
(1984) 03 RAJ CK 0008
In the Rajasthan High Court
Case No : .C.S.T. Reference No. 24 of 1973

State of Rajasthan

APPELLANT

Vs

Oriental Agencies

RESPONDENT

Date of Decision : 26-03-1984

Acts Referred:

Rajasthan Sales Tax Act, 1994 — Section 15

Citation : (1987) 64 STC 135

Hon'ble Judges : S.N. Bhargava, J; S.C. Agrawal, J

Bench : Division Bench

Advocate : K.K. Sharma, for the Appellant; S.M. Mehta, for the Respondent

Judgement

S.C. Agrawal, J.—This reference has been made by the Board of Revenue u/s 15 of the Rajasthan Sales Tax Act, whereunder the following question has been referred for the opinion of this Court:

Whether on the facts and circumstances of the case the turnover of Rs. 5,464 being of hoses is leviable to tax at general rate of 6 per cent or at 10 per cent.

2. M/s Oriental Agencies, respondent (hereinafter referred to as "the assessee") is a registered dealer under the Rajasthan Sales Tax Act, 1964 (hereinafter referred to as "the Act"). For the period 1st July, 1966 to 30th June, 1967 the turnover of the assessee included the sales of rubber hoses amounting to Rs 5,464. The Commercial Taxes Officer was of the view that rubber hoses were taxable at the rate of 10 per cent under entry 77 of notification dated 2nd November, 1965 and entry No. 63 of the notification dated 29th May, 1967. The Commercial Taxes Officer rejected the contention of the assessee that the rubber hoses fell in the residual entry and were taxable at general rate of 6 per cent. The Deputy Commissioner affirmed the order of the Commercial Taxes Officer in appeal. The Board of Revenue held that rubber hoses were chargeable at general rate of 6 per cent and were not covered by entry No. 77 of notification dated 2nd November, 1965 and entry No. 63 of notification dated 29th May, 1967. Feeling

aggrieved by the aforesaid order of the Board of Revenue, the department moved the Board of Revenue for referring the question of law arising out of the order of the Board of Revenue to this Court and thereupon the Board of Revenue has referred the question mentioned above to this Court.

3. Entry No. 77 of the notification dated 2nd November, 1965 and entry No. 63 of the notification dated 29th May, 1967 were identical and they were as under :-

All types of sanitary goods and fittings and all types of pipes and pipe fittings.

4. The submission of Shri Sharma, the learned counsel for the department was that the words "all types of pipes and pipe fittings" are words of wide amplitude and they would cover every type of pipe including rubber hose, which is also a pipe. In support of his aforesaid submission, Shri Sharma has placed reliance on the definition of "hose" as contained in the Shorter Oxford Dictionary. Shri Mehta, the learned counsel for the assessee, has on the other hand placed reliance on the decision of the Supreme Court in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. G.S. Pai & Co. 1980 45 STC 58 and the decisions of the Madhya Pradesh High Court in Commissioner of Sales Tax, M.P. v. Truel Tubes 1980 46 STC 473, Commissioner of Sales Tax v. IISCO Stanton Pipe and Foundry Co. Ltd. 1982 50 STC 207 and Commissioner of Sales Tax, M. P. v. Mandsaur Cement Pipe Factory 1983 54 STC 112 and the decision of the Kerala High Court in Deputy Commissioner, Ernakulam v. Equipment Agencies 1981 47 STC 68.

5. In Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. G. S. Pai & Co. 1980 45 STC 58, the Supreme Court has construed entry No. 26A of the First Schedule of the Kerala General Sales Tax Act, 1963 which read as under:

Water supply and sanitary fittings.

6. The Supreme Court held that words "water supply...fittings" do not occur in isolation, but they are used in juxtaposition of the words "Sanitary fittings" and that the entire expression "water supply and sanitary fittings" is one single expression and the words "water supply...fittings" must receive colour from the immediately following words "sanitary fittings". The Supreme Court held that the expression "water supply...fittings", in the context in which it occurs, means such pipes or materials as are meant for use for supply of water to or in lavatories, urinals or bath-rooms of private houses or public buildings and they do not include heavy pipes which are laid underground as mains for carrying water supply from one area or place to another.

7. In Commissioner of Sales Tax, M. P. v. Truel Tubes 1980 46 STC 473, the Madhya Pradesh High Court, while construing entry 56 of Schedule II to the Madhya Pradesh General Sales Tax Act, 1958, which was in the same terms as the entry in question in the present case, has held that the words "all types of pipes and pipe fittings" must receive colour from the words associated with them

and must be construed as embracing pipes used for sanitary purposes and would not include conduit pipes, which are used for the purposes of casing of electrical wiring. In taking the aforesaid view, the Madhya Pradesh High Court has placed reliance on the decision of the Supreme Court in Deputy Commissioner of Sales Tax v. Pai & Co. 1980 45 STC 58 . The aforesaid decision in Commissioner of Sales Tax Vs. Truel Tubes, was followed in Commissioner of Sales Tax Vs. IISCO Stanton Pipe and Foundry Co. Ltd., wherein it was held that cast-iron pipes were not included within the expression "all types of pipes and pipe fittings" contained in entry 56 of Schedule II to the Madhya Pradesh General Sales Tax Act, 1958. Again in Commissioner of Sales Tax, M.P. v. Mandsaur Cement Pipe Factory 1983 54 STC 112, the Madhya Pradesh High Court held that cement pipes were not included within entry 56 of Schedule II to the Madhya Pradesh General Sales Tax Act.

8. In Deputy Commissioner, Ernakulam v. Equipment Agencies 1981 47 STC 68, the Kerala High Court, while considering the entry "water supply and sanitary fittings" (entry 56A of the First Schedule to the Kerala General Sales Tax Act) held that polythene pipes were not covered by the said entry.

9. The decisions of the Madhya Pradesh High Court, referred to above, are fully applicable to the present case inasmuch as entry No. 56 of Schedule II of Madhya Pradesh General Sales Tax Act, which came up for consideration before the Madhya Pradesh High Court in those cases, was in the same terms as entry Nos. 77 and 63 which arise for consideration before us and for the reasons given in the aforesaid judgment, it must be held that the expression "all types of pipes and pipe fittings" in the said entries receive colour from the words preceding this expression in the said entries, viz, "all types of sanitary goods and fittings" and has to be construed as embracing pipes and pipe fittings used for sanitary purposes. Rubber hose pipes are not normally used for sanitary purposes and, therefore, rubber hose pipes would not fall within the ambit of the expression "all types of pipes and pipe fittings" as contained in the entries referred to above.

10. Rubber hose pipes would not be covered by the words "all types of pipes and pipe fittings" also for the reason that the word "fitting", as explained by the Supreme Court in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. G.S. Pai and Co., is intended to refer to articles or things which are fitted or fixed to the floor or walls of a building and may, in a given case, include even articles or materials fitted or fixed outside, provided they can be considered as attached or auxiliary to the building or part of it. A rubber hose pipe is not used for the purpose of fitting or fixing to the floor or wall of a building. Rubber hose pipe would therefore, not be covered by the expression of "all types of pipes and pipe fittings" as contained in entries Nos. 77 and 63, referred to above.

11. Once it is found that the rubber hoses does not fall within the ambit of the aforesaid entries it must necessarily fall in the residual entry because it is not the case of the department that it is covered by any other entry.

12. It must, therefore, be held that on the facts and in the circumstances of the case, the turnover of Rs. 5,464 being of hoses was leviable at the general rate of 6 per cent and not at the rate of 10 per cent. The question referred, to is answered in the affirmative, i. e., in favour of the assessee and against the department. There will be no order as to costs.