
(1977) 03 BOM CK 0026
In the Bombay High Court
Case No : S.T.R. No. 3 of 1977

Union Sales Corporation

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 22-03-1977

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 52, 61(1)

Citation : (1977) 6 CTR 550 : (1977) 39 STC 452

Hon'ble Judges : M.H. Kania, J;D.P. Madon, J

Bench : Division Bench

Advocate : B.C. Joshi and P.C. Joshi, for the Appellant; R.J. Joshi and M.M. Dadhich, for the Respondent

Judgement

Kania, J.—This is a reference u/s 61(1) of the Bombay Sales Tax Act, 1959 (hereinafter referred to as "the said Act"). The question referred to us for our determination is as follows :

"Whether, on a proper interpretation of entry 56 of Schedule C to the Act and upon consideration of the data about motorised elevator mobile copper roller storage racks, the article is covered by entry 56 of Schedule C to the Bombay Sales Tax Act, 1959 ?"

2. As will be clear from our judgment, this question arises from a decision of the Tribunal which deals with the assessment of the applicant-assessed for the period from 1st November, 1969, to 31st October, 1970, and also with the determination made by the Commissioner of Sales Tax on 3rd October, 1974, on an undated application u/s 52 of the said Act made by the applicant which was received in the office of the Commissioner on 1st January, 1974. Entry 56 of Schedule C to the said Act has been amended with effect from 11th May, 1973. In view of this, with the consent of the counsel for both the parties, we are reframing the question referred to us by dividing the same into two questions as follows :

(1) Whether, on a proper interpretation of entry 56 of Schedule C to the Bombay Sales Tax Act, 1959, as it stood prior to 11th May, 1973, and upon consideration of the data about motorised elevator mobile copper roller storage racks, the said article is covered by the said entry ?

(2) Whether, on a proper interpretation of entry 56 of Schedule C to the said Act as it stands after the amendment effective from 11th May, 1973, and upon consideration of the data about motorised elevator mobile copper roller storage racks, the said article is covered by the said entry ?

3. The facts giving rise to this reference are as follows : The applicant is a registered dealer under the said Act and is a manufacturer of textile machinery. In respect of the period from 1st November, 1969, to 31st October, 1970, the Sales Tax Officer assessing the applicant levied sales tax at 12 per cent. on the sale of motorised mobile iron and steel racks sold by the applicant on the footing that the said articles were covered by entry 56 of Schedule C to the said Act. The applicant preferred an appeal against this decision to the Assistant Sales Tax Commissioner, who dismissed the same. The applicant then went by way of second appeal against this decision to the Sales Tax Tribunal. The applicant also filed the application u/s 52 of the said Act before the Commissioner of Sales Tax, as aforesaid, for determination as to whether the power-operated storage racks sold by the applicant fell under the general residuary entry 22 of Schedule E to the said Act. On this application the Commissioner of Sales Tax, after considering the material produced before him, held that the said articles were covered by entry 56 of Schedule C to the said Act. The applicant preferred an appeal against this decision to the Sales Tax Tribunal. Both the aforesaid appeals were heard together and were dismissed by the Tribunal by a common judgment. The present reference arises from this judgment of the Tribunal.

4. The article in question is described by the applicant in its said application to the Commissioner of Sales Tax as a power-operated storage rack, which stores and shifts and places rolls in the printing department at the required place. In this application it was pointed out by the applicant that the textile mills were buying these units or articles on the issue of T forms on the basis that they were machines used in the process of printing cloth. The applicant contended that these power-operated storage racks fell under the residuary entry 22 of Schedule E to the said Act. From the description of the said article given in one of the printed pamphlets on record it appears that it is a coiled shaped elevator warp and beam storage rack. In another printed pamphlet, the said article has been described as a motorised elevator mobile roller storage rack. In the advantages claimed for the article, it has been mentioned that owing to the forward and backward travel and the high speed of the conveyor chains, every beam stored on the stand can be conveyed to the loading or unloading place within shortest time. In the introduction given in the pamphlet in respect of this article it has been claimed that it is useful for maximum utilisation of floor space in the storage of raw materials, semi-finished and finished products. It has been further

pointed out that these mobile storage racks are custom-built to suit individual requirements. It has also been mentioned in these pamphlets that these mobile storage copper roller racks can be successfully used for a variety of storage applications. In the other material, which is on record, namely, the specifications of the patent regarding the said article, it is mentioned that the said article is an invention which has for its object, a novel means of storing articles so that very small storage space is required, and it is further claimed that this article makes it possible to remove individual articles without disturbing the other articles stored. The description given shows that the said article consists of a conveyor capable of moving along the vertical plane so that it could act as an elevator and that the articles stored are placed directly on the conveyor or on carriers provided with the conveyor. It is not necessary to go into the elaborate details given in respect of this article. Suffice it to say that it consists of a storage rack combined with a mechanised conveyor for moving the articles stored vertically as well as horizontally. Before we consider the arguments advanced by the respective counsel, it may not be out of place to set out entry 56 of Schedule C to the said Act. The descriptive part of the aforesaid entry, as it stood prior to the amendment effective from 11th May, 1973, read thus :

"Iron and steel safes, almirahs and furniture and upholstered furniture."

5. After its amendment effective from 11th May, 1973, the descriptive part of the said entry reads thus :

"Metal safes, cash boxes and almirahs, all kinds of metal furniture (including slotted angles and ready to assemble parts thereof), furniture made from fibre glass reinforced plastic or made primarily from any kind of plastics, upholstered furniture and furniture in the manufacture of which laminated sheets are used."

6. The submission of the learned counsel for the applicant is that the article in question is an article which contains elaborate machinery for moving the goods to be stored vertically as well as horizontally, and hence it cannot be called furniture at all. It is submitted by him that the fact that this machinery is attached to a rack, the purpose of which is the storage of industrial articles or goods, does not make any difference and, in view of the fact that the said rack contains this elaborate machinery, it cannot be called furniture at all. It is submitted that the expression "furniture" used in the said entry must be interpreted or construed in the sense in which the said expression would be understood in popular or commercial parlance, and from this point of view as well as from the common-sense point of view such an article as described above cannot be regarded as furniture at all. It is, on the other hand, contended by the learned counsel for the respondent, that the main purpose of the said article is the storage of goods. The mere fact that there is some machinery attached to this article or that it is used in industrial establishments does not make any difference and the article remains a piece of furniture.

7. It might be useful to refer to certain decisions for the proper inter-pretation of

the expression "furniture" used in the aforesaid entry. In *State of Uttar Pradesh and Another Vs. Kores (India) Ltd.*, , the question was whether carbon paper was paper as envisaged by entry 2 of Notification No. ST-3124/X - 1012(4)-1964 dated 1st July, 1966, issued u/s 3-A of the U.P. Sales Tax Act, 1948. It was held by the Supreme Court that a word which is not defined in an enactment has to be understood in its popular and commercial sense with reference to the context in which it occurs. The word "paper" not having been defined either in the U.P. Sales Tax Act, 1948, or the Rules made thereunder has to be understood in the sense in which persons dealing in and using the article understand it. That word in the common parlance or in the commercial sense means paper which is used for printing, writing or packing purposes, and hence carbon paper could not be regarded as paper as envisaged by the said entry in the said notification. In *Commissioner of Sales Tax v. Associated Dental & Medical Supply Co.* [1976] 37 S.T.C. 336, this Bench has followed the view taken in *Commissioner of Sales Tax v. Dawoodbhoy M. Tayabally* [1975] 36 S.T.C. 291, that the meaning of terms describing goods in the entries in the schedules to the Sales Tax Act prescribing rates at which commercial articles have to be taxed has to be gathered from the trade parlance or the common parlance in trade. The question there *Commissioner of Sales Tax v. Associated Dental & Medical Supply Co.* [1976] 37 S.T.C. 336 was whether a dental chair could be regarded as furniture falling under entry 56 of Schedule C to the said Act. It was held by us that even from a common-sense point of view, a dental chair could not be regarded as an item of furniture, but must be regarded as a specially designed equipment to enable proper dental treatment to be given to patients. Now, the statement of facts in the case before us shows that the applicant is a manufacturer of textile machinery. The article in question consists of not merely of storage rack but of such a rack which contains elaborate machinery, namely, a motorised conveyor for moving the goods to be stored. The use of this article is not merely for storage of goods but also the conveying of the same for the purpose of loading or unloading. From a common-sense point of view, it appears to us difficult to regard an article of this kind, containing such machinery as aforesaid, as a piece of furniture. Even if the test of popular parlance is applied, it appears to us difficult to regard such an article as a piece of furniture. The descriptive part of the said entry, which we have set out earlier, indicates that furniture referred to therein is like almirahs, safes, upholstered furniture and so on. There is nothing to indicate that an article containing such elaborate machinery as is contained in the article before us can be regarded as furniture. We may, in this connection, refer to the decision of the Gujarat High Court in *Scientific and Glass Laboratories v. State of Gujarat* [1974] 34 S.T.C. 418, where the question was whether glass "ampoules" manufactured for the purpose of filling them with injections or liquid medicines and hermetically sealing them were not "bottles" within the meaning of the said term in entry No. 6(vii) of Schedule C of the Bombay Sales Tax Act, 1959, or whether they were covered by the residuary entry 22 of Schedule E to the said Act. It was inter alia, observed that the collocation of the words used in entry No. 6(vii) of Schedule C to the said Act attracted the principle of *noscitur a*

sociis, which means that where the meaning of a particular word is of a wider import, the legislative intent should be ascertained by reference to adjoining words in connection with which the word in question is used, because such adjoining words lend their colour and meaning to the word in question.

8. As against this, Mr. R. J. Joshi, the learned counsel for the respondent, relied very strongly on the decision of the Gujarat High Court in *Chandan Metal Products Pvt. Ltd. v. State of Gujarat* [1969] 23 S.T.C. 29. In that case, it was held, inter alia, that shelving racks and beanstalks manufactured from iron and steel, and sold by a company manufacturing iron and steel products, component parts and accessories, are iron and steel furniture within the meaning of the said expression in entry 44H of Schedule C to the Bombay Sales Tax Act, 1959, as applicable to the State of Gujarat. This entry read thus :

"Iron and steel safes, almirahs and furniture and upholstered furniture."

9. It was held that a shelving rack is used in an office or an industrial organization for the purpose of keeping files, papers, etc., and is an article of convenience, which is used for furnishing a place of business or an office and hence must be regarded as furniture within the meaning of the said expression in the said entry. We are afraid that this decision is not very helpful in the determination of the questions raised before us. There is no doubt that an ordinary storage rack used in an office or a residential house would be a piece of furniture, and merely because such a storage rack is used in an industrial organization, it does not cease to be furniture. The question before us, however, is whether a storage rack which contains elaborate machinery such as we have described above can be regarded as furniture within the meaning of the said expression in the said entry 56. In the aforesaid case before the Gujarat High Court, the storage rack did not contain any machinery at all and hence the decision in that case is of little assistance in the present case. In our view, and applying a common-sense point of view as to what is ordinarily regarded as furniture, an article such as the one before us, which contains elaborate machinery, cannot be regarded as furniture at all.

10. In the result, we answer the two questions reframed as aforesaid in the negative. As far as the costs are concerned, the learned counsel for the applicant has not pressed for the costs in view of the fact that the aforesaid questions have come up for the first time before this Court. There will, therefore, be no order as to costs of this reference. The fee of Rs. 100 paid in each of the two reference applications by the applicant will be refunded to the applicant.

11. Reference answered accordingly.