

(2002) 03 KL CK 0056
In the High Court Of Kerala
Case No : T.R.C. No. 312/97

The Deputy Commissioners

APPELLANT

Vs

Indian Rare Earths Ltd.

RESPONDENT

Date of Decision : 25-03-2002

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 5

Citation : (2002) 03 KL CK 0056

Hon'ble Judges : V.P. Mohan Kumar, J;M. Ramachandran, J

Bench : Division Bench

Advocate : Raju Abraham, Government Pleader, for the Appellant; Antony Dominic, for the Respondent

Final Decision : Allowed

Judgement

M. Ramachandran, J.—The Deputy Commissioner of Sales Tax is the revision Petitioner in all these six cases. By a common order, six tax appeals had been disposed of by the Kerala Sales Tax Appellate Tribunal, Trivandrum. Four of them were the appeals filed by a Government of India Company, Indian Rare Earths Limited and. two others by a State Government enterprise, Kerala Minerals and Metas Limited. The revisions, because of their identical nature could appropriately be disposed of by a common Judgment. The cases related to the assessment pertaining to years 1983-84 to 1986-87 and the issue concerns the rate of tax that could be assessed in respect of their products, as to whether they were taxable under entry 71 of the 1st schedule of the K.G.S.T. Act, at 8 per cent or only at the general rates of 4 per cent/5 per cent as unclassified items.

2. The products sold by the companies were minerals such as Ilmenite, Monazite, Sillimanite, Rutile, Zircon, Garnet, etc. Entry 71 as at the relevant time came in the group heading chemical elements and compounds. The entry stood shifted as item 42 from 1st July 1987, and again changed in 2000 which strictly are not relevant for the purpose of these oases. The tax rates for the group as it stood at the relevant time could be tabulated and extracted as following:

(1) (2) (3) (4) "Chemical elements and compounds" Per cent 62. Menthol At the point of first sale in the State 8 by a dealer who is liable to tax u/s 5 63. Glycerine do. 6 64. Camphor do. 6 65. All acids do. 6 66. Titanium dioxide do. 10 67. Caustic soda and Caustic do. 8 potash 68. Soda ash do. 8 69. Sodium Sulphate do. 8 70. Sodium Silicate do. 8 70A. Chalk powder do. 6 70B. Sagol lime produce do. 8 70C. Sulphur do. 8 71. Chemicals not elsewhere do. 8 specified in this schedule

3. The assessing authorities relying on a decision of the Gujarat High Court reported in *Vijay Foundry and Machinery Works v. State* 1984 S.T.C. 152, held that since any substance used in or obtained by a chemical process or processes is a "chemical", and since the products sold by the assessee are used as a chemical by the purchasers, they could very well be classified under entry 71 of the First Schedule, and therefore the balance tax became payable.

4. The appellate authority found that the assessees are dealers in minerals. While considering the question, the authority had went into the details of the processes. The sands collected from beach of Chavara was a compendium of minerals. The mining as above was on the basis of licences issued under the Mines and Mineral (Regulation) and Development Act, on payment of royalty. After being brought down to factory from the slurry the minerals were separated, by process of washing, froth floatation, sieving, magnetic picking, etc. (but not any chemical processing). Concentrator's were used for heavy mineral concentrates, and they were again cleaned through an upgrading plant. After a process of drying, exploiting on the different properties of the minerals, separation was carried out, and the final products segregated. Taking note of the process of winning them and the end products, the appellate authority had concurred with the view of the assessing authority, by holding that the minerals collected was not sold in the same term and the item sold cannot be considered as sand as seen in the beach and in its natural form.

5. The Appellate Tribunal however reversed the finding. Referring to items 62 to 70 C of the First Schedule, it had been observed that the chemicals named therein were basically obtained by chemical process. The arrangement of the entries according to the Tribunal showed that the legislature did not intend to include within the meaning of chemicals items in their natural forms. According to the authority, water, air or sand do have chemical formulae, but a distinction was to be drawn, as between chemicals and substances in their natural form. It was pointed out that the separation was not a manufacturing process. Tribunal also noticed that the selfsame companies were also engaged in manufacturing of chemicals," with the said minerals, by follow up procedures, the products being Thorium Hydroxide and Thorium Phosphate of the Indian Rare Earths, and Titanium Dioxide of the Kerala Mineral and Metals. The opinion was rendered that these products alone qualified to be termed as chemicals, assessable under entry 71. In short, the finding was that minerals like Umenite belong to a class by themselves, are different from chemicals, as meant by the entry, for only

chemical products might have been intended to be covered, which were not items in their natural form. Though capable of being used in a chemical manufacturing process, the items were therefore not "chemicals elsewhere specified in the schedule.

6. Sri Raju Joseph, Special Government Pleader attacks the Order of the Tribunal. He at first referred to the meaning of the term "chemical" in the Oxford Dictionary, and also a few reported decisions dealing with some of the relevant aspects. He pointed out that the meaning assigned to "chemical" in shorter Oxford Dictionary was as "relating to or belonging to Chemistry", and "obtained by Chemistry". Another contextual meaning was "a substance obtained or used in chemical operation".

7. In Websters Third New International Dictionary, the meaning given is "relating to application of Chemistry as acting or operated by chemical means, or synthesised from chemicals, suitable for use in or used for operation in Chemistry having reference to or relating to the Science of Chemistry". The accent was on the part of the expression, that if the substance was used in or for chemical operation the substance was a chemical. Dictionaries are not generally meant for resolution of legal issues, and particularly in the present cases, we are conscious that the possible meanings of the terms chemicals, given by the dictionaries might be of little help in ultimately lending light to the real intention of the legislature. But, the Contention is to be noticed for whatever it is worth.

8. The learned counsel had thereafter adverted to the Division Bench decision, Minerals and Metals Trailing Corporation of India Ltd. v. Board of Revenue (1988) 69 S.T.C. 38. While considering the import of the word, "Chemical not elsewhere specified", the court repelled the argument that the entry (during the relevant time) could not have taken in sulphur which was not a compound. But the decision has been rendered in a totally different context, and there are no discussions which help to resolve the issue that has been highlighted in this batch of revisions.

9. Counsel thereafter cited the decision, Industrial Gases Ltd. v. Commissioner 1968 (21) S.T.C. 124. The Allahabad High Court therein held that oxygen obtained by a process of liquefying air was a chemical. The Court held that if the dealer stocked and sold the article as a chemical, it would be a chemical, whatever language he used to describe it. The tenor of the decision and the circumstances highlighted, indeed may be capable to advancing the cases of the Revenue, as the situations are almost identical.

10. Mr. Joseph later on took us to Vijay Foundry and Machinery Works v. State of Gujrat 1902 (84) S.T.G. 152, on which reliance had been placed by the lower authorities. Bentonite powder was being used by the assessee in preparing moulds for castings. In an earlier proceedings, the High Court had held that refined bentonite powder Was a chemical. It was described as a very fine powder, which swells when added to water and put to medical and industrial use and the

gels are suitable for suspending powder in aqueous preparations and preparation for industrial barrier. But the issue was whether in Unrefined form it was a chemical. The contention appeared to be that minerals mean substances which can be obtained from earth by mining, digging, dredging, etc. The court observed that in the Mines and Minerals (Regulation) and Development Act when mines and minerals were defined bentonite was not referred to as mineral, and there was nothing to show that a mineral cannot be a chemical. Ultimately, it was held as following:

After referring to the aforesaid definition the Tribunal rightly observed that a commodity need not be a product of a chemical process and also be used to produce a chemical effect in order to be classed as a chemical. Both these qualities are alternative qualities and the possession of either suffices to make the article a "chemical". We see no reason to differ from the aforesaid reasoning adopted by the Tribunal.

It was therefore submitted that unless it was unequivocally established that ilmenite, zircon or the order variety of products, which were stocked and sold by the assessee as a dealer, were not to be described as chemical compounds the case of the assessee had no legs to stand. The Government Pleader pointed out that the raw sand had lost its earlier characteristic as it underwent sophisticated processing, and therefore they came within the group headings "chemical element and compounds, and since admittedly they were not chemicals - elsewhere specified, the items were taxable at the point of first sale at 8 per cent. The view taken by the Tribunal it was submitted, was against express facts, per se artificial and meanings never intended by the statute were supplied by an interpretation process, and therefore the order was not sustainable. Adverting to the presence of Titanium dioxide, as item 66, which was a product after manufacture he refuted the stand of the dealer that it did not alter the picture at all.

11. Mr. Jayasankar Nambiar and Madhavan appeared for the Respondents. They canvassed for the position that listing of items 62 to 70 were sufficient to show that the chemicals named are basically a group of products obtained by a chemical processing. Therefore, item 71 also had to be treated as an entry describing items which were resultant products of such processing, and therefore it was never contemplated to include minerals which had been picked from the beach, but washed and separated, by mechanical processing. For years together, they were not assessed as chemicals, obviously understanding the situation as suggested by the assessees, and a volte face was unwarranted.

12. Mr. Jayasankar in an attempt to emphasise his arguments took us through the decision *Quality Chemicals v. State of Gujarat*. The proposition was that an article referred to in any taxing statute should be assigned popular meaning, and technical or scientific meaning are not to be given. But, we see that the ultimate decision was as against the assessee and the Court had also relied on the following passage for the decision of the Supreme Court in *Akbar Badrudin*

Jiwani of Bombay Vs. Collector of Customs, Bombay, .

It is, of course, well-settled that in taxing statute the words used are to be understood in the common parlance or commercial parlance but such a trade understanding or commercial nomenclature can be given only in cases where the word in the tariff entry has not been used in a scientific or technical sense and where there is no conflict between the words used in the tariff entry and any other entry in the tariff schedule.

The argument was only with reference to the placement of Entry 71, as according to the assessee the finished items were products of chemical processing. But on the submissions it is difficult to hold that ilmenite is not a chemical, as this will be doing violence to the language of the entry, which is impermissible.

13. The next decision cited almost was supplemental to the above submission, the citation being Pardeep Aggarbatti, Ludhiana Vs. State of Punjab and Others, . The principle was of *noscitur a sociis* and Supreme Court had held:

9. Entries in the Schedules of Sales tax and Excise statutes list some article separately and some articles are grouped together. When they are grouped together, each word in the Entry draws colour from the other words therein. This is the principle of *noscitur a sociis*.

But it is meaningful to note that the court had noticed that articles are at time separate, and at time grouped together. When grouped together the article which was under consideration in the case decided was Entry 16 of Punjab G.S.T. Act, which read as given below at the relevant time:

Cosmetics, perfumery and toilet goods excluding tooth paste, tooth powder, kumkum and soap.

14. Dhoop and Agarbathi were sought to be taxed, as coming within "perfumery", but the attempt was found as one without justification, as the article brought within its fold were only those for ensuring personal hygiene, and agarbathi did not belong to that class. But that is not the case here, as there is no grouping in the article, and sustenance is attempted to be drawn from the preceding entries. We also had scanned through the decision Shree Baidyanath Ayurved Bhavan Ltd. Vs. Collector of Central Excise, Nagpur, , where there was an attempt to claim exemption, by contending that the toothpaste produced by the company was an ayurvedic medicine. The observation of the Tribunal that in interpreting statutes, like Excise Act, the primary object was to raise revenue, and in classification, resort should not be made to scientific and technical meanings of the terms and expressions, but their popular meaning which is the meaning attached to them by person using it have been approved by the Apex Court. Ilmenite is a product used in the manufacture of other products, and it cannot be forgotten that it is basically a chemical, and chemical alone, in popular as well as commercial sense. Reference to Chapter on Minerals in the

Encyclopedia Britanica Volume 12, 15th Edition could be informative. A mineral is described as a solid formed by natural processes generally crystalline, and inorganic and include gems. Minerals in due course are formed as deposits. Mining is the accepted way of collecting natural resources. These do not at all justify to characterise them as something different from chemicals. We find it difficult to concur with the statement that the products obtained are not to be treated as chemicals, for the only reason that man's intervention had not been there in its formation. If that be the cases, nothing prevented the legislature from making the position clear as now held by the Tribunal. The processing which the product had under-went before the ores emerged in their present form cannot be ignored altogether.

15. In view of the expression employed in the schedule it is impossible to read it as done by the Tribunal. That most of the entries under the headings are products by chemical reaction, is not sufficient enough to take out a substance, which could have ordinarily answered to the description of a chemical. To accept the contention would result in our holding that ilmenite is not a chemical compound, the assessee had no such case. As we see it, the schedule does not differentiate between a chemical which could be a natural product as well as a manufactured item. The Tribunal has very heavily relied on a circumstance that no manufacturing process is involved in the separation process. But, it is wholly forgetting the definition of the term in the Factories Act. The sophisticated machinery used, and the ingenious and patented methods employed for the process, belies the argument. The magnetic properties are the basis for retrieving some of the items by passing them down an inclined chute between the jaws of an electro magnet. The other processes are also not simple in operation. The slurry which is mined and brought to the factory has lost all its characteristics, and the resultant marketable products have been subjected to a transformation beyond recognition. The minerals-which are so segregated, according to us are chemicals and the circumstance pointed out that they have not been subjected to excise duty is not relevant factor for upsetting the assessment. Also, our findings tally with the dictionary meanings referred to earlier.

16. In this view, we have to hold that the Tribunal has misapplied the law and has been carried away by principles, which really do have little relevance in the adjudication. Consequently, the petitions are allowed, and. the orders of the appellate authority are restored.