

(1997) 08 KAR CK 0047

In the Karnataka High Court

Case No : Writ Appeal No's. 4577 and 4578 of 1995 and Sales Tax Revision
Petition No. 65 of 1996

Sushil Industries and another

APPELLANT

Vs

Additional Assistant Commissioner of Commercial Taxes
(Assessments), Mangalore and others

RESPONDENT

Date of Decision : 27-08-1997

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 5 (3) (a), 5 A

Citation : (1998) 110 STC 484

Hon'ble Judges : V. Gopala Gowda, J;G.C. Bharuka, J

Bench : Division Bench

Advocate : M.N. Shankaregowda and S. Narayan, for the Appellant; Smt.
Sujatha, High Court Government Pleader, for the Respondent

Judgement

G.C. Bharuka, J.—The short question involved in these cases is, as to whether the word "timber" as used in Explanation 1 to section 5A of the Karnataka Sales Tax Act, 1957 (in short "the Act"), as it stood till April 1, 1988, included "veneers" as well.

2. The appellants/petitioner, hereinafter referred to as "the assesses", are registered dealers under the Act. According to the present assesseees, they purchase timber and convert the same into veneers/plywood and sell the same at concessional rate of tax of 4 per cent provided u/s 5A, on furnishing of form No. 37 by the purchasers declaring that, the same are required by them for the purpose of manufacturing.

2A. Section 5A provides for taxation of industrial inputs by prescribing a lower rate of tax on sale of goods as industrial inputs at 4 per cent in case the general rate of tax prescribed u/s 5 read with the Second Schedule to the Act, is higher than 4 per cent.

Explanation (1) to the said section which calls for an interpretation by us, as it

stood before its amendment by Karnataka Act 15 of 1998, read thus :

"Explanation. - (1) For the purpose of this section, the expressions "industrial inputs" or "inputs", mean either a "component part" or "raw material", but do not include wood, bamboo and timber (other than packing shooks) and inputs falling under serial numbers 104 (ethyl alcohol), 104-A (denatured spirit), 104-B (M.G. alcohol) and 115 (molasses) of the Second Schedule."

3. As noticed above, in the context of the said explanation, we are required to ascertain and pronounce whether "timber" and "veneer" manufactured out of the same are the same or different commodities in common parlance and or for the purpose of the Act.

4. In the case of *Mukesh Kumar Aggarwal & Co. v. State of Madhya Pradesh* [1998] 68 STC 324 MP (paragraph 4), it has been held by the Supreme Court that, in a taxing statute words which are not technical expressions or words of art, but are words of everyday use, must be understood and given a meaning, not in their technical or scientific sense, but in a sense as understood in common parlance, i.e., "that sense which people conversant with the subject-matter with which the statute is dealing, would attribute to it". Such words must be understood in their "popular sense". The particular terms used by the Legislature in the denomination of articles are to be understood according to the common commercial understanding of those terms used and not in their scientific and technical sense "for the Legislature does not suppose our merchants to be naturalists or geologists or botanists".

5. In *Mukesh Kumar's case* [1998] 68 STC 324 (SC) the question which had fallen for consideration before their Lordships was, as to what is the true connotation of the word "timber" in common as well as legal parlance. It has been held that, the expression "timber", it seems to us, has an accepted and well-recognized legal connotation and is nomen juris. It has also a popular meaning as a word of everyday use. In this case, it was held that the two meanings, of "timber" the legal and the popular, coalesce and are broadly subsumed in each other.

6. In the Chambers 20th Century Dictionary, the meaning of the word "timber" is this :

"wood suitable for building or carpentry, whether growing or cut : standing trees of oak, ash, elm, or (locally by custom) other kinds, etc."

7. After considering the said definition and meanings of the word "timber" it was further held that, in its popular sense "timber" is understood to be "imarathilakdi". In a popular sense "timber" has certain association of ideas : as to its size, stability, utility, durability, the unit or measure of quantity and of valuation, etc.

8. Admittedly, "veneer" is a thin layer or sheet of cut by a rotary machine used to measure as a common or ordinary surface. It can also be referred to as a thin

layer of wood which are put together to form plywood.

9. In Websters New 20th Century Dictionary "veneer" is defined as :

"v. 1. to cover with a thin layer of fine material; especially, to cover (wood) with wood of finer quality, as in furniture,

2. any of the thin layers glued together in plywood,

3. any attractive but superficial appearance or display; as a veneer of culture.

10. Considering the said aspects, the learned single Judge has held that :

"Let me examine whether venner can be called as timber on the basis of the principles laid down in the above case. In common parlance, "timber" is normally used to refer to logs, rafters, planks or other cut sizes. The word "timber" is not used to refer to an item manufactured out of timber. While planks and cut sizes of timber would be called as "timber", once they are shaped or used in the manufacture of furniture, like chairs or tables, they cease to be timber and are not called as timber. Similarly, the thin slices or sheets manufactured from out of timber for providing the facing layers is not called as "timber", but is called as "veneer". No one in the trade, when he sees such a thin layer of wood intended as a facing layer, refers to it as "timber". It is referred as "veneer". Hence it has to be held that "venner" is not "timber" in the ordinary sense."

11. The said finding of the learned single Judge regarding common parlance meaning and understanding of "veneer" and "timber" as distinct commodities has not been questioned by the respondents before us.

12. Despite the aforesaid finding, the learned single Judge has held that, for the purpose of Explanation 1 to section 5A of the Act, the word "timber" will include "venner" and the said view is sought to be supported by Smt. Sujatha, learned High Court Government Pleader appearing for the respondents.

13. It is of importance to note here that much controversy and confusion had been created by two clarifications issued by the Commissioner of Commercial Taxes in respect of the controversy at hand. These clarifications which are dated May 25, 1987 and January 5, 1988, have been filed as annexures C and D to the writ petition. The clarifications are to the following effect :

(i) Clarification dated May 25, 1987.

"I am to inform that veneers and splints used in match industries are taxable u/s 5(1) at 7 per cent and they can be sold against form 37. Billets are taxable under entry 45 of Second Schedule."

(ii) Clarification dated January 5, 1988 :

"Splints and veneers made of soft wood and which can only be used in a match industry is no doubt not timber falling under entry 45 but a 5(1) commodity, but in so far as the question of concessional rate against form 37 is concerned

(under section 5A of the Act) splints and veneers being wood (even if not timber) would get excluded from the purview of section 5A since wood is also excluded from section 5A. Hence the earlier clarification dated May 25, 1987 is hereby withdrawn. Splints and veneers therefore cannot be purchased against form 37."

14. It appears that, because of the confusions created by the said clarifications, the Legislature by Karnataka Act 15 of 1998, after timber, inserted the words "other than veneers" in Explanation 1 to section 5A to set at rest the controversy on the question involved.

15. Despite the said fact and the statutory provisions and the amendment thereto, the learned single Judge has held that, the term "timber" cannot be held as including "veneer" till April 1, 1988 when it was explicitly taken out of it by incorporation of the words "other than veneer". For coming to the said conclusion, he has assigned two reasons. According to him, firstly, under entry 45 of the Second Schedule as it stood at the material time, the veneer being manufactured form of "timber" was subjected tot he same rate of tax and therefore, the said concept has to be accepted even for the purpose of section 5A. The second reason assigned by him is that, the Legislature, when so intended, had expressly excluded "veneer" from the "timber", for the purpose of the explanation by bringing about an amendment as noticed above, which reflects the intention of the Legislature.

16. So far as entry 45 of the Second Schedule of the Act is concerned, it has to be read along with section 5(3)(a) of the Act. Section 5(1) of the Act provides for rate of tax on sale or purchase of goods at 7 per cent whereas u/s 5(3)(a) the rate of tax applicable has been provided for the goods mentioned in the Second Schedule. Entry 45 as it stood during the material period reads thus :

-----						Entry
Description	of	goods	Rate	of	tax	No.
-----						45 (a) Timber,
rosewood and sandalwood in log form 13%						(b) Timber, rosewood and
sandalwood in cut or manufactured form of all sizes and shapes :						(i) obtained
from out of material which has 3% already suffered tax (ii) in other cases 13%						

17. From a reading of the above entry, it is clear that, under the said entry, the rate of tax was prescribed not only for the timber but also for commodities manufactured out of it. This clearly shows that, the Legislature itself was vigilant of the fact that timber and the commodities manufactured out of it are distinct but none the less for the purpose of providing a common rate of tax, those were clubbed together and put under entry 45(b). Apart from this, entry 45 of the Second Schedule is not a definition clause and therefore, the said grouping cannot be taken as definition of the word "timber" of the other sections of the Act.

18. Apart from the above reasons, section 5A starts with a non obstante clause

with opening words as "notwithstanding anything contained in section 5."

19. Now it is well-settled that non obstante clause appended to a section in the beginning is meant to give an overriding effect over the provisions referred to therein. In this view of the matter as well, the words and expressions used in section 5A has to be understood with reference to their natural and common parlance meanings and not with reference to any provisions made in section 5. We are further of the opinion that, the amendment to the Explanation by inclusion of the words "other than venner" was necessitated because of the conflicting clarifications issued by the Commissioner as noticed above and has to be construed explanatory in nature. For the said reasons we hold that, the "veneers" were not included in the word "wood" even prior to April 1, 1988 and the assesses selling veneers against form 37 were entitled to the concessional rate of tax at 4 per cent.

20. Now coming to the individual facts of the two appeals and the revision petition under consideration :

So far as Writ Appeal No. 4577 of 1995 is concerned, as it bears out from the original records produced by Mrs. Sujatha, learned High Court Government Pleader, though the writ petition was filed against the proposition notice issued for the assessment year 1986-87 but, since there was no order restraining the assessing officer from proceeding with the assessment, the same was completed on November 21, 1989. Consequential demand notice was served on assessee on December 13, 1989 but, curiously and for the reasons best known to the assesses, said subsequent development was not brought on record and the writ petition was disposed of on September 7, 1995 setting liberty to the assesses to file objections to the impugned proposition notice. We find that, pursuant to the said direction of the learned single Judge, a further proposition notice was issued and some reply has also been filed by the assessee but, in our considered opinion, issuance of said notice and the reply thereto is wholly inconsequential. Learned single Judge would not have given any such direction if the petitioner had placed on record the subsequent events at the time of hearing of the writ petition. In that view of the matter, excepts clarifying the law as above, in our opinion, no further relief is admissible to the appellant. But it is clarified that, he will have a right to seek appropriate remedy in accordance with the provisions of the Act.

21. So far as the assessee in Writ Appeal No. 4578 of 1995 is concerned, during the pendency of the writ petition, he had filed a revised return on July 26, 1993 and in the said return he had claimed benefit in terms of section 5A of the Act. Accordingly, assessments were completed on October 28, 1993 by subjecting "veneers" manufactured by it out of tax suffered logs at the rate of 3 per cent. Therefore, he cannot have any reasonable grievance against the said assessment order. It may be noticed here that, the said fact was also not brought to the notice of the learned single Judge.

22. Now coming to the revision petition, for the reasons stated above, order of the Tribunal is not sustainable and is accordingly set aside.

23. Accordingly, the writ appeals are disposed of in the terms stated above and the revision petition is allowed. No costs.

24. Writ appeals disposed of accordingly.