(2005) 03 KL CK 0015

In the High Court Of Kerala

Case No : T.R.C. No. 58 of 2001

State of Kerala	APPELLANT
Vs	
Chelur Corporation	RESPONDENT

Date of Decision : 18-03-2005

Acts Referred:
Kerala General Sales Tax Act, 1963 — Section 5

Citation : (2005) 142 STC 176

Hon'ble Judges : K.S. Radhakrishnan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : Georgekutty Mathew, Government Pleader for Taxes, for the Appellant; Arikkat Vijayan Menon and V. Menon, for the Respondent

Final Decision : Allowed

Judgement

K.S. Radhakrishnan, J.—Revenue has come up with this revision against the order passed by the Sales Tax Appellate Tribunal in T.A. Nos. 267 of 1989 and 808 of 1995.

2. T.A. No. 267 of 1989 is the appeal filed by the Revenue against the order of the Deputy Commissioner (Appeals) for the year 1983-84. Assessee is the manufacturer of slotted angles, panels and accessories. For the year 1983-84 assessing authority had assessed slotted angles at the rate of 12 per cent as an item coming under entry 145 of the First Schedule to the Kerala General Sales Tax Act, 1963 as it stood prior to April 1, 1984, which read as follows:

Sl. Description of Point of levy Rate of tax No. goods 145. Safes, almirahs and At the point of first sale 12 per cent furniture made of in the State by a dealer iron or steel who is liable to tax under Section 5

Aggrieved by the order of the assessing authority, assessee took up the matter in appeal before the Deputy Commissioner (Appeals). Deputy Commissioner accepted the contention of the assessee and directed the assessing authority to assess the turnover at 6 per cent as an item coming under entry 45 of the First

Schedule. Aggrieved by the said order, Revenue preferred T.A. No. 267 of 1989. Tribunal dismissed the appeal relying on the decision in Godrej and Boyce Mfg. Co. (P) Ltd. v. State of Kerala [1991] 83 STC 474 ker. Tribunal noticed that the High Court had held that slotted angles and panels separately sold are not furniture coming under entry 145, as it stood prior to April 1, 1984 but is an item coming under entry 45 of the First Schedule. Tribunal held that no material has been placed before it to take a different view. In the light of the above mentioned decision of the High Court, the Tribunal confirmed the order of the Deputy Commissioner (Appeals). Appeal filed by the Revenue was dismissed. The said order is also under challenge in this case.

3. Assessee for the year 1984-85 had returned a total turnover of Rs. 5,51,331.26 and taxable turnover of Rs. 16,284.16 and the assessment for the year 1984-85 was completed. Assessing authority took the view that the assessee had sold slotted angles which constituted parts of safes, almirahs and furniture made of iron and steel falling under entry 145 of the First Schedule and are taxable at 12 per cent with effect from April 1, 1984. Aggrieved by the order assessee took up the matter before the Appellate Assistant Commissioner who took the view that levy of tax at 12 per cent on the sales turnover of slotted angles and panels which constituted parts of furniture is correct since the goods sold by the assessee is nothing but furniture, various parts of which can be assembled or detached as and when required. Assessee took up the matter in appeal as T.A. No. 808 of 1995. Tribunal placing reliance on the decision of the Madras High Court in State of Tamil Nadu v. Poornima Agencies (Tax Case No. 977 of 1979 dated December 5, 1979) took the view that slotted angles, plates, shelves, bolts and nuts cannot be termed as furniture and office equipment. The Tribunal also held that the Revenue has not placed any material to show that slotted angles, panels, etc., sold by the assessee were of the category which could only be used as parts of furniture or were intended to be used as furniture. Tribunal directed the assessing authority to assess the turnover of slotted angles, panels, etc., at 6 per cent under entry 45 of the First Schedule. Aggrieved by the same, State has preferred T.R.C. No. 58 of 2001.

4. We are in this case concerned with the application of entry 145 as it stood prior to April 1, 1984 and subsequent to April 1, 1984. For the year 1983-84 unamended entry 145 has to be applied and for the year 1984-85 amended entry has to be applied. So far as the assessment for the year 1983-84 is concerned, the decision in Godrej and Boyce Mfg. Co''s case [1991] 83 STC 474 (Ker) would hold the field. We have got our own reservation with regard to the reasoning adopted in that judgment, but so far as the assessment year 1984-85 is concerned, we have to interpret entry 145, which reads as follows:

Sl. Description of Point of levy Rate of tax No. goods 145. Safes, almirahs and At the point of first sale 12 per cent. furniture or parts in the State by a dealer thereof made of who is liable to tax under iron or steel Section 5

This Court in Godrej and Boyce Mfg. Co''s case [1991] 83 STC 474 SC, took the view that all articles mentioned in entries 143, 143A, 144 and 145 are end-products used as articles of furniture as such. The court held that it cannot admit of any doubt that in common parlance or in the commercial world the slotted angles and panels separately sold by the assessee is not known or understood as a furniture made of iron or steel and usable as such and the fact that slotted angles and panels can be so manipulated, to make a rack or ladder, which may be called as an item of furniture, cannot be a factor to hold that the word "furniture" made of iron or steel will take within its, fold, even the component part or parts thereof.

5. We may with due respect submit that the Legislature in entry 145 as it stood prior to April 1, 1984 had correctly used the expression safes, almirah and furniture. The word "safe" has been defined in the Chambers 20th Century dictionary to mean a chest or closet, a ventilated box or cupboard. The word "almirah" has been defined as follows:

Wardrobe, movable cupboard, cabinet, etc.

"Furniture" has been defined as follows:

"movables, either for use or ornament, with which a house is equipped; equipment; decorations; accessories; metal fittings for doors and windows; pieces of wood or metal."

We may in common parlance call furniture as a safe, almirah, chair, table, etc. The word "furniture" has got its own definite meaning. The word takes in not only tables, chairs, etc., but various other items of furniture as movable with which house is equipped. Slotted angles and panels, in our view, would fall within the expression "furniture", because it is generally used to make racks which are akin to safes, almirah, etc. These items are stocked and sold in unassembled form only for easy transportation and handling. Contention was raised by the assessee that slotted angles are not parts of furniture and therefore will not fall under entry 145 of the First Schedule. According to him, the item will come under entry 45 of the First Schedule which provides tax for steel and iron items. In support of this contention the counsel argued that slotted angles can be used to make several other items like ladder, partitioning walls, etc. Confusion arose, according to us, due to the fact that the meaning of the word "furniture" has not been properly understood. We have already given the meaning of the word "furniture" in the English language. We have already held that slotted angles and panels are furniture themselves though not in assembled form. Further when the Legislature has used the expression "parts thereof made of iron or steel meaning has been made more clear. Legislature has incorporated those words so that slotted angles and panels made of iron or steel would fall under entry 145. Even though slotted angles may be used or are fit for other purposes, the same will not affect classification of the item for the purposes of levy of tax which has to be done based on main or normal use of the item. No one can have a doubt that the usual or normal use of slotted angles and panels is to make furniture. We therefore find no ambiguity either in the unamended entry 145 or the amended entry 145 by which the position is made explicit. We are therefore of the view, that slotted angles and panels would fall within the expression "furniture" and would also fall under entry 145. We also reject the argument of the assessee that item will come under iron and steel articles provided under entry 45 because a specific entry will exclude a general entry. In other words since the item falls under entry 145, it cannot be consigned to a general entry under 45.

6. We may point out entry 145 has been amended subsequently vide entry 64 which reads as follows:

"Furniture of all kinds whether sold as finished goods or in unassembled form:

Explanation: Slotted angles when assembled form furniture or rack shall be deemed to be furniture for the purpose of this entry."

We are also unable to agree with the reasoning of the Madras High Court in State of Tamil Nadu v. Poornima Agencies. We may incidentally point out that in Mas Storage Systems (P.) Ltd. Vs. State of Kerala, Short Notes 34 a Bench of this Court while interpreting Schedule I, Entry 58 of the Kerala General Sales Tax Act, 1963 held that slotted angles and panels separately sold are not furniture made of iron and steel. We find it difficult to subscribe to that view also. Further reference to larger Bench is unnecessary since entry with which we are concerned is entry 145 as it stood then. We are of the view, even without the Explanation introduced later, slotted angles would fall under entry 145. We therefore answer the question in favour of the Revenue and hold that slotted angles and panels, etc., would fall under entry 145. Assessee is therefore bound to pay tax at the rate of 12 per cent. Order of the Tribunal in T.A. No. 808 of 1995 is set aside and the order of the assessing authority is upheld. Appeal filed by the State is partly allowed and the question is answered in favour of the Revenue. We hold that slotted angles and panels are furniture and the levy of tax at 12 per cent on the sales turnover of slotted angles and panels under entry 145 of the First Schedule is upheld.