
(2006) 11 KAR CK 0092
In the Karnataka High Court
Case No : S.T.A. No. 18 of 2006

Sree Durga Distributors

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 18-11-2006

Acts Referred:

Karnataka Value Added Tax Act, 2003 — Section 60

Citation : (2007) 6 STT 218 : (2007) 5 VST 347

Hon'ble Judges : R. Gururajan, J;N. Ananda, J

Bench : Division Bench

Advocate : R.V. Prasad, K. Hama Kumar and Sridhara Murthy and Vasana Aasts, for the Appellant; Sujatha, AGA, for the Respondent

Final Decision : Dismissed

Judgement

1. M/s. Sree Durga Distributors is before this Court, aggrieved by the order dated 31.5.2006 passed by the authority for Clarification and Advance ruling u/s 60 of the Karnataka Value Added Tax Act of 2003 (for short "the KVAT Act"). The appellant-dealer is engaged in the activity of trading in Animal Feed such as "Dog Feed" sold under the brand names "Pedigree" and "Cat Feed" sold under the brand name "Whiskas". The animal feed sold by the appellant are purchased from the registered dealers situated within the State of Karnataka and it would be second sale in the State of Karnataka. The goods sold by the appellant are exclusively used as daily food to cats and dogs. The appellant did not collect any tax under the provisions of the Act, on the sales of "Dog Feed" and "Cat Feed" effected by the appellant. It is the case of the appellant that the said goods fell under Entry No. 8 of the First Schedule appended to the Act, for the periods commencing from 1.4.2005 and up to 6.6.2005 and under Entry No. 5 of the First Schedule appended to the Act on and with effect from 7.6.2005 and as such is exempt from payment of tax under the provisions of the Act. The assessing officer was of the view that the "Dog Feed" and "Cat Feed" dealt with by the appellant would not fall under Entry 8 of the First Schedule appended to the Act,

for the periods from 1.4.2005 and up to 6.6.2005 and under Entry No. 5 of the First Schedule appended to the Act on and with effect from 7.6.2005. He was of the view that the said goods are liable to be taxed at the rate of 12.5% treating the same as non-scheduled goods. The appellant in the circumstances approached the authority u/s 60 of the Act seeking for clarification in the matter. After hearing, the clarification authority ruled that "Dog feed" and "Cat Feed" do not fall under Entry 8 of the First Schedule or Entry 5 of the revised First Schedule with effect from 7.6.2005 and the said goods are liable to be taxed under 12.5%. Appellant aggrieved by this order is before us.

2. Sri. Prasad, learned Counsel for the appellant would take us through the entries to contend that Dog feed and Cat feed do form and do fit into the entries in the case on hand. According to him, Dog feed and Cat Feed are nothing but animal feed and the Legislature in its wisdom has chosen to use the word "namely" which would mean that the entry is to be understood as illustrative and not expansive. He would rely on certain Judgments.

3. Per contra, Smt. Sujatha, learned Government Advocate supports the order and in addition she would say that the Dog Feed and Cat Feed cannot come within the entry 1. She equally relies on a few Judgments.

4. After hearing, we have seen the entries in the case on hand. Entry No. 8 to the First Schedule appended to the Act, which was operative for the periods from 1.4.2005 to 6.6.2005 would read as under:

8. Animal feed and feed supplements, namely, processed commodity sold as poultry feed, cattle feed, pig feed, fish feed, fish meal, prawn feed, shrimp feed and food supplements and mineral mixture concentrates, intended for use as feed supplements.

Entry 5 of the First Schedule as substituted by Karnataka Act No. 27/05 which came into force from 7.6.2005 would read as under:

5. Animal feed and feed supplements, namely, processed commodity sold as poultry feed, cattle feed, pig feed, fish feed, fish meal, prawn feed, shrimp feed and feed supplements and mineral mixture concentrates, intended for use as feed supplements including de-oiled cake and wheat bran.

5. The argument is that Dog Feed and Cat Feed are nothing but animal feed and that therefore, they cannot be excluded in terms of the submission made before us. We should point out at this stage that in a taxing Statute, the entry has to be read as a whole to understand the intention of the legislature for the purpose of levy of tax on a commodity. If so read, it would indicate that Dog feed and Cat feed cannot fit into the said entry. The authority has noticed this aspect of the matter and thereafter has come to a conclusion that Dog Feed and Cat Feed are to be excluded under Entry 5 for the purpose of levy of tax. Law is also well settled in this regard.

6. Commissioner of Sales Tax Vs. Bishram Tiwari, is a Judgment by the Division

Bench of the Allahabad High Court. The Allahabad High Court has noticed the word "namely" at page 486. After noticing the Court holds reading as under:

It is thus clear that the word "namely" has got no fixed meaning. Depending upon the context, it may mean the things which have been named or it may mean "or example" or "such as" or "at least".

A perusal of the notification shows that the intention was to divide all the agricultural implements into two divisions, viz., (i) the implements driven by human or animal power and (ii) mechanised implements or those driven otherwise than by human and animal power. It does not appear to have been the intention to exempt only some of the agricultural implements driven by human and animal power and to leave out others. The idea seems to have been to exempt all agricultural implements driven by human or animal power and to tax only those agricultural implements which are worked otherwise than by human or animal power.

7. The Madras High Court In 47 STC 337 Mad (State of Tamil Nadu v. Kasiraja Nadar) considered interpretation of notification in terms of Tamil Nadu Act. The Court would say as under:

The meaning of the word "namely" used in the notification is restrictive in the sense that the general expression which precedes the word "namely" is confined to the itemised expressions that follow the word "namely" and its meaning can be neither illustrative nor expansive.

8. A Division Bench of this Court in Maharashtra Hybrid Seeds Company Limited Vs. State of Karnataka, has considered the interpretation of taxing Statute-Ejusdem generis and Words and Phrases -"Namely", "And The Like". After noticing the Court has ruled as under in para 12.

In the instant case the goods in question are packing materials made out of jute and not any other material, under Clause (v) the packing materials made out of jute have been brought to tax. There are three items in Clause (v)(a) gunny bags, (b) bardan (including batars) and (c) hessian cloth. The gunny bags and bardans (including batars) are admittedly made out of jute. "Hessian" as per Shorter Oxford Dictionary means "strong coarse cloth of heap or jute; sackcloth". In the same dictionary "hemp" means "a plant from which coarse fibres are obtained for the manufacture of rope and cloth". Thus all the three entries in Clause (v) relate to fibre made out of jute. After these entries, the Legislature has added the words "and the likes. Similarly, in all other clauses as well, the words "and the like" have been added at the end of entries. The words "and the like" will have to go with the description of the items in the clause and would not include an item which is not conceived in the entry. In Clause (v), the intention is to subject to tax the packing materials made out of jute only and not out of any other material like cloth, polythene, etc. Jute is the basic fibre and the packing materials made out of jute only are subjected to tax. The expression "and the like" would require to be considered "ejusdem generis". The genesis or the class

of items envisaged by the preceding words not being exhaustive of the genesis or the class, the Legislature has conceived the words "and the like" so as to bring in any other item of the same class or genesis. In entry 16-A, broadly speaking, the packing materials of different metals and materials have been mentioned and the reference to the words "and the like" will have to go separately with the description in each item and would not go beyond that to any other item not conceived in such each sub-item. The reference in entry 16-A(v) is with reference to gunny bags, bardan (including batars), hessian cloth and the words "and the like" extending the principle of ejusdem generis would not conceive cotton cloth bags within that group to subject the petitioner to entry tax.

9. This Court noticing the said Judgment and after following the said Judgment has chosen to pass an order in TAET No. 1/2004 dated 8.6.2006. In the said Judgment, this Court has ruled in favour of the assessee while considering a similar plea. From a reading of all these Judgments, what is clear to us is that the entry has to be read as a whole and if so read, if any benefit is available, certainly of course, the same has to be provided to the assessee. But, however, after reading the entry as a whole and in that event If it indicates non-inclusion of certain commodities, then this Court would not be justified in including those commodities for the purpose of taxation under a particular entry. Any inclusion by the Court for the purpose of taxation would be usurpation of power which is not available to the Court in the matter of taxing Statute, for the purpose of levy of tax.

10. Recently, a Division Bench of this Court in Balaji Computers and Others Vs. The State of Karnataka and Others, has referred to various Judgments of the Apex Court as well as other High Courts and this Court ultimately ruled that the language employed in exemption notifications and items in respect of which exemption has been given has to be understood in the context in which the exemption notifications came to be issued. This Court after noticing the earlier Judgment has chosen to say that the understanding of law at the earliest point of time of its enactment cannot be ignored. What applies to the Statute, in my view, must be applied to the Circular also. This Judgment also supports the Revenue. Therefore, we are in agreement with the argument of Smt. Sujatha, Government Advocate that the authorities are right in the case on hand.

11. We mat also notice the Judgments cited by Sri. Prasad, learned Counsel.

12. 1947 STC 359 (Indo International Industries v. Commissioner of Sales Tax) is a Judgment of the Apex Court. The Apex Court has chosen to say that it is well settled that in interpreting items in Statutes like the Excise Tax Acts or Sales Tax Acts, whose primary object is to raise revenue and for which purpose they classify diverse products, articles and substances, resort should be had, not to the scientific and technical meaning of the terns or expressions used but to their popular meaning, that is to say, the meaning attached to than by those dealing in then.

13. 118 STC 69 (Manjula K. Shah and Ors. v. Commercial Tax Officer, 40th Circle, Bangalore and Ors.) would say that the Department had treated raw agarbathis on par with agarbathis while levying tax and it is not permissible for the department to depart from the consistent practice when the benefit is sought under the exemption notification.

14. The facts of the case would stand on different footing. Strong reliance is placed on the Judgment of the Supreme Court in VEE Nissan Electronics Vs. Commissioner of Central Excise, Mumbai, . In the said Judgment, it is noticed that the Apex Court was considering Tariff item 33F-Musical Systems and Musical Systems commercially known as stereo or hi-fi systems. After noticing the entry, the Apex Court ruled that undeniably the system of the appellants is commercially known as a "Stereo or hi-fi system". The use of the word "namely" in the tariff item does not mean that only the items specified thereafter fall under the definition of the term "musical system". The term "namely" only clarifies that even those items would constitute a musical system. The findings of the Supreme Court with regard to clarification has to be understood in the context of tariff item 33F with regard to a musical system commercially known as stereo. That Judgment would not be of any assistance to the appellant.

15. In the result, we after carefully going through the entry and after carefully going through the law on the subject are of the view that the revenue is justified in passing the impugned order.

16. Appeal stands rejected.