(2014) 08 KAR CK 0041

In the Karnataka High Court

Case No : Sales Tax Revision Petition Nos. 320 of 2012 and 2 to 18 of 2013

State of Karnataka APPELLANT

Vs

Godrej Consumer Products Limited RESPONDENT

Date of Decision : 20-08-2014

Acts Referred:

Karnataka Value Added Tax Act, 2003 — Section 39(1), 4(1)(a)(ii)

Citation : (2014) 80 KarLJ 328

Hon'ble Judges : Rathnakala, J;N. Kumar, J

Bench : Division Bench

Advocate : S. Sujatha, Additional Government Advocate, Advocate for the Appellant; N. Venkataraman, Senior Counsel and M. Thirumalesh, Advocate for the Respondent

Judgement

N. Kumar, J.—The State has preferred these revision petitions against the order passed by the Karnataka Appellate Tribunal, Bangalore (hereinafter referred to as ''the Tribunal''), challenging the finding that, G.K. Aerosol, Hit Aerosol, Hit Rat and Hit Line are Insecticides falling under Entry 23 of Third Schedule of Karnataka Value Added Tax Act, 2003 (hereinafter referred to as ''the Act''). The respondent-Company is engaged in the manufacture and sale of G.K. Aerosol, Hit Aerosol, Hit Rat and Hit Line, which are used as Home Insecticides. The business premises of the respondent was inspected. It was noticed that the respondent has charged and collected the VAT at the rate of 4% on the sale of aforesaid goods. The Prescribed Authority passed the reassessment order under Section 39(1) of the Act, levying tax at the rate of 12.5% on the sale of these goods.

2. The respondent preferred a writ petition Godrej Sara Lee Ltd. Vs. State of Karnataka, instead of preferring an appeal to the Joint Commissioner of Commercial Taxes on the ground that the reassessment was done on the instructions of the Commissioner and therefore, no useful purpose would be served in preferring a statutory appeal. The High Court accepting the said submission directed the respondent-Company to approach the Tribunal and

accordingly, the respondent preferred an appeal before the Tribunal. The Tribunal after hearing both parties, considering the judgments on which reliance was placed held that the goods manufactured and sold by the respondent-Company are admittedly insecticides containing the chemicals, which are capable of killing the mosquitoes, rats, cockroaches, etc. Mosquito Repellants are totally different products as the)'' drive away mosquitoes, etc. Therefore, the goods manufactured by the respondent are insecticides falling under Entry 23 of Third Schedule of the Act. As such, they are assessable to tax at the rate of 4% at the relevant point of time. The order of the Assessing Authority was set aside and it was directed to pass consequential orders. Aggrieved by the said order, the State has preferred these revision petitions.

3. These revision petitions came to be admitted on 12-7-2013 to consider the following substantial questions of law:

"(a) Whether the Tribunal is right in giving a finding that the goods sold by the assessee such as G.K. Aerosol, Hit Aerosol, Hit Rat and Hit Line are also goods coming within the former group of goods figuring in Entry 23 of Third Schedule of the Karnataka Value Added Tax Act, 2003 (for short ''the Act'') and not under the latter part of the goods mentioned in this entry which are excluded from the applicability of the rate of tax as is contemplated under Section 4(1)(a)(ii) of the Act?

(b) In the facts and circumstances of the case, whether the Tribunal is justified in interpreting Entry 23 of the Third Schedule to the Act ignoring the exclusion clause and the words ''and the like'' used for non-agricultural or non-horticultural purposes?"

4. The learned Additional Government Advocate assailing the impugned order contended that, the Sl. No. 23, which was substituted by Act No. 5 of 2008 with effect from 1-8-2008 expressly states what goods are excluded. The said exclusion denotes not only phenyl, liquid toilet cleaners, floor cleaners, mosquito coils, mosquito repellants, but it had expressly used the expression "and the like" used for non-agricultural or non-horticultural purposes. Admittedly, the disputed, goods are used for non-agricultural or non-horticultural purposes, it is an insecticide. But, when it is used for the aforesaid purposes and the Legislature expressly states "and the like", the rule of "ejusdem generis" is attracted and not only mosquitoes, but all flies, if they are killed by the use of insecticides, they are excluded from entry at Sl. No. 23 and therefore, they are liable to pay tax at the rate of 12.5% and not at the rate of 4%.

5. Per contra, learned Senior Counsel appearing for the respondent-Company submitted that, the Legislature has expressly used the word ''insecticide'' and it falls at Sl. No. 23 in respect of which tax payable is only 4%. However, the Legislature thought mosquito repellants would not fall within the word "insecticides", but this Court interpreting the said serial number, taking note of the presence of "Allethrin" in the repellant, excluded the mosquito repellants

from Sl. No. 23. It is in that context, it became necessary for the Legislature to substitute that entry with an exclusion clause excluding the mosquito repellants from Entry 23 and therefore, he submits that the order passed by the Tribunal is in accordance with law and does not call for interference.

6. Sl. No. 23, as it stands today, has a checkered history. When the Act was introduced for the first time, the entry was at Sl. No. 16 in the Third Schedule. It read as under:

"16. Chemical fertilizers and chemical fertilizer mixtures; including gypsum, insecticides, pesticides, rodenticides, fungicides, weedicides, herbicides, plant regulators and plant growth nutrients".

Subsequently, it was substituted by Act No. 27 of 2005 as under:

"23. Chemical fertilizers, chemical fertilizer mixtures; bio-fertilizers, micro nutrients, gypsum, plant growth promoters and regulators; insecticides, pesticides, rodenticides, fungicides, weedicides, herbicides".

7. Again, it was substituted by Act No. 5 of 2008 as under:

"23. Chemical fertilizers, chemical fertilizer mixtures; bio-fertilizers, micro nutrients, gypsum, plant growth promoters and regulators; rodenticides, fungicides, weedicides and herbicides; insecticides or pesticides but excluding phenyl, liquid toilet cleaners, floor cleaners, mosquito coils, mosquito repellants and the like used for non-agricultural or non-horticultural purposes".

8. The judgment of this Court in Ashok Agencies Vs. State of Karnataka, was delivered on 19th March, 2008. To overcome the said judgment, the law was amended and therefore, by Act No. 5 of 2008 with effect from 1-8-2008, the following entry was substituted:

"23. Chemical fertilizers, chemical fertilizer mixtures; bio-fertilizers, micro nutrients, gypsum, plant growth promoters and regulators; rodenticides, fungicides, weedicides and herbicides; insecticides or pesticides but excluding phenyl, liquid toilet cleaners, floor cleaners, mosquito coils, mosquito repellants and the, like used for non-agricultural or non-horticultural purposes".

If we carefully look into the aforesaid entry, it could be dissected as under:

(a) Chemical fertilizers, chemical fertilizer mixtures;

(b) Bio-fertilizers, micro nutrients, gypsum, plant growth promoters and regulators;

(c) Rodenticides, fungicides, weedicides and herbicides;

(d) Insecticides or pesticides but excluding: (i) phenyl, liquid toilet cleaners, floor cleaners; (ii) mosquito coils, mosquito repellants and the like used for non-agricultural or non-horticultural purposes.

Each one of them constitute a separate category. In order to appreciate this entry, it is useful to refer to the entry in the Karnataka Sales Tax Act, 1957. Sl. No. 5 of Part I of Second Schedule to K.S.T. Act read as under:

"5. Insecticides, pesticides, rodenticides, fungicides, weedicides, herbicides, plant regulators and plant growth nutrients excluding copper sulphate".

Sl. No. 11 of Part M of Second Schedule to K.S.T. Act read as under:

"11. Mosquito repellants including devices, parts and accessories".

Therefore, it is clear that, mosquito repellants including devices, parts and accessories were not treated as part of insecticides. It had an independent entry. When the Act came into force, they had only one entry as set out above. It was subsequently substituted by entry at Sl. No. 23. The understanding of the Legislature was that, as the words used in the said entry are clear and unambiguous, it does not include mosquito repellant. But, when this Court in the aforesaid Ashok Agencies'' case ruled out that, because of the presence of "allethrin" in the mosquito repellant, it falls within the definition of "insecticide", it became necessary for the Legislature to make their intention clear. Therefore, they substituted said entry by the latest entry specifically excluding the said mosquito coils and mosquito repellant. In the process, they also included phenyl, liquid toilet cleaners and floor cleaners. They also added the words "and the like" used for non-agricultural or non-horticultural purposes. Therefore, the entire object of the substituted provision is to exclude the mosquito repellant from the ambit of the word "insecticide", if it is used for non-agricultural or non-horticultural purposes.

9. The words "and the like" was the subject-matter of interpretation by this Court in the case of Maharashtra Hybrid Seeds Company Limited Vs. State of Karnataka, , wherein it was held as under:

"Normally speaking, the Courts while giving a meaning to an item contained in the Schedule give it the meaning which the makers of the Schedule intended by grouping various articles in a particular group considering them in a generic sense......

....

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.................

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.

The Tribunal was not justified in law to hold that the reference of words in Entry 16-A "namely" and "and the like" will have the meaning "such as" to conceive the entry to be illustrative. In our view, entry in itself is exhaustive which does not permit the inclusion of any other material which is not enumerated".

10. Therefore, the words "and the like" are not the same as "namely" or "such as". Therefore, wherever the words "and the like" are used, even if the principle of "ejusdem generis" is applied, the words "and the like" will have to go with the description of each items in the class, it cannot be broadened to include the items, which were not conceived in the entry. The exclusion was with reference to phenyl, liquid toilet cleaners, floor cleaners, which kills invisible germs or bacteria. They constitute a class by themselves. The other category of goods excluded are mosquito coil, mosquito repellant, i.e., they deal with flies which are visible and in particular, the mosquitoes. But they do not kill but they act as repellant. Therefore, the words "and the like" in the context has to be understood as "referring to germs and bacteria", which are not visible or mosquitoes, which are visible, but goods which are used as repellant.

11. The Supreme Court in the case of Dunlop India Ltd. and Madras Rubber Factory Ltd. Vs. Union of India (UOI) and Others, has held as under:

"Meanings given to articles in a fiscal statute must be as people in trade and commerce, conversant with the subject, generally treat and understand them in the usual course. But once an article is classified and put under a distinct entry, the basis of classification is not open to question. Technical and scientific tests offer guidance only within limits. Once the articles are in circulation and come to be described and known in common parlance then there is no difficulty for statutory classification under a particular entry".

12. Where a word has a scientific or technical meaning and also an ordinary meaning according to common parlance, it is in the latter sense that in a taxing statute the word must be held to have been used, unless contrary intention is clearly expressed by the Legislature, as held by the Apex Court in the case of Porritts and Spencer (Asia) Ltd. Vs. State of Haryana, .

13. The Apex Court held in the case of Annapurna Biscuit Manufacturing Co., Kanpur Vs. Commissioner of Sales Tax, U.P., Lucknow, asunder:

"It is well-settled rule of construction that the words used in a law imposing a tax should be construed in the same way in which they are understood in ordinary parlance in the area in which the law is in force. If an expression is capable of a wider meaning as well as narrower meaning the question whether the wider or the narrower meaning should be given depends on the context and the background of the case".

14. In R.N. Dongare and Another Vs. State of Karnataka, , it was held by the Apex Court as under:

"The "entry" to be interpreted here is in a taxing statute; full effect should be given to all the words used therein. If a particular article would fall within a description, by the force of words used, it is impermissible to ignore that description, and denote the article under another entry, by a process of reasoning".

15. While understanding the meaning of words used in a statute, the legislative history should also be taken note of. In the background of these settled legal principles, when we look at the entry at Sl. No. 23, it is clear in the earlier enactment i.e., Karnataka Sales Tax Act, mosquito repellants found a place as a separate entry and they were taxed at a higher rate when compared to insecticide, which was a separate entry. After coming into force of the Act, no separate entry for mosquito repellants was carved out, thereby meaning it fell under residuary clause. It is only when this Court interpreting the earlier entry at Sl. No. 23 had included these mosquito repellants within the word "insecticide", the Legislature brought an amendment substituting the said entry with the present entry expressly excluding mosquito repellants from the word "insecticide". From the way the said entry now stands, it is clear that, mosquito repellants are also treated as an insecticide, as held by this Court in Ashok Agencies'' case, but they expressly excluded it, denying the benefit of 4% tax to the dealers dealing with that product. If the intention of the Legislature was to exclude all insecticides or pesticides used for non-agricultural or non-horticultural purposes, they could have done so by using only those words without expressly mentioning phenyl, liquid toilet cleaners, floor cleaners, mosquito coils and mosquito repellants. As the intention of the Legislature was to exclude only those items and not other items, they have chosen to exclude these items in the manner they have done. Therefore, by applying the principles of "ejusdem generis", we cannot include those items, which are not even conceived by the Legislature. Now the products, which are in dispute are not mosquito repellants nor mosquito coils much less phenyl, liquid toilet cleaners or floor cleaners. It is a killer for crawling, flying insects and rats. An "insecticide" is a substance used to kill insects and "rodenticide" to kill rodents. They include ovicides and larvicides used against insect eggs and larvae respectively. They are used in agriculture, medicine, industry and by consumers. The aforesaid product provides an instant kill solution to all insect and rodent problems. Depending on the nature of the problem, a specialist product is available to deal with it. Hit comes in a specialist flying insect killer format to provide an instant solution to mosquito and fly problem, a specialist crawling insect killer format to ensure a sustained roach free and ant free house and a multi insect killer format, if a single solution is needed. Therefore, Hit Aerosol is meant for flying insects, which kills both flies and mosquitoes. Hit Aerosol for crawling insects eliminates cockroaches for six weeks. It has an applicator which kills hidden cockroaches. Hit Aerosol for crawling and flying insects is a multi insect killer for crawling and flying insects and therefore, all these products fall within the word "insecticide". It is not a repellant. Incidentally, it also kills mosquitoes. What is excluded from the ambit of "insecticide" is mosquito repellants and not mosquito killers. Hit Rat are for killing rodents and Hit Line are meant for killing crawling insects. In that view of the matter, the order passed by the Tribunal is in accordance with law

and cannot be found fault with. Accordingly, the substantial questions of law are answered in favour of the respondent-assessee and against the State. Hence, we pass the following order:

These revision petitions are dismissed.

No costs.

