

**(1995) 07 MAD CK 0077**

**In the Madras High Court**

**Case No :** T.C. No's. 801 of 1985 and 69 of 1989 (Revision No's. 363 of 1985 and 39 of 1989)

State of Tamil Nadu

APPELLANT

Vs

A.D. Parasurama Chettiar and Sons

RESPONDENT

**Date of Decision :** 10-07-1995

**Acts Referred:**

Tamil Nadu General Sales Tax Act, 1959 — Section 38

**Citation :** (1995) 07 MAD CK 0077

**Hon'ble Judges :** Venkatachalam, J;Abdul Hadi, J

**Bench :** Division Bench

## Judgement

Abdul Hadi, J.—Both these tax revisions u/s 38 of the Tamil Nadu General Sales Tax Act preferred by the Revenue, deal with a common question and hence they are taken up together. T.C. (R) NO. 69 of 1989 deals with the assessment year of 1984-85 and T.C. (R) No. 801 of 1985 deals with the assessment year of 1997-78. In both the revisions the question is whether "glass bottles" could be charged to tax at point as contended by the Revenue, or, to multi-point tax, as contended by the assess, in each of the cases. The assessee in T.C. (R) No. 69 of 1989 is dealer in raw materials required for making aerated water and presumably he has sold glass bottles incidentally. The assessee in T.C. (R) No. 801 of 1985 deals with empty glass bottles.

2. No doubt, prior to April 1, 1961, there was entry 54 in the First Schedule to the Tamil Nadu General Sales Tax Act, which dealt with specifically of "glass bottles" and levied a single point tax. But that came to be deleted with effect from April 1, 1961. But subsequently entry 102, in same Schedule, was introduced in 1974, which ran as follows :

"Glass and glassware :

(i) Sheet glass and plate glass :

(ii) Mirrors :

(iii) Laboratory glassware :

(iv) Glass shell, glass globes and chimneys for lamps and lanterns :

(v) Other glassware including tableware."

Here it must be noted that the term "glass bottle" has been specifically expressed in the abovesaid entry.

3. In 1993, the said entry 102 was substituted by Act 21 of 1983 with effect from January 1, 1983, as follows :

"Glass and glassware, all including :

(i) Flat glassware, all sorts including :

(ii) Mirrors,

(iii) Laboratory glassware,

(iv) Glass shells, glass globes and chimneys for lamps and lanterns,

(v) Tableware and other glassware.

Explanation. - Flat glass includes, sheet glass wired glass and glass, whether in the form of plate glass, figured glass or in any other form."

Though there are some minor changes in the abovesaid 1983 entry compared with the 1974 entry, for all practical purposes it can be said, in the light of the question in hand, that there is no real difference between the two.

4. In 1987, the abovesaid 1983 entry a charges. In other words the abovesaid sub-item (v) was renumbered as sub-item (vi) and before sub-item (vi) as so renumbered, the following sub-item was inserted, namely :

"(v) Glass bottles, glass marbles and glass beads".

This change came into force from January 1, 1987. So, From January 1, 1987, there is no difficulty in holding that "glass bottles" are chargeable at single point tax. But the question before us in the Revision No. 69 of 1989 is whether, after the above 1983 amendment, i.e., in the assessment year 1984-85, "glass bottles" could be charged to tax only under entry 102. Likewise in T.C. (R) No. 801 of 1985 the question is whether after the above referred to 1974 amendment and prior to the above referred 1983 amendment i.e., in the assessment year 1977-78, whether "glass bottles" could be charged to tax at single point only, under entry 102.

5. In both these tax case while the first two authorities held that the "glass bottles" in each of these two cases should be charged to tax at single point, the Tribunal reversed the said decision and held in favour of the assessee that they are chargeable to tax only as multi-point commodities. Hence these revisions by the Revenue in each of these cases. According to the Tribunal in the popular

sense "glass bottles" would not come under the term "glassware" and only in 1987 glass bottles have been specifically included in the abovesaid entry 102 and so it held that for the above referred relevant assessment years, glass bottles would not come under the term "glassware" mentioned in entry 102 prior to 1987 amendment or prior to 1983 amendment as the case may be.

6. The learned Additional Government Pleader (Taxes) referred us to Atul Glass Industries (Pvt.) Ltd. Vs. Collector of Central Excise, . No doubt that decision also reiterates the settled law, that in assigning meaning the common parlance meaning alone should be given. That decision dealt with a case of "glass mirror" and of the question of its applicability to tax under the term "other glass and glassware" set forth in item 23A(4) of Schedule I to the Central Excises and Salt Act, 1944. It was also held that glass mirror though literally may be an article made of a glass would not come under the term of glassware in that popular senses and so it was held that excise duty could not be levied on it under the abovesaid Act.

7. But the learned Additional Government Pleader (Taxes) relies on the following sentences, in that decision and the same runs as follows :

"..... For the same reason, it cannot be classified as "glassware" for "glassware" means merchandise made of glass and understood in its primary senses as a article."

From this sentences learned Additional Government Pleader (Taxes) wants us to hold that the Supreme Court gas held that Glass means, in the popular senses itself, any merchandise made of glass or any glass article .

8. But we are unable to accept this contention. From that sentence alone it cannot be concluded that the Supreme Court came to the conclusion that anything made of glass would come under the term "glassware" in the popular sense. If that is so, the Supreme Court would have even come to the conclusion that glass mirror was also a glassware, which the Supreme Court did not do so.

8A. On the other hand, the said Supreme Court decision has been elaborately dealt with in 1994 92 STC 450 (Deputy Commissioner of Sales Tax (Law) v. K. Ummul Kulsu). In that a Division Bench of the Kerala High Court comprising of K. S. Paripoornan, J., as he then was and K. P. Balanarayana Marar, J., held, after an elaborate discussion and after referring to Atul Glass Industries (Pvt.) Ltd. Vs. Collector of Central Excise, , that "glass bottles" would not come under the term "glassware" in the popular sense or in the common parlance sense. Paragraph 9 of the said judgment refers to Atul Glass Industries (Pvt.) Ltd. Vs. Collector of Central Excise, and points out that the said decision reiterated the settled law, that the abovesaid common parlance sense must be made in considering any expression used in such entries. In paragraph 10 of its judgment the said Division Bench of the Kerala High Court observed as follows :

"In the light of the principles enunciated in the decisions aforementioned the

meaning of the term "glassware" has to be gathered from the trade practice or the common parlance in trade. In the absence of a definition in the Sales Tax Act the popular meaning attached to glassware by persons who deal in that item has to be resorted to. In the circumstances, the dictionary meaning of the word "glassware" does not lend any assistance to us to decide whether glassware includes glass bottles and phials."

Paragraph 11 of the judgment is as follows :

"Glassware as ordinarily understood is something to do with tableware like glass tumblers, glass dishes, plates, etc. Glass sheets, bangles and mirrors do not come under that category nor syringes, lactometers, etc. It is common knowledge that glass bottles and phials are not ordinarily in a glassware shop. The assessee are not running glassware shops whereas they are dealers in glass bottles, phials, etc. From the order of the Appellate Tribunal it is seen that the respondent in T.R.C. Nos. 113 and 114 of 1990 is a dealer in aluminium goods, plastic goods, empty bottles, perfumes etc. Respondent in T.R.C. No. 40 of 1991 is doing business in empty bottles, corks, perfumes, etc. Neither of them is dealing in tableware which is commonly known as glassware. Glass bottles and phials are not usually sold in a glassware shop. .... The word "glassware" has therefore to be understood according to its popular sense and when so understood it is clear that glass and bottles and phials will not come within that term."

9. Therefore it is clear to us that even under entry 102 of the Tamil Nadu General Sales Tax Act, Glass bottles would not come within the term "glassware". That is why, presumably the term "glass bottles" was sought to be introduced specifically into that entry in 1987, no doubt along with other terms, viz., "glass marbles and glass beads". It must be noted here that even prior to April 1, 1961, the Legislature was aware of the expression of the expression "glass bottles" since in the First Schedule there was entry 54 (as already noted) charging specifically "glass bottles" to tax at single point, after the deletion of that entry 54, when entry 102 was introduced, in the year 1974, if the Legislature really wanted to include "glass bottles" also, for taxing as a single point commodity, the Legislature would have used the expression "glass bottles" specifically in the 1974 amendment itself. But the Legislature did not so not only in 1974, but subsequently in 1983 also. Only in 1987, the term, "glass bottles" once again appeared in entry 102. Therefore it is clear that prior to the 1987 amendment, "glass bottles" could not be brought into entry 102. The net result is, there is no reason for our interference with the impugned orders of the Tribunal in both the cases.

10. Accordingly, these two revision petitions are dismissed. In the circumstances, no order as to costs.

11. Petitions dismissed.