

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

VATAP No. 73 of 2011 (O&M)

Date of decision: October 27, 2016

M/s S. R. Foils and Tissue Limited

.. Appellant

v.

The State of Haryana and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Amar Pratap Singh, Advocate for the appellant.
Ms. Mamta Singla Talwar, Deputy Advocate General, Haryana.

...

Rajesh Bindal J.

1. The present appeal was admitted for consideration of following substantial question of law on 27.1.2012, arising out of the order dated 29.7.2011, passed by Haryana Tax Tribunal at Chandigarh (for short, 'the Tribunal') in Sales Tax Appeal No. 105 of 2010-11:

“Whether the tissue paper would be covered by Entry 57 Schedule 'C' of the Haryana Value Added Tax Act, 2003, which is assessable at the rate of 4% or it is assessable under the Residue Entry at the rate of 12.5% ?”

Arguments of the appellant

2. Learned counsel for the appellant submitted that the appellant is engaged in the business of manufacture and sale of tissue paper, napkin, toilet paper rolls, kitchen wipes and facial tissues. All along, the goods being manufactured by the appellant were being considered to be part falling in Entry 57 of Schedule 'C' of the Haryana Value Added Tax Act, 2003 (for short, 'the Act') leviable to tax @ 4%. The appellant filed application dated 19.11.2009 under Section 56(3) of the Act to the State Government for clarification, as to under which Entry the aforesaid goods being manufactured by the appellant would fall and the rate of tax leviable thereon. The Financial Commissioner and Principal Secretary to the Government of Haryana, Excise and Taxation Department, vide order dated 18.1.2010, opined that the goods being manufactured by the appellant were not forming part of Entry 57 of Schedule 'C' of the Act, hence, would be taxable @ 12.5%, being unclassified goods. The order was challenged before the Tribunal. The Tribunal, vide order dated 29.7.2011, dismissed the appeal. The order is under challenge before this court.

3. Learned counsel for the appellant submitted that firstly the Financial Commissioner and Principal Secretary to Government of Haryana, Excise & Taxation Department had gone wrong in observing that the end use of the product is to be seen for the purpose of its classification. On his own imagination, he had added words in the Entry which, in fact, do not exist. Reference to Entry in Central Excise Tariff was totally un-called for. Even the Tribunal had gone wrong in taking into consideration the purpose for which the product is being used. It is no where in the Entry, whereas in certain entries, wherever the Legislature wanted to put a condition regarding

use of the product, as mentioned in the Entry, has specifically been mentioned therein. Reliance upon the judgment of Karnataka High Court in Super Market v. State of Karnataka, (1997) 104 STC 15 is totally misplaced for the reason that entries in Karnataka Sales Tax Act, 1957 are totally different. One of the Members of the Tribunal had given different reasoning for reaching to the same conclusion, but even that cannot be sustained in judicial scrutiny. The Entry is quite wide. It does not specify any particular use of the product mentioned therein, namely, 'paper'. 'Paper' has multiple uses and with the change in time and technology, it will continue to have more uses. Same product may be used by different persons for different purposes, hence, use cannot be a determinative factor for the purpose of taxation or to find out as to whether the product falls in Entry 'A' or Entry 'B'. There is no scope for intendment in a taxing statute. Words have to be given their purposive meaning. Residuary Entry is to be invoked only if the product does not fall in the specific Entry. Heavy onus in that case is on the State. Common parlance test is to be applied with reference to the persons, who are dealing in the product. As per the market survey conducted by the appellant, which was placed before the authorities, the goods manufactured by the appellant are treated as 'paper'. To limit the product 'paper', as mentioned in the Entry, only to the extent of use for writing or printing, drawing, packing or decorating or wall paper is not legally sustainable, as Entry 57 of Schedule 'C' of the Act does not specify any such uses.

4. In support of his arguments, reliance was placed upon Division Bench judgment of Kerala High Court in Cochin Cadalas (P) Ltd. v. State of Kerala, (2008) 16 VST 319 (Ker), where craft paper was held to be included

in the Entry merely mentioning paper. Reliance was also placed upon the judgment of Bombay High Court in Commissioner of Sales Tax v. Agarwal & Co., 1983 (12) ELT 116 (Bom.), where skimmed milk powder was held to be falling in the Entry providing for “milk whole of separated or reconstituted.” It was given purposive interpretation. Judgment of Hon'ble the Supreme Court in Standard Pencils (P) Ltd. v. Collr. of C. Ex., Madras, 2002 (145) ELT 278 (SC) was relied upon where pencil form of 'Kum Kum' was held to be falling in the Entry mentioning 'Kum Kum'. It was not held to be limited to 'Kum Kum' in powder, liquid or sticker form. Reference was also made to judgment of Hon'ble the Supreme Court in Porritts & Spencer (Asia) Ltd. v. State of Haryana, (1978) 42 STC 433 (SC), where dryer felts were held to be textile. In support of the plea that end use is not relevant, reference was made to the judgment of Hon'ble the Supreme Court in Dunlop India Ltd. & Madras Rubber Factory Ltd. v. Union of India and others, 1983 (13) ELT 1566 (SC) and Division Bench judgment of this court Goyal Motor Parts v. State of Punjab and another, (2011) 38 VST 159.

5. It was further submitted that if the goods can be covered in the Entry specifically providing for a product by giving liberal construction, the residuary Entry providing for higher rate of tax should not be resorted to. In that event, heavy onus is on the revenue. In support, reliance was placed upon Commissioner of C. Ex., Meerut v. Maharshi Ayurveda Corpn. Ltd., 2006 (193) ELT 10 (SC).

Arguments of the State

6. In response, learned counsel for the State submitted that a plain reading of the Entry would give a meaning that word 'paper' used therein has reference to writing or printing, drawing, packing or decorating or wall

paper and none else. The foiled paper being manufactured by the appellant will not fall in the Entry by any stretch of imagination. While relying upon the judgment of Hon'ble the Supreme Court in State of Uttar Pradesh and another v. M/s Kores (India) Ltd., (1976) 4 SCC 477, it was submitted that carbon paper in that case was not held to be 'paper' and Hon'ble the Supreme Court opined that 'paper' is understood to mean a substance which is used for bearing writing, or printing, or for packing, or for drawing on, or for decorating, or covering the walls. The product being manufactured by the appellant does not fall in any of the aforesaid categories, hence, will not be covered under the Entry. In State of Orissa v. Gestetner Duplicators (P) Ltd., (1974) 33 STC 333 (Orissa), stencil paper was not held to be 'paper'. In Commissioner of Sales Tax, U. P. v. Masneill and Barry Ltd., Kanpur, AIR 1986 SC 386, 'ammonia paper' and 'ferro paper' was not held to be forming part of the Entry, which provided for 'paper' other than hand-made paper. The judgment of Karnataka High Court in Super Market's case (supra) is clearly against the appellant, as in that case even 'tissue paper' was held to be not falling in the Entry providing for 'paper'. Regarding interpretation of entries with reference to paper or its products, reference was further made to judgments of Karnataka High Court in STA No. 36 of 2010-- 3M India Limited v. State of Karnataka, decided on 30.8.2012 and STRP Nos. 389-435 of 2012-- M/s Raman Boards Ltd. v. The State of Karnataka, decided on 20.8.2014. She further submitted that the judgments sought to be relied upon by the appellant are distinguishable on facts. While mentioning the goods in different Schedule, their use is always considered. It is on that basis only the rates of tax are determined.

Reply by the appellant

7. In response, learned counsel for the appellant submitted that none of the judgments sought to be referred to by learned counsel for the State is relevant. Much water has flown ever since the matter was decided by Hon'ble the Supreme Court in M/s Kores (India) Ltd.'s case (supra), where the assessment year involved was 1956-57. With the change in technology, how the paper is now understood, and its multiple uses has undergone a dramatic change, otherwise the issue therein was whether carbon paper was 'paper' or not. The words used by Hon'ble the Supreme Court in the judgment are not to be read as a statute, once the uses to which 'paper' can be put to have not been mentioned in the Entry. In M/s Raman Boards Ltd.'s case (supra), the goods under consideration before the court were 'paper products' and not 'paper' as such, hence distinguishable.

8. Heard learned counsel for the parties and perused the paper book.

Discussion

9. Though at the time of admission, this court had framed the issue, as has been reproduced in paragraph No. 1 in the judgment, however, the same needs to be re-framed keeping in view the issue, which was raised by the appellant before the Financial Commissioner and Principal Secretary to the Government of Haryana, Excise and Taxation Department, in the application filed by it under Section 56(3) of the Act. The same is as under:

“Whether the tissue papers and its forms, namely, tissue paper, napkin, toilet paper rolls, kitchen wipes and facial tissues fall under Entry 57 of Schedule C of the Act ?”

10. The relevant Entry under consideration in the present appeal are extracted below:

“ SCHEDULE C		
<i>[See sub-clause (iii) of clause (a) of sub-section (1) of section 7]</i>		

<i>Sr. No.</i>	<i>Description of goods</i>	

XX	XX	XX
57.	Paper, paper board and newsprint”	

11. A clarification was sought by the appellant by filing application under Section 56(3) of the Act to the Financial Commissioner and Principal Secretary to the Government of Haryana, Excise & Taxation Department. Vide order dated 18.1.2010, the Financial Commissioner opined that the Entry uses the generic term 'paper', hence, the items covered therein would be craft paper, news print paper etc. The products being manufactured by the appellant are meant for specific purpose, hence, could not be included. Reference was also made to Central Excise Tariff entries. The opinion expressed by the Financial Commissioner and Principal Secretary to the Government of Haryana was upheld in appeal filed by the appellant before the Tribunal vide order dated 29.7.2011. Four out of five Members of the Tribunal, while relying upon the judgment of Karnataka High Court in Super Market's case (supra), where the product, classification of which was the issue, was regarding paper napkin. It was found to be not forming part of the Entry containing 'paper', but was found to be forming part of the Entry containing toilet articles.

Case law

12. In Mukesh Kumar Aggarwal & Co. v. State of Madhya Pradesh and others, (1988) 68 STC 324 and Annapurna Carbon Industries Co. v. State of Andhra Pradesh, (1976) 37 STC 378, Hon'ble the Supreme Court opined that “user test”, i.e., the test, the use to which the goods can be put, can also be considered in interpreting an item in taxing statute. However, this rule of interpretation has got its own limitations. Certain goods may be put to different uses by different persons. That cannot entitle the revenue to apply different rules of tax to the sales of the very same product by different dealers depending on the use to which they will be put by the purchasers. The particular use to which an article can be applied in the hands of a special consumer is not determinative of the nature of the goods.

13. In Commnr. of Central Excise, Cochin v. M/s Mannampalakkal Rubber Latex Works, 2007 (217) ELT 161, Hon'ble the Supreme Court opining on an Entry under the Central Excise Tariff Act, 1985, opined that there are two types of tests – one is test of 'composition' and one is test of 'end-user'. Generally in matters of classification, 'composition test' is an important test and 'end-user test' would apply only if the Entry says so.

14. The aforesaid judgment was cited with approval in latest judgment of Hon'ble the Supreme Court in Civil Appeal No. 2650 of 2016--Commissioner of Commercial Tax, U. P. v. M/s A. R.Thermosets (Pvt.) Ltd., decided on 6.9.2016.

15. In M/s Kores (India) Ltd.'s case (supra), the assessment year involved in the judgment was 1956-57. It was a case under U. P. Sales Tax Act, 1948. The issue under consideration before Hon'ble the Supreme Court was “whether carbon paper is paper falling within the purview of

'paper'.....?' In considering the aforesaid issue, Hon'ble the Supreme Court referred to various dictionaries for meaning of word 'paper'. It was noticed that word 'paper' is understood as meaning a substance which is used for bearing writing, or printing, or for packing, or for drawing on, or for decorating, or covering the walls. Hon'ble the Supreme Court went on to examine what carbon paper was. It was manufactured by coating the tissue paper with a thermosetting ink (made to a liquid consistency) based mainly on wax, non-drying oils, pigments and dyes by means of a suitable coating roller and equalising rod and then passing it through chilled rolls. It can be used only between two sheets of paper in order to reproduce on the lower sheet that what is written or typed on the upper sheet, i.e., making carbon copy. Referring to the judgments of different High Courts dealing with 'ammonia paper and ferro paper' [Kilburn & Co. Ltd. v. Commissioner of Sales Tax, U. P., Lucknow, (1973) 31 STC 625] and 'stencil paper' [Gestetner Duplicators (P) Ltd.'s case (supra)], it was opined that carbon paper cannot be said to be a paper. The word 'paper' as such was not defined in the Act. The definition, as referred to in various dictionaries, was not exhaustive as it has used the word 'etc.' towards end.

16. The consistent opinion expressed by Hon'ble the Supreme Court is that the observations made in a judgment must be read in the context in which they appear to have been stated. The judgments are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary to embark into lengthy discussions, which is meant to explain and not to define. Judges interpret words of statutes; their words are not to be interpreted as statutes. Reference can be made to judgments of Hon'ble the Supreme Court in Bharat Petroleum Corporation

Ltd. v. N. R. Vairamani, (2004) 8 SCC 579 and Inbasegaran and another v. S. Natarajan (Dead) thr. Lrs., 2014(4) RCR (Civil) 872.

17. The judgment of Karnataka High Court in Super Market's case (supra), where the issue under consideration was rate of tax applicable to paper napkin. The assessee claimed that it was covered under Entry at Sr. No. 125, whereas the department claimed that it was covered under Entry at Sr. No. 65. Both the entries read as under:

“Sl. No. 65.- Toilet articles except toilet soaps and such other toilet articles as may be specified by the State Government by Notification in the Official Gazette.

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Sl. No. 125.- All kinds of paper including arbon paper, blotting paper, water proof paper, PVC coated paper, ferro paper, ammonia paper, stencil paper but excluding paper falling under serial number 55, pulp boards, art boards, duplex boards, triple boards, card boards, corrugated boards, and the like, cellophane.”

18. 'Paper napkin' was found to be covered under Entry at Sr. No. 55 containing toilet articles. Reference was made to judgment of Hon'ble the Supreme Court in M/s Kores (India) Ltd.'s case (supra). It was a case of two competing entries for classification.

19. In Cochin Cadalas (P) Ltd.'s case (supra), the issue under consideration before Kerala High Court was as to whether 'craft paper' was paper falling in Entry 94(i) or will be covered under Entry 94(ii) of the First Schedule to the Kerala General Sales Tax Act, 1963, which are extracted below:

<i>Sr. No.</i>	<i>Description of goods</i>	<i>Point of levy</i>	<i>Rate of tax</i>
94(i)	Paper	At the point of first sale in the State by a dealer who is liable to tax under Section 5	4.00%
94(ii)	Newsprint, cardboard, paper products, note books and printed materials including greeting cards	Do	5.00%

20. Referring to the judgment of Hon'ble the Supreme Court in Mukesh Kumar Aggarwal Co.'s case (supra) that 'user test', though may be logical but inconclusive, it was opined that when a generic name is used in the Entry without any further clarification regarding inclusion or exclusion in the expression 'paper', it shall include all kinds of paper. The other Entry defining different kinds of paper would automatically be excluded from the first Entry. It was further opined therein that in a taxing statute, there is no room for any intendment. The words must be given true meaning. Relevant paras thereof are extracted below:

“..... Item 94 of the First Schedule to the Act is in two parts. Item 94(i) speaks of 'paper'. It is appropriate to state that the normal legislative practice whenever such expressions are used in the entries attached to the Schedule to the Act, is to use the expression immediately after using generic name of the commodity, 'paper of all kinds', but, whenever they included or excluded certain types of paper, it was made clear by appropriate provision. In the absence of any inclusion or exclusion in the expression “paper”, it can be said that it included all kinds of paper. Sub-entry (ii) in item No. 94 of the First Schedule to the KGST Act, speaks of newsprint, cardboard, paper products, note books and printed materials including greeting cards. Therefore, such of those commodities

which are enumerated in sub-entry (ii) of entry 94 of the First Schedule to the KGST Act are excluded from sub-entry (i) of entry 94 of the Act, which speaks of paper.

It is now well-settled that in a taxing statute, there is no room for any intendment and regard must be had to the clear meaning of the words.....”

[Emphasis supplied]

It was also a case of two competing entries.

21. In M/s A. R. Thermosets (Pvt.) Ltd.'s case (supra), the issue under consideration was the rate of tax on bitumen emulsion. Bitumen is in solid form, whereas bitumen emulsion is in liquid form. Bitumen emulsion is a processed bitumen. It comes into existence when bitumen is treated with emulsifiers and other chemicals to attain a liquid form. The stand taken by the revenue was that the word “bitumen” should be given narrow meaning for the reason that the Legislature has not thought it appropriate to use the prefix or suffix like “all”, in all forms or of all kinds. Bitumen used in the entry is in generic form. It would be erroneous not to cover a product, which is only a type or form of bitumen and retains all its essential characteristics. The contention was rejected as the entry did not suggest as to what it is included or excluded. Bitumen emulsion was opined to be part of the entry containing 'bitumen', as it was found to be only one of the varieties of bitumen. The revenue's stand that residuary entry should be invoked for taxing bitumen emulsion was rejected, relying upon the principle that 'specific entry would override a general entry'. Reference was made to Collector of Central Excise, Shillong v. Wood Craft Products Ltd., (1995) 3 SCC 454 to opine that resort can be made to a residuary heading

when by liberal construction specific Entry cannot cover the goods in question. In this case, electronic cash registers were found to be covered in the entry providing for cash register as one of the goods.

22. If the case of the appellant is considered in the light of enunciation of law, as referred to above, Entry 57 in Schedule 'C' only prescribes 'paper', 'paper board' and 'newsprint'. It does not provide for any inclusions or exclusions. It further does not provide for any user test. The word 'paper' used in the Entry is in generic form, which will include all types of paper, which has its essential characteristics. It is not in dispute that even the tissue paper, napkin, toilet paper rolls etc. retain the essential characteristics of paper. It is only that it is in different strength and is used for different purposes. There is no competing entry to find out whether product falls in entry 'A' or 'B'. The residuary entry is to be invoked in case, with liberal construction to the specific entry, the product could not be found to be forming part thereof.

23. For the reasons mentioned above, the substantial question of law, as referred to above, is answered in favour of the appellant and against the revenue.

24. The appeal stands disposed of accordingly.

(Rajesh Bindal)
Judge

(Harinder Singh Sidhu)
Judge

October 27, 2016

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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No

