarn waste". Following the decision of the

Supreme Court in *Alladi Venkateswarlu and Others Vs. Govt. of Andhra Pradesh and Another*, the court applied commonsense rule of interpretation and held that the common man understands that cotton waste is covered by cotton and cotton yarn waste is covered by the words cotton yarn.

11. Another test, which is sometimes applied for interpreting items of taxing statutes, is the "user test". According to this test the use to which the goods can be put can also be considered in interpreting an item. However, this rule of interpretation has got its own limitations. Certain goods may be put to different uses by different persons. That cannot entitle the Revenue to apply different rates of tax to the sales of the very same product by different dealers depending on the use to which they will be put by the purchasers. The particular use to which an article can be applied in the hands of a special consumer is not determinative of the nature of the goods. To apply this test, the deciding factor has to be predominant or ordinary purpose or use. It is not enough to say that an article can be put to some other uses also and to classify it under the different categories for different sellers. It is its general or predominant user which may determine the category in which an article should fall and once that is done, tax can be charged on sales of such goods only at the rate applicable to goods of the particular category to which they have been held to belong irrespective of their end use. In *Annapurna Carbon Industries Co. v. State of Andhra Pradesh* [1976] 37 STC 378 the Supreme Court while interpreting the expression "arc carbons" held that "arc carbons" are mainly used for production of powerful light used in projectors in cinemas and are known as "cinema arc carbons" in the market. The fact that "arc carbons" can also be used for searchlights, signalling, stage lighting, or where powerful lighting for photography or other purposes may be required, could not detract from the classification to which the carbon arcs belong. In *Mukesh Kumar Aggarwal and Co. Vs. State of Madhya Pradesh and Others*, the question for determination was whether the subsidiary parts of eucalyptus tree sold in heaps by the forest department after separation of "bailies" and "poles" could be called timber. In the notifications inviting tenders and certain other documents it was variously described as "eucalyptus fire-wood stacks", "eucalyptus wood stacks", "Nilgiri fuel-wood", etc. The Supreme Court held that the nomenclature used in such documents is not determinative of or conclusive of the nature of the "goods" which will have to be determined by the application of certain well-settled principles, guiding the matter. Referring to "user test", it was observed : "The user test is logical ; but is again inconclusive. The particular use to which an article can be applied in the hands of a special consumer is not determinative of the nature of the goods. Even as the description of the goods by the authorities of the forest department who called them varyingly as "eucalyptus fuel-wood", "eucalyptus wood-heap", etc., is not determinative, the fact that the purchasers were dealers in timber is also not conclusive". It was accordingly held that the "wood-heaps" were not susceptible to be or admit of being called "timber" with all concomitants and associations of that idea. In a recent decision in *Nagar Mahapalika, Bareilly v. State of U.P.*

[1988] 70 STC 97 the Supreme Court interpreting an item in the Schedule of goods subject to octroi observed :

"We must reiterate that we are concerned with a duty which is imposed at the time of entry and not how it is used thereafter. The taxable event for the imposition of octroi is the entry and the nature and type of the goods at the point of entry is the relevant factor."

12. In the light of the ratio of the above decisions it can be said that the user test has got a very limited application. It is neither a safe guide to interpretation nor is it conclusive. Unless other tests are found to be unsatisfactory or inadequate, this test should not be applied. Besides, even in cases where resort is taken to the "user test", it has to be limited to decide as to under what category or entry a particular item or product would generally fall and once it is so decided the same will apply to all sales under the Act, no matter by whom it is made or to whom it is made. In other words the user of the goods thereafter will have no relevance. It can't be used to levy tax on different dealers at different rates depending upon the use to which the goods are put or the purpose for which they are purchased.

13. Before concluding discussion on the various tests that are applied in interpreting items in taxing statutes, it may be appropriate to note that the Supreme Court has firmly ruled that in finding out the true meaning of the entries mentioned in the Sales Tax Act, the dictionary meaning is not relevant. *Ganesh Trading Co., Karnal Vs. State of Haryana and Another*, J. This position was reiterated by the Supreme Court in *Collector of Central Excise, Kanpur v. Krishna Carbon Paper Co.* [1989] 72 STC 280 where it was held by Sabyasachi Mukherji, J : "It is well-settled that in order to ascertain the correct meaning of a fiscal entry reference to a dictionary is apt to be somewhat delusive guide, as it gives all the different shades of meaning."

14. It is also by now well-settled that if two views are possible regarding classification of certain goods the benefit must go to the tax payer. If a tax payer seeks advantage, which was not intended by the legislature, but to which he was entitled on a construction of the statute he must be given that advantage [See *Atkinson v. Goodlass Wall and Lead Industries Ltd.* [1950] 31 TC 447 ; *The Commissioner of Income Tax, West Bengal 1, Calcutta Vs. Vegetables Products Ltd., State of Bombay v. Automobile and Agricultural Industries Corporation* [1961] 12 STC 122 (SC) and *CITv. Madho Pd. Jatia*

15. The principles laid down by the courts in various decisions discussed above can be summarised as follows : Where no definition is provided in the statute for ascertaining the correct meaning of a fiscal entry the same should be construed as understood in common parlance or trade or commercial parlance. Such words must be understood in their popular sense. The strict or technical meaning or the dictionary meaning of the entry is not to be resorted to. The nomenclature given by the parties to the word or expression is not determinative or conclusive of the

nature of the goods. The same will have to be determined by application of the well-settled rules or principles of interpretation which have been referred to as "common parlance" rule, "trade or commercial parlance" rule, "common-sense rule of interpretation" and "user test". The application of the principles will again depend on the facts and circumstances of each case. No test or tests can be said to be validly applicable to all cases. There may be cases where the interpretation may be tested by applying more than one rule of interpretation as has been done by the courts in certain cases.

16. Applying the aforesaid principles to the facts of the case, we find that pea-gravels cannot fall under item 29 of the Schedule of taxable goods attached to the Act. Entry 29 deals with bricks, brick-bats, stone chips and other products or sub-products arising out of the bricks or stones and also tiles (kiln burnt) other than mosaic (masonry tiles). From a bare reading of entry 29 it is clear that this entry covers bricks and stones and the products or sub-products thereof and tiles which are generally used for building or road constructions. Pea-gravels supplied by the petitioner in the instant case do not satisfy the description of goods given in item 29. There was no dispute at the bar about the fact that pea-gravels are not commonly known as stone or stone chips nor they are used in building or road constructions. These are used for filtration and percolation of water in tube-wells which is achieved by various means including "gravel pack". The pea-gravels supplied by the petitioner were to be used as pack material in tube-well for water supply as stated above. This being the factual position it is difficult to hold that pea-gravels is stone chip, stone or sub-products of stone. There is no material on record to show that in trade circle or in common parlance pea-gravels are known as stone or sub-products of stone. In fact, the revenue itself is not sure about its nature and description. The assessing officer treated it as sub-product of stone at the assessment stage. Before the High Court it was contended to be "stone". Even if technically or scientifically pea-gravels can be termed as stone, it is apparent that in common parlance or in commercial parlance pea-gravels is not known as stone or sub-product of stone. Even the use of pea-gravels is clearly different and distinct from that of stone or sub-products of stone. In view of the aforesaid factual position we hold that pea-gravels are not stone or sub-products of stone and do not fall under item 29 of the Schedule of taxable goods attached to the Act and as such it is not taxable.

In the result, the impugned order of assessment is quashed and this writ petition is allowed. No order as to costs.