

(2006) 02 KAR CK 0016
In the Karnataka High Court
Case No : STA No. 31 of 2005

Stovekraft Pvt. Ltd.

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 24-02-2006

Acts Referred:

Karnataka Value Added Tax Act, 2003 — Section 4 (1) (b), 60

Citation : (2006) ILR (Kar) 3894

Hon'ble Judges : P. Vishwanatha Shetty, J;N. Kumar, J

Bench : Division Bench

Advocate : K. Arvind Kamath, for the Appellant; Sujatha, A.G.A., for the Respondent

Final Decision : Allowed

Judgement

N. Kumar, J.—The appellant has challenged in this appeal the order dated September 30, 2005 passed by the Authority for Clarification and Advance Rulings (hereinafter referred to as "the authority") u/s 60 of the Karnataka Value Added Tax Act, 2003, holding the rate of tax leviable to stainless steel LPG stove is at 12.5 per cent, kerosene wick stove at 12.5 per cent and stainless steel vacuum flask at 12.5 per cent.

2. The appellant is a dealer registered under the provisions of the Karnataka Value Added Tax Act, 2003 (for short, hereinafter referred to "the KVAT Act"). It is engaged in the manufacture and sale of utensils like pressure cookers, stoves, tavas, flasks, etc. Under the Act the goods are subjected to tax under five different rates of tax under four separate Schedules and u/s 4(1)(b) of the KVAT, 2003. While the First Schedule deals with goods exempted from the tax, the Second Schedule deals with the goods which are taxable at one per cent and the Third Schedule deals with goods which are taxable at four per cent and finally the Fourth Schedule deals with goods which are taxable at 20 per cent. All the unscheduled goods are taxed at the Revenue Neutral rate of 12.5 per cent u/s 4(1)(b) of the KVAT Act.

3. In fact, in the Third Schedule prior to its substitution entry No. 4 dealt with aluminum utensils and enameled utensils. However, in the substituted Third Schedule which came into effect from June 7, 2005 entry No. 5 is substituted in place of earlier entry No. 4, which refers to "all utensils including pressure cookers and pans other than utensils made up of precious metals". Thus, the description of the goods at entry No. 5 is far wider when compared to the earlier entry before substitution.

4. The appellant believed that all the goods manufactured by it including pressure cookers, stoves, tavas and flasks would fall within the definition of utensils and would be chargeable at four per cent as per the aforesaid entry to the Third Schedule. However, with a view to seek an advance ruling from the authority filed an application u/s 60 of the KVAT Act, seeking an advance ruling on the applicability of rate of tax on the sale of stainless steel LPG stove, kerosene wick stove, aluminum non-stick cook-ware, stainless steel vacuum flask. Before the authority the appellant contended that in the absence of the definition of the word "utensils" in the KVAT Act, the dictionary meaning of the same would have to be adopted. The meaning of the word "utensils" as per the various dictionaries would mean a tool or an instrument or an implement. According to the appellant, therefore, it was contended that the aforesaid items manufactured by him are in the nature of implements and are taxable under the aforesaid entry.

5. After considering the contention of the parties, the authority held utensil is a fairly commonly used word and it has a common understanding as a vessel or container to contain things. The meaning in the dictionaries further qualify the use as being for kitchen use or in the house. The utensil is a vessel or container or tool or instrument especially for use in a kitchen. Therefore, the authority was of the view that the stoves are neither tools nor instruments for use in a kitchen, but are appliances for use especially in a kitchen or a household. Keeping in mind that stoves have a general purpose, use, which is not confined only to domestic or kitchen, it was held that the stoves cannot be called as kitchen utensils for the purpose of the Act. Similarly, the vacuum flask and kerosene wick stove were also held to be not utensils. Therefore, it has ruled that the applicability of rate of tax in respect of all those three items is 12.5 per cent u/s 4(1)(b) of the Act. Aggrieved by the said order the appellant is before this Court challenging the same.

6. Sri K. Aravind Kamath, learned Counsel appearing for the appellant, contended before us that entry No. 5 in the Third Schedule is an inclusive entry and it specifically mentions what are the items which are to be excluded from the said entry. Therefore, having regard to the word "utensils" used in the said entry, stoves being appliance used in a kitchen for preparation of food along with pressure cookers fall within the said entry and the interpretation placed by the authority on the word utensil is very narrow and is opposed to the intention with which the Legislature has included entry No. 5 in the Third Schedule. Therefore,

he submits that the said finding requires to be interfered with.

7. Per contra, Smt. Sujatha, learned Additional Government Advocate contended that utensils necessarily mean a vessel, that too, used in a kitchen. A stove is not a utensil because it is not a vessel. In fact, even before this Act came into force stoves were taxed under a separate head. In that view of the matter, the finding recorded by the authority is in consonance with the understanding of the word utensil in common parlance and it does not call for any interference.

8. In the light of the aforesaid contentions, the short point that arises for our consideration is, whether the word "utensils" includes a stove and flask ?

9. In Shorter Oxford Dictionary the meaning of the word "utensil" has been given as under :

Any article useful or necessary in a house hold; a domestic implement, vessel, or article of furniture ; an instrument or vessel in common use in a kitchen, dairy, etc. ; any vessel or other article serving a useful end or purpose ; a tool or implement used by artisans, farmers, etc.

10. The meaning of the word "utility" as per the aforesaid dictionary reads as under :

A useful thing or feature ; a use, an object that can satisfy a human need ; anything which can satisfy a human want.

11. In the Chambers Dictionary, the meaning of the word "utensil" has been given as under :

Any useful or ceremonial implement, tool or vessel; fit for use; to use.

12. In Webster's Dictionary, the meaning of the word "utensil" has been given as under :

A vessel, tool, implement, etc. ; serving a useful purpose ; especially for domestic or farming use ; fit for use.

13. From the aforesaid meaning assigned to the word "utensil" it is clear that the word "utensil" includes a vessel and the word "utensil" is not synonymous with the word "vessel". Utensil means any article useful or necessary in a house-hold commonly used in a kitchen. In other words, an implement, tool or vessel fit for use and serving useful purpose. As the entry stands, the words used are "all utensils" "including". The word "all" and "including" has special significance. The word "includes" is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute. When it is so used, these words and phrases must be construed as comprehending not only such things as they signify according to their nature and import, but also things which the interpretation clause declares that they shall include. The words used in an inclusive definition denote extension and cannot be treated as restricted in any sense. When we are dealing with an inclusive definition it would be

inappropriate to put a restrictive interpretation upon the terms of wider limitation. As the word "utensil" is not defined under the Act, but in entry No. 5 the word used is "all utensils" "including", it is inappropriate to put a restrictive meaning to the word "utensil" as understood in common parlance. The word "utensil" is a term of wider denotation.

14. It is to be remembered the word used in 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 imposed. If the expression is capable of a wider meaning as well as a narrower meaning the question whether the wider or narrower meaning should be given depends on the context and the background of the case. The terms and concepts appearing in the taxing statutes require to be understood the way in which they have been defined in the statute and in the absence of such definitions in the statutes, they should be understood in their popular meaning and as understood in commercial or common parlance. The intention of the legislation which is paramount not only requires to be taken note of, but also the purpose for which the Legislature intends to levy tax at the reduced rate of tax. In this background we have to find out whether the word "utensils" includes stove and flask.

15. In the Schedule under the earlier entries the rate of tax was prescribed for steel articles, aluminum articles and other articles made of other metals as well as pressure cookers. In fact, in the Third Schedule prior to its substitution by the Karnataka Value Added Tax (Amendment) Ordinance (1 of 2005) which came into effect on June 7, 2005 at entry 4 goods taxable at four per cent were "aluminum" and "enameled" utensils. However, in the substituted Third Schedule which came into effect from June 7, 2005 in entry No. 5 is included "all utensils including pressure cookers and pans other than utensils made up of precious metals". Thus, the legislative intent is made clear expressly. What is specifically excluded is the utensils made up of precious metals. The tax of four per cent is levied on all utensils including pressure cookers and pans. If we look at the rate of tax payable to different Schedules, there is a total exemption of payable of tax under the KVAT Act in respect of goods mentioned in the First Schedule. Only one per cent is the tax payable in respect of goods to the Second Schedule because the Second Schedule is with respect to precious metal the value of which could be in thousands and lakhs which are normally not used by common man. 20 per cent is the tax levied on goods in respect of the Fourth Schedule which pertains to narcotics and molasses which is not used by common man. In this context four per cent is the tax levied on goods mentioned in the Third Schedule which are also used by common man. A vessel in a kitchen without a stove is of no use. Similarly, a stove without a vessel is also of no use in a kitchen. They are complementary to each other. Only when both of them are put to use each one of the goods would be useful to a common man. A kitchen without a stove is unthinkable. Irrespective of the strata to which a person belongs every house will have a kitchen and every kitchen will have a stove to cook the food. It is of common use. If we go by the dictionary meaning, a tool or

an implement serving a useful purpose, especially for domestic, that is used in a kitchen is a utensil. All utensils are not vessels. But all vessels are utensils. However, the word "utensil" includes a vessel and all other tools and implements which are of use for domestic purpose and in a kitchen. If the legislative intent is kept in mind and the meaning of the word "utensil" as gathered from the aforesaid definition is taken into consideration and the way the entry is worded namely "all utensils" "including" and when what is excluded from this definition is expressly stated it is clear that a stove whether it is a LPG stove or kerosene wick stove would fall within the words "all utensils" and falls within entry No. 5 of the Third Schedule to the Act.

16. In so far as stainless steel vacuum flask is concerned, there should not be any difficulty as it is a vessel which is used for storing beverages like coffee, tea, milk, etc., at a particular temperature which is used by common man in the house or even outside the house. Merely, because a stove or flask is used outside the house also and in hotels and restaurants and in commercial enterprises, it cannot be said that it does not fall within the word "utensil". Having regard to the use of a stove or a flask in kitchen by a common man, the use of those items commercially outside the house is negligible. That cannot be the determining factor.

17. The Supreme Court in the case of Annapurna Biscuit Manufacturing Co., Kanpur Vs. Commissioner of Sales Tax, U.P., Lucknow, , has held 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 a narrower meaning the question whether the wider or the narrower meaning should be given depends on the context and the background of the case.

18. In fact, a division Bench of this Court in the case of Raja Brick and Tile Industries Vs. The Addl. Commissioner of Commercial Taxes, Zone-II and Another, , has held that the terms and concepts appearing in the taxing statutes require to be understood the way in which they have been defined in the statute and in the absence of such definitions in the statutes, they should be understood in their popular meaning and as understood in commercial or common parlance. They only fortify the understanding in the market parlance, but if they differ from common parlance then the latter will prevail. It is further observed that the intention of the Legislature which is paramount not only requires to be taken note of but also the purpose for which the Legislature intends to levy at reduced rate of tax. It was further pointed out that going by ordinary connotation as also its meaning as understood in commercial parlance and reference to the commodity is put to use to a corresponding entry has to be understood.

19. Under the circumstances, the findings recorded by the authority that stoves have a general purpose use both domestic and commercial, it cannot be called as kitchen utensil for purposes of the KVAT Act and that the vacuum flask has a general purpose and they are not only used in household and in commercial

establishments, hospitals, etc., for carrying a liquid it cannot make flask a kitchen utensil do not stand to reason. Therefore, the said ruling by the authority holding that the stoves and flasks are to be taxed u/s 4(1)(b) of the Act at 12.5 per cent is hereby set aside.

20. In view of the aforesaid discussion we are of the view that the phrase "utensils" used in entry No. 5 includes the stainless steel LPG stove, kerosene stove and vacuum flask which are of common utility in a household and the same fall within entry No. 5 and liable to be taxable only at four per cent.

21. In the light of the aforesaid conclusion the order dated September 30, 2005 is modified to the extent indicated above and the appeal is allowed. No costs.