

(2008) 04 KL CK 0013

In the High Court Of Kerala

Case No : T.R.C. No"s. 428 and 454 of 2001

Supply House

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 11-04-2008

Acts Referred:

Citation : (2008) 2 ILR (Ker) 433 : (2008) 15 VST 207

Hon'ble Judges : H.L. Dattu, C.J.;K.M. Joseph, J;C.N. Ramachandran Nair, J

Bench : Full Bench

Advocate : C.K. Thanu Pillai, S. Shaina and T.K. Shaij Raj, for the Appellant;
Vinod Chandran, Special Government Pleader, for the Respondent

Judgement

H.L. Dattu, C.J.—The Full Bench has this question before it:

Whether the "non-stick cookware" is classifiable under entry 5 of the First Schedule to the Kerala General Sales Tax Act, 1963 or whether the item would fall under entry 104 of the First Schedule, which provides for levy of tax on pressure cooker, cook and serve-ware, casseroles, water filters and similar home appliances not coming under any other entry in this Schedule or in the Fifth Schedule?

2. Entry 5 of the First Schedule to the KGST Act reads thus:

Sl. No.	Description of the goods	Point of levy	Rate of tax
5.	Aluminium household utensils	At the point of first sale in the State by a dealer who	4 per cent
	whether made out of aluminium or aluminium alloys	is liable to tax under Section 5	

3. Entry 104 of the First Schedule to the Act reads as under:

Sl. No.	Description of the goods	Point of levy	Rate of tax
104	Pressure cooker, cook-and-serve At the point of first sale in the State by a dealer who is liable to tax under Sec- water filters and similar home appliances not coming under any other entry in this Schedule or in the Fifth Schedule.		12.5 per cent

4. The reference to the Full Bench was made, because it was found that there was a divergence of opinion upon the question, one division Bench has held that aluminium non-stick wares such as "frying pan" and "dosa thava" are aluminium household utensils and therefore would come under entry 5 of the First Schedule to the KGST Act and another Division Bench has held that "satilon-coated aluminium products" are "similar house appliances" and therefore would fall under entry 104 of the First Schedule to the KGST Act.

5. In T.R.C. Nos. 562 and 563 of 2001, in the judgment delivered on December 18, 2001 Since affirmed by Supreme Court in Hawkins Cookers Limited v. State of Kerala [2008] 14 VST 375.--Ed., a Bench of this Court has held "satilon-coated aluminium products" are classifiable under entry 104 of the First Schedule to the KGST Act and chargeable to sales tax at 12.5 per cent. The court has negated the contention of the assessee that "satilon-coated aluminium products" are identical with aluminium household utensils made of aluminium and aluminium alloys. The court is further of the view, that, coating of satilon makes the difference to the product and in trade or commercial parlance no one would describe satilon-coated aluminium products as aluminium household utensils.

6. In Tax Revision Case No. 49 of 2003, another Division Bench by its judgment dated August 22, 2003, has held that "aluminium non-stick wares" such as frying pan and dosa thava are aluminium household utensils and consequently, would fall under item No. 5 of the First Schedule to the KGST Act. The court after noticing the observations made by the first appellate authority and the relevant entries has observed as under. The relevant portion whereof is this:

Now let us consider the question as to whether the aluminium utensils such as frying pan and dosa thava with a coating inside the vessel to make it non-stick will fall under either of the entries. Admittedly, the words "non-stick" were not there either under entry 5 or under entry 104 at the relevant time. Entry 5 refers to aluminium household utensils made of aluminium and aluminium alloys. In view of the finding by the first appellate authority on inspection of the item that the said items are aluminium household utensils, it would consequently fall under item No. 5. The fact that there is a chemical coating inside the utensil will not alter the position and the same will nevertheless remain aluminium household utensil. Now the only other thing to be considered is as to whether such an

aluminium utensil can be brought under entry 104 of the First Schedule extracted above. Entry 104 as extracted above would clearly show that these two items can be brought only under home appliances. However, in order to attract the said entry, the "home appliances" in the instant case--frying pan and dosa thava--should not come under any other entry in the First Schedule or in the Fifth Schedule. Thus, entry 104 is not attracted. Entry 5, as we have already noted, deals with aluminium household utensils. The principle that special excludes general will also apply. The Tribunal has taken the view that the two items considered will not fall either under entry 5 or under entry 104 only because these two items are non-stick wares which were not specifically included in the said two entries during the relevant period. We find that the Tribunal had observed that only vessels made wholly of aluminium and aluminium alloys will fall under entry 5. This view of the Tribunal, according to us, was not justified in view of the fact that even non-stick items are included under entry 5 at the relevant time provided the items are aluminium household utensils. From the findings of the first appellate authority, the items are only made of aluminium with a chemical coating which will not take the product out of the entry 5. We are in agreement with the view taken by the first appellate authority. The decision of the Division Bench of this Court in T.R.C. No. 562 of 2001 has no application to the present case in view of the clear finding of fact entered by the first appellate authority that the item dealt with by the assessee is aluminium household utensil and the admitted position as could be seen from the assessment order that it is an aluminium household utensil.

7. Arguments canvassed:--Our attention was drawn by Mr. C.K. Thanu Pillai, the learned Counsel for the assessee, that, the assessee is a dealer in non-stick cookware made of aluminium and since these utensils are used as household utensils, they should be necessarily classified as aluminium household utensils made of aluminium and aluminium alloys and consequently should be treated as an item falling under entry 5 of the First Schedule to the KGST Act and chargeable to sales tax at four per cent. The learned Counsel would further contend that this Court in P. Ratnakaran, ARR VEE Distributors, Kollam v. State of Kerala (S.T. Rev. No. 49 of 2003), while considering aluminium non-stick ware such as frying pan and dosa thava sold by the assessee therein, has concluded that, since those items are mainly made of aluminium and even after coating inside the vessels will not lose their identity as aluminium vessels and therefore, classifiable under entry 5 of the First Schedule to the Act and therefore, the same principle and interpretation requires to be accepted and adopted while considering whether non-stick cookware made of aluminium is classifiable under entry 5 of the First Schedule to the KGST Act or under entry 104 of the First Schedule.

8. The learned Counsel Sri Vinod Chandran for the Revenue would contend that non-stick cookware though made of aluminium or aluminium alloy, because of the permanent coating inside and outside the vessel, would not retain its identity as aluminium household utensil and therefore requires to be classified as an item

falling under entry 104 of the First Schedule to the KGST Act.

9. Our decision:--Now we first turn to analyse the item sold by the assessee. As we understand from the reference order, the assessee apart from others, is a dealer in non-stick cookware. The assessee has not produced any material before us in support of his assertion that they are purely made of aluminium without any coating inside or outside the utensils. Traditionally, the non-stick cookware is made of either stainless or made of cast iron and now-a-days they are also made of metals such as aluminium or aluminium alloys. In the trade circle and in common parlance there is well merited distinction between aluminium household utensils on one hand and the non-stick cookware on the other. The aluminium household utensils are normally used by the people below the poverty line for the purpose of cooking their regular meal. The Legislature may be keeping in view the persons and the purpose for which these utensils are used has fixed the lower rate of tax at five per cent. For the purpose of commodity taxation this aspect may not be much relevant factor, but at the same time cannot be totally ignored. The item "non-stick cookware" though could be made of aluminium or aluminium alloy, in order to make it "non-stick" is coated with satilon both inside and outside the utensil. But the question is whether non-stick cookware could be equated with aluminium household utensil and whether this is acceptable to the commercial community as an aluminium domestic utensil.

10. The word "household" is more or less equivalent to the word "domestic". The word "domestic" is defined in the Shorter Oxford Dictionary "as if or belonging to the home, house or household". The meaning of the word "utensils" as per the Concise Oxford Dictionary is instrument, implement especially one in domestic use, as kitchen, cooking or religious use. In common parlance, household utensils mean the domestic kitchen utensils. For the purpose of taxation, it is the predominant use" which has to be taken in to consideration. The ordinary dictionary meaning of the word "utensil" is sufficiently wide to include any article useful or necessary in a household. In Commissioner of Sales Tax, Uttar Pradesh Vs. The Modi Sugar Mills Ltd., , the court has observed that in a taxing statute, equitable considerations are entirely out of place. Nor can the taxing statute be interpreted on any presumptions or assumptions. The courts must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed ; it cannot imply anything which is not expressed; it cannot import provisions in the statutes so as to imply an assumed deficiency.

11. Now we analyse the relevant entries. The Schedule in "an Act merely sets down things and objects and contains their names and; descriptions. The Schedule does not enact anything. They can neither enlarge nor cut down the meanings or articles or things specifically named in the list. Entry 5 speaks of aluminium household utensils made of aluminium and aluminium alloys. The entry, therefore, contemplates household utensils made of aluminium and aluminium alloys. The phraseology used suggests that the household utensils

made of aluminium and aluminium alloys alone would fall under this entry. The entry in question should be limited, in our view, to those utensils which are generally used in kitchen and made of aluminium and aluminium alloys. What we infer is, the entry primarily refers, only to primary forms of household utensils made of aluminium and aluminium alloys and not to the modified or improved versions of aluminium utensils. The words used in the entry are to be construed in the sense in which they are understood in the trade by the dealer and the consumer. The first approach should be, read the words as they are. If they give coherent and cogent meaning without leading to absurd or anomalous results, then the only thing that should be done is to follow the words of the statute literally. This is normally known as rule of literal interpretation. Therefore, in our view, the first approach should be, read the words as they are. Secondly, to consider whether an item falls within the meaning of an entry of a Schedule to an Act.

12. Entry 104 speaks of pressure cooker, cook-and-serve ware to keep food warm, casseroles> water filter, and similar home appliances, but not coming under any other entry in the Schedule or in the Fifth Schedule. Under this entry, the Legislature after enumerating the goods which are used as home appliances has specifically used the expression "similar home appliances" but not coming under any other entry. The expression "similar" is an important expression. It does not mean identical but it means corresponding to or resembling to in many respects; or having a general likeness. The statute does not: contemplate that the goods classified under the words of "similar description" shall be in all respects the same. If it did, these words would be unnecessary. They were intended to embrace goods but not identical with those goods. The Revenue does not dispute that non-stick cookware is firstly made of aluminium alloy and also used as home appliance, but their contention appears to be that though non-stick cookware is made of aluminium alloy, its inside and outside is coated with satilon, firstly to make the food item prepared by using the non-stick cookware not to stick to the utensil and secondly to wash off the oil or grease easily from the utensil.

13. A sales tax statute being one levying tax on goods, any particular term used to specify an item of goods on which tax is levied, must, not being a term of science or art, be presumed to have been used in the ordinary sense and, therefore, it should be understood according to the meaning ascribed to it in common parlance. Therefore, while interpreting any item subjected to tax under the sales tax laws, resort should be had to their popular meaning or meaning attached to them by those dealing in them, i.e., in the commercial sense and not to the scientific or technical meaning of such term. It is now well-settled legal position in law that, when the statute does not provide any definition in the statute for ascertaining the correct meaning of the entry, the same requires to be construed and understood in common parlance, or by the commercial-parlance rule. Sometimes "user test" can also be applied for proper interpretation of the entry in the statute.

14. In *P. Ratnakaran v. State of Kerala* (S.T. Rev. No. 49 of 2003), the court was primarily concerned with rate of tax on the sale of aluminium non-stickware such as frying pan and dosa thava. The stand of the assessee was that these items would fall under entry 5 of the First Schedule to the KGST Act. However, the assessing authority took the stand that the said items are classifiable as items falling under entry 104 of the First Schedule to the KGST Act, which speaks of pressure cooker, cookware, etc., and similar house appliances not coming under any other entry in this Schedule or in the Fifth Schedule. The expression "non-stick cookware" was conspicuously absent under the original entry and this expression was introduced/substituted in the entry for the first time by Act 23 of the 1999 with effect from April 1, 1999. In the appeal filed against the order of assessment, the assessee had produced the samples of items of aluminium frying pans and dosa thava. The first appellate authority had entered a finding after inspection of the items, that the said two items are made of aluminium, but only with a chemical coating inside the utensils to become the utensils non-stick and hence the goods will come under entry 5 of the First Schedule. This view of the first appellate authority is not accepted by the Tribunal in the second appeal filed by the Revenue. The Tribunal was of the opinion that "frying pan and dosa thava" are "similar home appliances" and therefore they require to be classified under entry 104 of the First Schedule to the Act.

15. In the tax revision case filed by the assessee, this Court has taken the view that mere chemical coating inside the utensils will not alter the position and the same will nevertheless remain aluminium household utensil. The issue therefore is, in spite of such coating, whether frying pan and dosa thava are aluminium household utensils, which could be classified under entry 5 of the First Schedule to the Act. At this stage, it may be necessary to look into the reasoning and conclusion reached by this Court while holding the aforesaid items are aluminium utensils and therefore, it would be inappropriate to classify those items under entry 104 of the First Schedule to the KGST Act. The learned judges proceeded on the assumption that the expression "non-stick" was not there either under entry 5 or entry 104 of the First Schedule to the Act and therefore, merely because there was a chemical coating inside the utensil, it will not alter the position and the same will nevertheless remain household utensil. It is difficult for us to accept the reasoning of the court. In entry 104 of the First Schedule to the Act, the Legislature after enumerating certain goods which are household utensils, consciously uses the expression "similar home appliances" not falling under any other entry in the First or Fifth Schedule to the Act. This expression is not taken note of by the court while construing the items which fell for consideration. In our view, if this expression was noticed by the court, then possibility of the court classifying the frying pan and dosa thava which, though made of aluminium but coated with satilon inside and outside the utensil, would not have concluded that those items would fall under entry 5 of the First Schedule. The entry 104 of the First Schedule to the Act speaks of pressure cooker, cook-and-serve ware and water filters, etc. These are all home appliances

used regularly by the people who are just above the poverty line. These items may not be luxury items and may not be absolute necessity in cooking at home. Further these items could be made of aluminium alloys, stainless steel and cooper alloys. The non-stick cookware may be made of aluminium but inside and outside the utensil it is coated with satilon chemical and since it is used as home appliance, it would fall within the meaning of "similar appliances" and, therefore, in our view, would certainly fall under entry 104 of the First Schedule. In our view, the satilon coating on the utensil would increase the utility value of the utensil and also becomes an expensive item when it is sold in the market. They no more continue as primary product of aluminium or aluminium alloys, though it continues to be home appliance. Since there is a separate entry for this type of home appliances, they should be necessarily classified under that entry. Secondly, coating of satilon on aluminium utensils would definitely makes the difference to the product and in trade or commercial parlance no one would describe the satilon-coated aluminium products as aluminium household utensils. If this be the correct view, as we think it is, with great respect to the learned Judges who decided P. Ratnakaran's case (S.T. Rev. No. 49 of 2003), the view that frying pan and dosa thava coated with satilon would come entry 5 of the First Schedule to the Act, is not the correct view.

16. The second fallacy in the reasoning of the learned judges appears to be that they were more swayed by the findings of the first appellate authority. It is no doubt true that the first appellate authority on inspection of the items has come to the conclusion that "frying pan" and "dosa thava" are made of aluminium and therefore the said items are household utensils. This finding of fact normally is not disturbed by the High Court while exercising its revisional jurisdiction/but, at the same time, if that finding of fact is wholly perverse, then it would be certainly a question of law and the revisional court can exercise its revisional power to correct that perverse finding. The first appellate authority having said that the commodities in question are made of aluminium did not give any finding whether coating of these items with the satilon chemical would take out these items from the entry, aluminium household utensils. Therefore, in our view, this Court should not have been persuaded by the findings of the first appellate authority.

17. The other reasoning of the learned judges is that, since entry 5 of the First Schedule deals with aluminium household utensils, the principle that special excludes general will also apply. There cannot be any dispute on this proposition of law. However, if there are two entries and one entry is broader and covers an entire class of goods, while the other entry covers some of the goods out of the said class, the latter entry should be considered as a special entry in respect of those goods. In such a situation, the special entry would cut down the scope of the general entry, so that both the entries could be read harmoniously and given effect to.

18. However, the question is whether non-stick household utensils fall under specific entry, entry 5, or under general entry "similar home appliances" not

coming under any other entry in this Schedule or in the Fifth Schedule under entry 104. We have already taken the view that aluminium utensils referred to in entry 5 are pure aluminium products and not value-added products of aluminium like non-stick household utensils. In fact, non-stick household utensils are a class in itself and the Legislature by subsequent amendment brought it under entry 104. This obviously reveals the legislative intention that it never intended to treat non-stick items including those essentially made of aluminium, under entry 5 as aluminium household utensils". Therefore, we are of the view that until non-stick items were specifically brought under entry 104, those items were covered under the residuary category "similar home" appliances" referred to in entry 104.

Since in effect, we are overruling the judgment in P. Ratnakaran's case (S.T. Rev. No. 49 of 2003), we must add that it is only household utensils, whether made of aluminium or aluminium alloys which will fall under entry 5 of the First Schedule to the Act.

19. In the result, we hold that, "non-stick cookware made of aluminium" are home appliances and classifiable under entry 104 of the First Schedule to the KGST Act.

The revision petitions shall now be placed before the Division Bench dealing therewith for appropriate orders.