(1999) 08 KAR CK 0039

In the Karnataka High Court

Case No : S.T.R.P. No''s. 58 to 61 of 1996

T.T. Private Limited (now known as T.T.K. Prestige Ltd.) APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 11-08-1999

Acts Referred:

Citation : (2003) 133 STC 317

Hon'ble Judges : V.K. Singhal, J;T.N. Vallinayagam, J

Bench : Division Bench

Advocate : K.S. Ramabhadran, for the Appellant; S. Sujatha, High Court Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Singhal, J.—Order of the Karnataka Appellate Tribunal dated September 1, 1995 have been assailed in these revision petitions. Petitioner is engaged in the manufacture of pressure cooker, pressure pans and other accessories thereto. The manufacturing units are situated in Karnataka and Tamil Nadu. In respect of the assessment years 1986-87 to 1989-99, a dispute has arisen with regard to Aluminum separators and pressure pans as to whether they are liable to be taxed as parts and accessories of pressure cookers under the relevant entry of Second Schedule to the Act. Entry No. 10 from April 1, 1988 in Part P of Second Schedule has specified "Pressure cookers, their parts and accessories". It was liable to tax at 10 per cent from April 1, 1988 and prior to that entry at Serial No. 126 was also to the same effect. But the rate of tax from April 1, 1974 to March 30, 1986 was 8 per cent and thereafter 10 per cent. A claim was made by the petitioner under entry 45 of the Fifth Schedule to the Karnataka Sales Tax Act which was effective for the period March 29, 1981 to March 31, 1992. The aforesaid items are exempted from tax. The relevant entry was "Aluminum utensils, excluding those falling under serial No. 126 of Second Schedule". The assessing authority on the basis of a circular issued by the Commissioner of Commercial Taxes Taxes on September 3, 1987, issued a proposition notice on

March 25/ 26, 1990. The petitioner submitted that the Aluminum separators are merely aluminum utensils and they are made of aluminum and are of the nature and description of aluminum utensils. In respect of pressure pans, it was submitted that the company is effecting the sale of pressure pans with gaskets and lids and also without lids and gaskets. In cases where the pressure pans have been sold in lids and gaskets that has been treated to be pressure cookers and tax under the appropriate entry has already been paid. It is only in cases where the pressure pans have been sold without lids and gaskets, the said items cannot be classified as part of pressure cookers or accessories of the pressure cookers and in the nature of aluminum utensils for which the exemption should be given. The claim of the assessee was rejected by the assessing authority. Appeals preferred against the assessment order were also dismissed on November 4, 1992. In the second appeals before the Karnataka Appellate Tribunal reliance was placed by the Tribunal on its earlier decision given in S.T.A Nos. 871 to 874 of 1989 in respect of aluminum separators and for pressure pans and the appeals were dismissed.

2. Learned counsel for the petitioner submitted that the assessing authority was persuaded by the circular issued by the Commissioner and has not applied his mind independently of the circular. The assessment order is vitiated on that ground and any proceeding emanating therefrom also has the same fate. On merit also it is submitted that the aluminum separators and pressure pans have to fall within the description of the word "aluminum utensils" and even if it is considered that the item falls under both the categories then the golden rule of construction should be applied and the interpretation in favour of the assessee should be accepted.

3. Heard the arguments of the learned counsel for both the parties.

4. The word "pressure cooker" as used in entry 126 is in respect of an item which is used as an auto clave in kitchen ; air tight utensils for quick cooking or preserving the food by providing the heat with pressure of steam generated inside. The word utensil is defined as under :

" ''Utensil'', anything necessary for our use and occupation ; household stuff."

5. The word "accessories" was interpreted by the apex Court in Annapurna Carbon Industries Co. v. State of Andhra Pradesh [1976] 37 STC 378 AP, and arc carbons were held accessories to the cinema projectors or other cinematographic equipments. The Apex Court has observed :

"We find that the term ''accessories'' is used in the Schedule to describe goods which may have been manufactured for use as an aid or addition. A sense in which the word ''accessory'' is used is given in Webster''s Third New International Dictionary as follows : ''an object or device that is not essential in itself but that adds to the beauty, convenience, or effectiveness of something else''. Other meanings given there are : ''supplementary or secondary to something of greater or primary importance'' ; ''additional'' ; ''any of several mechanical devices that assist in operating or controlling the tone resources of an organ''. ''Accessories'' are not necessarily confined to particular machines for which they may serve as aids. The same item may be an accessory of more than one kind of instrument."

6. The matter was again examined in M/s. Mehra Bros Vs. The Joint Commercial Officer, Madras, in the context of seat covers and upholstery as to whether they could be considered as accessories of the motor vehicles. It was observed that an article or part is an accessory cannot be decided with reference to necessity to its effective use. General adaptability may be relevant but may not by itself be conclusive. The contribution for convenience or effectiveness was not approved as the correct test. Black''s Law Dictionary meaning was also taken into consideration, which is to the following effect.

"In Black''s Law Dictionary, Fifth Edition, at page 13 ''accessory'' has been defined as ''anything which is joined to another thing as an ornament, or to render it more perfect, or which accompanies it, or is connected with it as an incident, or as subordinate to it, or which belongs to or with it, adjunct or accompaniment. A thing of subordinate importance. Aiding or contributing in secondary way of assisting in or contributing to as a subordinate''."

7. It is not in dispute that the petitioner is a manufacturer of pressure cookers, pressure pans and other accessories thereto and the aluminum separators and pressure pans are manufactured by the petitioner. The entire argument is based on the reasoning that these two items can be used as aluminum utensils. In this regard, it can be considered that utensil itself is a very wide term and if the Legislature or the delegated authority has excluded pressure cookers, their parts and accessories by specifically saying so then the items which fall in the category of pressure cookers, parts or accessories cannot be considered as aluminum utensils for the purpose of exemption or rate of tax. Entry 45 of the Fifth Schedule has granted exemption to aluminum utensils, excluding those falling under Serial No. 126 of the Second Schedule. Under Serial No. 126 of Second Schedule, pressure cookers, their parts and accessories have been specified and therefore if the commodity falls in the category of the items in entry 126 then the rate has to be levied on the basis of the prescription of that class. Even according to the petitioner the pressure pans if sold along with the gaskets and lids, have been treated as pressure cooker. Then the question arises as to whether their basic character would be changed, if pressure pans are sold without lids and gasket. The item remains as pressure cooker and its parts even in the absence of the lids and gaskets. In respect of pressure pans even if for the sake of arguments it is considered that they can be put to other use also, for the purpose of taxation it is the predominant use which has to be taken into consideration and it is not denied that the said aluminum separators are not used in the pressure cookers.

8. In common and commercial parlance, pressure cookers are utensils. In Webster''s Third New International Dictionary, "pressure cooker" has been defined as "an airtight utensil for quick cooking or preserving of foods by means

of superheated steam under heat and pressure". The word "pan" has also been defined as "a metal, earthenware, or plastic container (as a warming pan, dustpan, dishpan) for domestic use, that is, usually broad, shallow, and open, (b) any of various metal kitchen utensils of different shapes and sizes in which foods are cooked or baked". The aluminum separators, pressure pans are parts of the pressure cooker. They fall in the category of utensils also. The dispute before us is not of interpreting the two entries on the basis of which interpretation beneficial to the assessee could be taken. Entry 45 of Fifth Schedule which is relating to aluminum utensils expressly excludes pressure cookers, their parts and accessories and as such because of the exclusion clause, the beneficial interpretation could not be taken.

9. In these circumstances, no case for interference in the order of the Tribunal is made out, the petitions are dismissed.