(1989) 01 AP CK 0028

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 284 of 1985

State of Andhra Pradesh — APPELLANT

Vs

India Rubbers — RESPONDENT

Date of Decision : 31-01-1989

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 20(2)

Citation : (1990) 76 STC 254

Hon'ble Judges : V. Neeladri Rao, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Advocate : The Government Pleader for Commercial Taxes, for the Appellant;

Judgement

B.P. Jeevan Reddy, J.—This tax revision case is preferred by the State against the judgment of the Sales Tax Appellate Tribunal in T.A. No. 537 of 1983.

2. The respondent is a manufacturer and dealer in tread rubber and vulcanising solution, having its factory at Balanagar. The assessment order was revised by the Deputy Commissioner in exercise of his powers u/s 20(2) of the Andhra Pradesh General Sales Tax Act. He held that tread rubber is liable to be taxed under entry 41 of the First Schedule to the Act, and that it does not fall under entry 101(ii) of the First Schedule, as was held by the assessing authority. On appeal, the Sales Tax Appellate Tribunal took the view that the words "and other articles made of rubber, plastic foam, synthetic foam or other similar material", occurring in entry 41 should be construed ejusdem generis with the preceding words "sheets, cushions, mattresses, pillows". Accordingly, the Tribunal held that tread rubber does not fall within the meaning of "other articles made of rubber". The result of the said reasoning was that tread rubber fell under entry 101. It is this view of the Tribunal that is challenged.

3. Entry 41 reads as follows :

"Sheets, cushions, mattresses, pillows (and other articles made of rubber, plastic foam, synthetic foam or other similar material)".

4. Entry 101 reads thus :

"Rubber products (other than those specifically mentioned elsewhere), including -

(i) latex foam sponge;

(ii) plates, sheets and strips unhardened, whether vulcanised or not and whether combined with any textile material or otherwise;

(iii) unhardened vulcanised rubber used for piping and tubing;

(iv) transmission, conveyor or elevator belts or belting material of vulcanised rubber, whether combined with any textile material or otherwise".

5. It may be noticed that the words "and other articles made of rubber, plastic foam, synthetic foam or other similar material" in entry 41 were introduced by Act 49 of 1976. The very same Amendment Act also introduced entry 101 in the First Schedule. Now a reading of both the entries would show that while entry 101 deals with rubber products as such, entry 41 does not deal mainly with rubber products but deals with sheets, cushions, mattresses, pillows, and other articles, whether made of rubber, plastic foam, synthetic foam, or other similar material. The question is whether tread rubber can be treated as an article made of rubber, within the meaning of entry 41. This brings in the question : what is the meaning of the word "article" ? In the Compact Edition of the Oxford English Dictionary the word is given several meanings. The one relevant is "14. elliptically (-article of trade, commerce, food, clothing, use, property) : A commodity; a piece of goods or property, a chattel, a thing material". Apparently the word "articles" in entry 41 is used as distinct from "products of" in entry 101. The word "product" too has been given several meanings in the Compact Edition of the Oxford English Dictionary, but the meanings relevant are "a quantity produced or obtained; a supply, provision, stock. That which is produced by any action, operation or work; a production; the result. That which results from the operation of a cause; of consequence, effect". On the meanings given to the two expressions aforementioned, we find it difficult to distinguish an article from a product. It is suggested that "article" means finished goods, while "product" may be finished goods, or not. We are not satisfied that any such definite demarcation is possible though it cannot be said that there is no substance in it. Evidently, with a view to get over this difficulty the Tribunal thought it fit to construe the words "other articles" in entry 41 ejusdem generis with the preceding words. While we do not subscribe to the theory that the words "other articles" occurring in entry 41 should be read ejusdem generis with the preceding words because of the use of the word "other", we are of the opinion that tread rubber is in effect "rubber" or at any rate a "rubber product". Having regard to the language of both the entries and the use to which it is put, it would be more appropriate to place tread rubber under entry 101 as "rubber" or at least as a "rubber product", rather than placing it under entry 41 as an article made of rubber.

6. For the above reasons, we agree with the Tribunal that tread rubber is taxable

under entry 101, and not under entry 41 though for different reasons.

7. The tax revision case, accordingly, fails and is dismissed. No costs. Advocate''s fee Rs. 150.

8. Petition dismissed.

