(1961) 10 BOM CK 0016

In the Bombay High Court

Case No : Sales Tax Reference No. 5 of 1959

The Star Trading Co. (Private) Ltd. APPELLANT

Vs

The State of Bombay RESPONDENT

Date of Decision : 09-10-1961

Acts Referred:
Bombay Sales Tax Act, 1953 — Section 34

Citation : (1962) 64 BOMLR 147 : (1962) 13 STC 102

Hon'ble Judges : Y.S. Tambe, J;V.S. Desai, J

Bench : Division Bench

Advocate : H.K. Shah and V.J. Jhaveri, for the Appellant; R.J. Joshi, instructed by Little and Co., for the Respondent

Judgement

Tambe, J.—On an application by the dealers u/s 34 of the Bombay Sales Tax Act (III of 1953) the Sales Tax Tribunal, Bombay, drew up a statement of the case, and has referred to us the following question of law :

"Whether the plant sold by the applicants (dealers) to the Kolaba Land and Mill Co., Ltd., is covered by item No. 69 of Schedule B to the Bombay Sales Tax Act, 1953 ?"

2. The facts giving rise to this reference are briefly these : The dealers Messrs Star Trading Co. (Private) Ltd., deal in articles of mill, gin stores and textile machinery. During the period of assessment, they sold a cooling plant for Rs. 20,000 to the Kolaba Land and Mill Co. Ltd. They have been assessed to sales tax on the said sale at the rate of one anna per rupee under item No. 69 of Schedule B of the Act of 1953. Item No. 69 of Schedule B is in the following terms :-

-- "Srl. Description Rate of Rate of Rate of No. of goods. sales tax. general tax. purchase tax. -- 69 Refrigerators Seven naye Three naye Seven naye and air Paise in Paise in the Paise in the

conditioning the rupee. rupee. rupee." plants.
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3. It was the contention of the dealers before the Sales Tax Authorities that the cooling plant sold by them to the Kolaba Land and Mill Co., Ltd., was neither a refrigerator nor an air conditioning plant within the meaning of item 69. The contention raised on behalf of the dealers was not accepted by the Sales Tax Authorities. Before the Tribunal, the dealers filed an affidavit, explaining the manner in which the cooling plant worked and was utilised by the mill for purposes of mercerising cotton fabric. The dealers also filed before the Tribunal a letter received by them from the Kolaba Land and Mill Co., Ltd. We will shortly advert to these documents. The Tribunal, after considering the affidavit and the letter, held that the purpose for which the cooling plant was used was to cool a certain solution used for mercerising processes. The cooling plant, therefore, fell within the meaning of the expression "refrigerator" occurring in item 69. In this view of the matter, the Tribunal rejected the contention of the dealers. As already stated, on an application made by them u/s 34 the aforesaid question has been referred to us.

4. It is the contention of Mr. Shah that the Tribunal was in error in holding that the cooling plant used for mercerising processes is a refrigerator within the meaning of item 69. According to him, the expression "refrigerator" has to be understood as is commonly understood by people, "that is, an article of domestic use which is commonly used by people for preserving articles of food and cooling drinks. He placed reliance on the Supreme Court decision in Ramavatar Budhaiprasad v. Assistant Sales Tax Officer, Akola and Another [1961] 12 S.T.C. 286.. On the other hand, it is the contention of Mr. Joshi that there is no warrant for understanding the expression "refrigerator" in such a narrow sense. That expression would include all cooling agents. Further, it is his contention that whenever the Legislature intended to limiting the levy of tax on articles used in households for domestic purposes, the Legislature had said so. The Legislature has not is any manner limited the scope and ambit of the expression "refrigerator" in item 69. In our opinion, the contentions raised by Mr. Joshi are not without force. The meaning of the expression "refrigerator" as given in the shorter Oxford English Dictionary is in the following terms : "Refrigerator : 1. That which refrigerates or cools. 2. An apparatus, vessel, or chamber for producing or maintaining a low degree of temperature; especially any vessel, chamber, or apparatus in which the contents are preserved by maintaining a temperature, near, at, or below freezing point, especially in the cold storage of food." In Webster, the meaning given is : "1. That which refrigerates or makes cold; that which keeps cool. Specific : (a) A box or room for keeping food or other articles cool. (b) An apparatus for rapidly cooling heated liquids or vapours, connected with a still, etc." It will thus be seen that an apparatus for cooling liquids is covered by the expression "refrigerator". There is also nothing in item 69 which would restrict the meaning of the expression "refrigerator" only to boxes or cabinets in domestic use for cooling or preserving food and other

articles. When this item 69 is read along with items 43 and 52, it becomes abundantly clear that when the Legislature intended to restrict the levy of tax to articles of domestic use falling in the generic expression occurring in items 43 and 52 the Legislature has expressly said so. There being no such qualifying clause in item 69, restricting the levy of tax only on those kinds of refrigerators adapted for domestic use, it is not possible to hold, as contended by the dealers, that we must give that restricted meaning to the expression "refrigerator". The working of the cooling plant sold by the dealers is explained by them in the affidavit filed before the Tribunal. In that affidavit, they have stated "the process of mercerising essentially consists of treatment of cotton fabric under dimensional control with a solution of caustic soda of a temperature not more than 40F. It is absolutely necessary that a mercerising plant be equipped with a caustic soda cooling plant. The cooling plant is placed at a convenient place near the machine or even at some distance from it. It is not necessary for the equipment to be installed in a close view since the process is not of air-conditioning but it is only of cooling the solution of the caustic soda. The cooling plant essentially consists of a compressor and cooling tubes through which the coolant is made to expand and consequently bring down the temperature of the caustic soda which comes in direct contact with it. These cooling devices are inserted, into a small tank which contains caustic soda of desired strength. From this tank by means of a pump the cool caustic soda solution is brought in the trough of the mercerising machine where the fabric is impregnated in the same and passed on to a tentering range. During the passage of the cloth on the tentering range to remove the caustic soda from the fabric, hot water is sprayed on to the fabric." From the aforesaid affidavit of the dealers, it is abundantly clear that as a part of the cooling plant, there is a tank or chamber in which, with the aid of the plant, caustic soda is cooled and brought down to a desired temperature. In other words, it is an apparatus in which caustic soda is maintained at a particular low degree of temperature. That being the factual position, in our opinion, the said cooling plant falls within the meaning of the expression "refrigerator" occurring in item 69. From the letter of the Kolaba Land and Mill Co., Ltd., produced by the dealers before the Tribunal, it appears that the cooling plant purchased by the mills is capable of being used for the refrigeration purposes also, and is not an apparatus solely and exclusively used for maintaining caustic soda used in mercerising processes at a particular temperature. The letter is in the following terms :

"Dear Sirs,

As desired in your letter No. 400/1/HM/3748 dated 22nd inst., we hereby certify that the cooling plant supplied to us by you as per your bill No. 130/SL of 20th November, 1954, is being used by us with our cloth mercerising machine and not for refrigeration purposes."

5. The concluding part of the letter "and not for refrigeration purposes" indicates that the said machine could be used for other refrigeration purposes than the

cooling of caustic soda. It is true that in the letter, the mills have suggested that cooling caustic soda for mercerising purposes is not refrigeration. But the view of the mills can hardly have any relevance in determining the scope and ambit of item 69.

6. It is next to be seen whether the expression "refrigerator" has generally acquired any restricted meaning in the commercial world. The Sales Tax Act is enacted for the purposes of levy of tax on the sale or purchase of goods in the State of Bombay. The meaning to be given to the articles mentioned in the items of Schedule B, therefore, will have to be the meaning of those terms as understood in the market, in other words in the commercial sense. There is no material on record to hold that in the commercial world the expression "refrigerator" is generally and commonly understood as a refrigerator used for domestic purposes only in the households. It is, therefore, not possible to hold that the cooling plant sold by the dealers was not a "refrigerator" within the meaning of item 69. The decision on which reliance is placed by the dealers is distinguishable on facts, and is hardly of any assistance to the dealers. The question that fell for consideration in that case was whether the sale of betel leaves was exempted from the levy of sales tax. The exemption was sought to be justified on the ground that betel leaves were vegetables and vegetables were exempted from levy of sales tax. In repelling the contention, their Lordships observed that the word "vegetables" cannot be given the comprehensive meaning the term bears in natural history and has not been given that meaning in the taxing statute they were considering. The term "vegetable" is to be understood, as commonly understood, denoting those classes of vegetable matter which are grown in kitchen garden and used at the table. No elaborate reasoning is required to say that vegetable has acquired that meaning and in markets also the term vegetable is understood in that sense. This, however, cannot be said about the term "refrigerator".

7. In the result, for the reasons stated above, the question referred to us will have to be answered in the affirmative. We answer accordingly. The dealers shall pay the costs incurred by the Collector of Sales Tax.

8. Reference answered, in the affirmative.

