(1984) 03 KAR CK 0046

In the Karnataka High Court

Case No : S.T.R.P. No''s. 37 and 38 of 1983

Veerarajendra Corporation APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 06-03-1984

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 21, 5 (1)

Citation : (1985) 58 STC 199

Hon'ble Judges : S.R. Rajasekhara Murthy, J;Jagannatha Shetty, J

Bench : Division Bench

Advocate : King and Partridge and K.P. Kumar, for the Appellant; S. Rajendra Babu, Government Advocate, for the Respondent

Judgement

Jagannatha Shetty, J.—The common question raised in these two revision petitions is whether trichloroethylene is a "heavy chemical" covered by item No. 79 of the Second Schedule to the Karnataka Sales Tax Act, 1957 (called shortly "the Act").

2. The petitioner is a partnership firm engaged in the business of buying and selling the chemicals including the trichloroethylene manufactured by M/s. Dhranghadhara Chemical Works, Bombay. For the years 1974-75 and 1975-76, the assessing officer levied tax on the turnover of the petitioner in respect of sale of trichloroethylene at the rate prescribed u/s 5(1) of the "Act" treating that chemical as a solvent falling under "other chemicals" and not as a "heavy chemical" falling under item No.79 of the Second Schedule.

Item No. 79, as it then stood reads :

"Heavy chemicals (such as sulphuric acid, dydrochloric Eight per cent." acid, caustic soda, etc.)"

Item No. 79 prescribes a higher rate of tax on the sale of "heavy chemicals" - the term which has not been defined in the Act. By way of illustrations, the legislature has classified the sulphuric acid, hydrochloric acid, caustic soda, as heavy chemicals.

3. The "Act" came into force in 1957. Up to the year 1977, there was no attempt on the part of the department to classify trichloroethylene as heavy chemical for the purpose of taxing at the rate prescribed under item No. 79. In the Commercial Tax Bulletin for the year ending June, 1977, the department has listed as many as 72 articles as heavy chemicals falling under item No. 79, but trichloroethylene was not included in that list. It was only in the next year bulletin for the quarter ending June, 1978, trichloroethylene came to be included in the list of heavy chemicals.

4. With this uncertainty prevailing prior to 1978, as to the rate of tax payable on the sale of trichloroethylene, the petitioner sought advice of the assessing officer. The assessing officer by communication dated 3rd May, 1978 informed the petitioner that the sale of trichloroethylene was taxable at 3 per cent. u/s 5(1) of the Act. Accordingly, the petitioner was collecting the tax from his customers up to 1978 and thereafter, he was collecting the tax at the higher rate as prescribed under item No. 79.

5. On 1st August, 1978 the Deputy Commissioner of Commercial Taxes initiated proceedings u/s 21 of the Act to revise the assessment orders for the years 1974-75 and 1975-76 by charging the turnover of the petitioner relating to sale of trichloroethylene at a higher rate treating the chemical as heavy chemical under item No. 79.

6. The petitioner after vainly resisting the action of the Deputy Commissioner, preferred appeals to the Karnataka Appellate Tribunal. The Tribunal also concurred with the view of the Deputy Commissioner and dismissed the appeals. The Tribunal mainly relied upon the decision of this Court in State of Mysore v. U. M. Gulam and Sons [1975] 36 STC 254 and summarised its conclusion as follows :

"It is obvious that what makes a chemical heavy chemical is its manufacture in bulk quantities at cheap rate per unit. The fact that an article is manufactured in bulk should necessarily lead to an inference that the rate per unit is low. In the case before us, the mere fact that the turnover from trichloroethylene was of the order of several lakhs at the hands of one dealer should be enough indication that it is a heavy chemical. The learned assessing officer appears to have ignored the ''obvious''."

7. The petitioner has now moved this Court challenging the legality of the order of the Tribunal and the Deputy Commissioner.

8. Mr. Kumar, learned counsel for the petitioner, urged that there is no acceptable evidence to classify "trichloroethylene" as a "heavy chemical", and in the absence of any such material and that too in view of the view that prevailed prior to 1978, it was not proper for the Deputy Commissioner to revise the assessment which was accepted for decades without any complaint from any quarter. He also

submitted that upon the advice tendered by the assessing officer, the petitioner was collecting the tax at the rate prescribed u/s 5(1) and even the department did not find it possible to include "trichloroethylene" in the list of heavy chemicals till 1978. What made them to include "trichloroethylene" in the bulletin of the year 1979 is also not known when particularly of the bulletin of the year 1977 containing as many as 72 articles did not find trichloroethylene.

9. Smt. Bhoopathy, learned High Court Government Pleader, on the other hand, contended that since trichloroethylene is being manufactured by heavy chemical industries, it should be regarded only as "heavy chemical" and not as "ordinary chemical".

10. In our opinion, it is very difficult for the Court or for the taxing authorities to classify chemicals as "heavy chemicals" or ordinary chemicals" in the absence of acceptable evidence. Perhaps, that is the reason why the Legislature has how obliterated the distinction between "heavy chemicals" and "ordinary chemicals" for taxing purposes. Item No. 79 has been amended by Karnataka Act No. 18 of 1978 deleting the word "heavy" preceding the word "chemicals" and that amendment came into force with effect from 1st September, 1978. The result of this amendment is that the turnover of all the varieties of chemicals is liable to be taxed uniformly at the rate prescribed under item No. 79.

11. There is no definition of the term "heavy chemicals" in the Act. This Court, however, in State of Mysore v. U. M. Gulam and Sons [1975] 36 STC 254 after referring to a passage from the Encyclopaedia of Social Sciences (page 300 of VII-VIII), broadly observed :

"According to the Encyclopaedia of Social Sciences, the heavy chemical industries in general include all those enterprises which turn out bulky chemicals cheap per unit of weight. Usage and opinion, however, vary considerably as to the specific industries possessing these general economic characteristics. All over the industrial world acids and alkalies are accepted as heavy chemical industries. The general common economic characteristics, viz., enterprises which turn out bulk chemicals cheap per unit of weight are taken as a criteria for determining the industries which fall under the category of heavy chemical industries; chemical fertilisers, salt cement and sulphur come within the meaning of the term ''heavy chemicals''."

12. The Tribunal while relying upon this decision has gone a step further. It has held that since trichloroethylene is manufactured by a heavy industry, it must necessarily be a cheap product.

13. Mr. Kumar urged that this part of the conclusion of the Tribunal that "trichloroethylene" must necessarily be a cheap product since it is manufactured by a heavy industry has no support of any evidence. Counsel, in our opinion, is right in his submission. The observations of this Court in Gulam and Sons'' case [1975] 36 STC 254 are in wide terms, and to add further guess work to that observations would be contrary to the well accepted norms of taxation. The

general and salutary rule that the subject is not to be taxed except by plain words should not be forgotten. There was no material before the Tribunal as to the comparative price structure of the chemicals much less the rates at which the other undisputed heavy chemicals are available for consumers. In the absence of any such evidence, the inference drawn by the Tribunal that "trichloroethylene" must necessarily be a cheap product has no support of reason.

14. Mr. Kumar next contended that this Court differentiating a "heavy chemical" from an "ordinary chemical" be applying the test of bulk production and at cheap rate cannot be conclusive in every case and it must primarily depend upon how a chemical is understood in common parlance. He urged that the heavy chemicals are essentially basic chemicals like hydrochloric acid, sulphuric acid and caustic soda, which are the illustration given by the Legislature in item No. 79 and not an end-product like trichloroethylene which is a combination of several basic chemicals.

15. This contention may get support from the meaning assigned to the term "heavy chemicals" in the Chambers Dictionary of Science and Technology (Revised Edition, page 559). It has been explained as follows :

"Heavy chemicals : (Chem.) Those basic chemicals which are manufactured in large quantities, eg. sodium hydroxide, chlorine, nitric acid, sulphuric acid."

16. But the word "heavy" is not a word of art. It has no definite meaning when used in diverse contexts. It is a non-technical word used in a number of scientific senses. In the Combined Chemical Dictionary (9th Edn., page 430), the meaning of the word "heavy" has been illustrated as follows :

(1) Referring to atomic weight (heavy water, heavy metal); (2) referring to production volume (heavy chemical); (3) referring to physical weight (heavy spar); (4) referring to thickness (heavy gauge wire); and (5) referring to distillation range (heavy oil).

The word "heavy" therefore, carries different meanings when used in different contexts. So far as chemicals are concerned, the information available indicates at least two relevant factors dominate the classification : (i) Production volume and (ii) price structure, What should be production volume and what must be the rate at which it should be available in the market must depend upon various circumstances and factors and indeed, there cannot be any uniform pattern in this regard to guide the discretion of the authorities. Confronted with this difficulty, the department, if we may so, rightly, did not think it advisable and proper to classify trichloroethylene as heavy chemical till 1978.

17. What made the department to include it in the bulletin of the year 1979 is not so clear. The decision perhaps depends upon the view taken by this Court in Gulam and Sons'' case [1975] 36 STC 254. In the first place, the two tests suggested by this Court in that case are not conclusive and secondly, one of the tests laid down by this Court, particularly the price of the product, is not

available in this case.

18. On the basis of the material on record, it is difficult for us to decide whether trichloroethylene is a heavy chemical or not. The position is not different for the taxing authorities.

The Deputy Commissioner ought not to have revised the assessment without any reasonable basis. The assessment which has been accepted for decades should not ordinarily be revised without compelling reason and that too, when the dealer was made to believe by the assessing authority that he could collect a particular rate. Any revision of that rate retrospectively by differing opinions would be highly oppressive if not illegitimate.

The Tribunal, therefore, ought to have reversed the order of the Deputy Commissioner without expressing any final opinion that trichloroethylene is a heavy chemical falling under item No. 79 of the Second Schedule to the "Act".

19. The question as on to-day is really academic since the Legislature has amended item No. 79 with effect from 1st September, 1978. The matter, therefore, deserves to be left to rest there.

20. In the result, these revision petitions are allowed. In reversal of the orders of the Tribunal and the Deputy Commissioner, the assessment orders are restored. In the circumstances of the case, we make no order as to costs.