

J.S. Auto Machine Shop Vs. State of Karnataka and anr.

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Court : Karnataka

Decided On : Apr-13-1988

Reported in : ILR1988KAR2510; [1988]70STC321(Kar)

Judge : S.R. Rajasekhara Murthy, J.

Acts : Karnataka Entry Tax Act - Sections 2(4) and 3; Punjab Municipalities Act - Sections 16; Bombay Sales Tax Act; [Constitution of India](#) - Article 286 and 286(1)

Appeal No. : Writ Petition Nos. 19038 to 19040 of 1987

Appellant : J.S. Auto Machine Shop

Respondent : State of Karnataka and anr.

Advocate for Def. : H.L. Dattu, High Court Government Pleader

Advocate for Pet/Ap. : K. Srinivasan, Adv.

Judgement :

ORDER

S.R. Rajasekhara Murthy, J.

1. The above writ petitions are disposed of finally on merits, after hearing the learned counsel for the respondents at the preliminary stage and after issued rule.

2. The common petitioner in these three writ petitions is a firm. During the years ending Deepavali of 1984, 1985 and 1986, the petitioner purchased and brought into the local area of Davanagere certain industrial machinery for the purpose of job-works, viz., for repairing of machines and re-conditioning of engines in his auto-machine-shop in Davanagere.

3. The 2nd respondent-the Assistant Entry Tax Officer, No. 4, Sub-Circle, Davanagere, issued a proposition-notice in form No. 8 to the petitioner proposing to levy entry tax on the value of the industrial machinery purchased and brought within the local area for use by the petitioner, during the three years in question.

4. The petitioner has challenged these notices on several grounds. The first attack is that the proposed levy is not in conformity with the charging section 3 of the Karnataka Entry Tax Act (the Act). The argument is that the machinery was brought by the petitioner for use in its workshop and was not meant for consumption, use or sale in the local area.

5. The tax is sought to be levied under entry 7 of the Schedule to the Act. That entry reads thus :

'Industrial machinery and parts and accessories thereof.'

6. The further argument is that the said machinery was installed for effecting repairs and reconditioning of the machinery brought by the customers to its workshop, and, that therefore the said activity does not amount to use or consumption of those goods within the local area, to attract the levy of entry tax.

7. The petitioner's prayer in the writ petition is, therefore, to declare and strike down item No. 7 to the Schedule to the Entry Tax Act which seeks to levy of entry tax on industrial machinery, as beyond the competence of the State Legislature.

8. In support of this contention the learned counsel for the petitioner has relied upon a decision of the Supreme Court in S. M. Ram Lal & Company v. Secretary to Government of Punjab (Civil Appeal No. 869 of 1966) disposed of on 3rd April, 1969.

9. It is argued on behalf of the State by the learned Government Pleader that the meaning of the terms - 'use', 'consumption' or 'sale' has received interpretation by the Supreme Court in *Burmah-Shell case* : AIR 1963 SC906 and the meaning given to the term, 'use' under the Bombay Municipal Act should hold good for Entry Tax Act also. It is also argued that the judgment in *Burmah-Shell case* : AIR 1963 SC906 was also by a larger Bench of five-Judges and that interpretation must prevail over the three-Judges-Bench in *Ram Lal's case* (Civil Appeal No. 869 of 1966 decided on 3rd April, 1969 - Supreme Court). It is, therefore, argued by the learned Government Pleader that the writ petitions are liable to be dismissed and the machinery purchased and brought by the petitioner into the local area for its own use, is also liable to be taxed under the Act. It is further argued that, the meaning of the term 'used' under the charging section should be interpreted as a noun and not as a verb, and so understood, the term, 'used' should be understood as 'put to use' and any other interpretation would defeat the object of the charging section and such a consequence should be avoided by the courts while interpreting a taxing statute.

10. In *Ram Lal's case* (Civil Appeal No. 869 of 1966 decided on 3rd April, 1969), the Supreme Court was interpreting the meaning of the term, 'use' in the context of levy of octroi on wool purchased by the dealer from its head office in Delhi where it was purchased and brought within the local area to their factory in Faridabad township, for dyeing. The Notified Area Committee of Faridabad proposed to levy octroi on the wool imported into the limits of Faridabad and issued a demand notice in that behalf. This notice was challenged before the High Court of Punjab, which held that the wool which was brought by the petitioners within the notified area was for 'use' and octroi on that account was properly leviable. The dealers, *Ram Lal and Company*, thereafter, challenged the levy in further appeal before the Supreme Court.

11. The Supreme Court considered the connotation of the terms, 'use' occurring in section 16 of the Punjab Municipalities Act, vis-a-vis entry 52 of List II, Seventh Schedule to the Constitution, which authorised levy of tax into the local area for consumption, use or sale therein.

12. The Supreme Court held, on facts, that there was no evidence in the case adduced by the parties on the question whether entry of the wool belonging to the appellants into the limits of the Notified Area Committee, was with the object of converting it into a different commercial commodity. The Supreme Court, therefore, remanded the matter to the High Court to make a fresh order in the light of the evidence to the produced by the parties in that behalf.

13. The learned counsel for the petitioner has, however, placed strong reliance on the observations made by the Supreme Court in the course of its order as to the connotation of the expression, 'use'. The excerpt from the judgment, which is referred by the learned counsel is produced below :

'It is common ground that the goods brought within the Notified Area Committee of Faridabad were not brought for consumption or sale. It was argued, however, that the goods were brought into the Notified Area Committee for use, and on that account octroi was leviable. The expression 'use' is not defined in the Act. In its ordinary meaning the word 'use' as a noun, is the act of employing a thing; putting into action or service; employing for or applying to a given purpose. But the word 'use' occurs in entry 52, List II of the Seventh Schedule to the Constitution sandwiched between 'consumption' and 'sale', and it must take colour from the context in which it occurs. It is a settled rule of interpretation that when two or more words which are susceptible of analogous meaning are coupled together, they are understood to be used in their cognate sense. They take, as it were, their colour from each other, that is, the more general is restricted to a sense analogous to the less general : Maxwell on Interpretation of Statutes, 11th Edition, page 321. The compiling of three words 'consumption', 'use' and 'sale' connotes that the underlying common idea was that either the title of the owner is transferred to another, or the thing or commodity ceases to exist in its original form. Unless it is proved that the wool brought within the limits of the Notified Area Committee, Faridabad, by the appellant was intended to be so employed that it was to cease to be the original commercial commodity and was to become a new commodity or a component of a new commodity, no octroi would be levied by the Notified Area Committee on the entry of wool.'

14. Basing on these observations, it is argued by Sri Srinivasan that the machinery brought by the petitioner within the local area, was not 'used-up' by the dealer, i.e., it was not intended to be converted into a different commercial commodity nor did it cease to be a original commercial commodity, but it was only installed in its workshop for undertaking job-works.

15. The turnover in job-works which is sought to be taxed as works contract under the Act, is not challenged by the petitioner in the writ petitions. The petitioner's only argument against the levy is, unless the machinery is used-up by the dealer or is converted into a different commercial commodity, it does not attract the charging section used the Act. And on the facts of the petitioner's case, it is argued, the mere entry of the industrial machinery within the local area, which is not consumed, used or sold, does not attract the levy.

16. The next decision relied upon by Sri Srinivasan is, Jaffrabad Municipality v. Kathiawar Industries : AIR1969 Guj344 . This decision is cited by the learned counsel in support of the submission that 'use' in the context of levy of octroi by the Jaffrabad Municipality was understood as 'used-up'. The case arose in the context of entry of raw-salt or uncrushed salt within the municipal limits for the purpose of crushing and converting it into crushed salt. Since the uncrushed salt brought into the municipal limits was used-up by the dealer in the course of his business of crushing salt, it was held that the company was liable to pay octroi on the uncrushed salt so brought by the dealer for crushing.

17. The Supreme Court in Kathiawar Industries Ltd. v. Jaffrabad Municipality : [1980]1SCR243 arising out of the Gujarat High Court decision reported in : AIR1969 Guj344 upheld the decision of the Gujarat High Court, and it was held that octroi was leviable on the uncrushed salt which was brought to the octroi area and crushed and the activity resulted in both consumption and use of the uncrushed salt by the dealer. The Supreme Court referred, in this context, to the decision in Burmah-Shell case : AIR 1963 SC906 in support of the reasoning that the word 'consumption' must be understood depending upon the context as 'using up'.

18. The Supreme Court referred to its earlier decision in *Anwarkhan Mehboob Co. v. State of Bombay* : [1961]1SCR709 .

19. It is necessary to refer to Anwarkhan's case : [1961]1SCR709 , since it contains very important discussion about the connotation of the term 'consumption' occurring in article 286 of the Constitution. The important passage which is required to be noted is in paragraph 9 of the judgment :

"Consumption', it was explained consists in the act of taking such advantage of the commodities and services produced as constitutes the 'utilization' thereof.'

20. That was a case wherein the purchase of raw-tobacco and utilization of the same for the manufacture of beedies was held to attract the provisions of the Bombay Sales Tax Act. [See : Explanation to article 286(1) of the Constitution].

21. Though the ratio of the said decision arose in the context of levy of purchase tax on raw-tobacco under the Bombay Sales Tax Act, the Supreme Court did consider the scope of the term 'consumption' and its connotation with reference to the levy of purchase tax. The Supreme Court relied, in turn, on the observations made by the Supreme Court in *State of Travancore-Cochin v. Shanmugha Vilas Cashew-nut Factory* : [1954]1SCR53 , in which Sri Das, J., held :

'In construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law. If the Revenue satisfies the court that the case falls strictly within the provisions of the law, the subject can be taxed, if, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter.'

22. The learned counsel for the petitioner has developed his argument on the basis of the enunciations made by the Supreme Court in the above-mentioned decisions in support of his contention that 'consumption' and 'use' occurring in section 3 of the Entry Tax Act, should be understood as 'used-up'. Therefore, the

argument proceeds, that the mere bringing of the industrial machinery within the local area, cannot be subjected to levy of entry tax.

23. One other contention of Sri Srinivasan is that the petitioner is not a 'dealer' as defined by section 2(4) of the Act. In support of this contention, he also referred to the definition of 'dealer' in the K.S.T. Act, which meaning is adopted for the purpose of Entry Tax Act also.

24. 'Dealer', under section 2(k) of the K.S.T. Act means, 'any person who carries on the business of buying, selling, supplying or distribution the goods'

25. The argument of Sri Srinivasan is that the petitioner in these cases does not carry on business of buying or selling of the industrial machinery, which he brings within the local area, for his own use, in his workshop and that therefore, he cannot be treated as a dealer under the Entry Tax Act. If the petitioner is not a dealer, the learned counsel submits, he is entitled to exemption under section 28 of the Act which provides for exemption from the applicability of the Act to persons who are not dealers in scheduled goods. It is, therefore, argued that the levy proposed in respect of industrial machinery is contrary to the charging section and section 28 of the Act.

26. In support of this contention the learned counsel cited the decision in State of Gujarat v. Raipur . : [1967]1SCR618 .

27. While dealing with the definition of 'dealer' in the Bombay Sales Tax Act, Justice Shah (as he then was) held, that in order to come within the charging provisions of the Act, it must be shown that the person had an intention to carry on the business of selling those goods before his turnover from the sale of those commodities is brought to tax. The question that arose in the said case was : whether the sale turnover of petitioner-company, which carried on the business of manufacturing and selling cotton textiles, of certain discarded and miscellaneous items, was liable to be taxed

28. The Supreme Court held that the burden of proving that the company was carrying on business of selling coal and other commodities, was on the

department. On facts, it was held that the turnover of sale of some of the commodities by the company was exigible to tax.

29. The Supreme Court referred to its earlier decision in *State of Andhra Pradesh v. Abdul Bakshi and Bros.* : [1964]7SCR664 , and distinguished the same and observed that the principle of that case was not applicable to the case they were deciding. It may be noted that in *Abdul Bakshi's case* : [1964]7SCR664 that a person who consumes a commodity bought by him (tanning bark) in the course of his trade (tanning hides and skins) and consumed it in the course of his trade or uses it in manufacturing another commodity for sale, is a dealer, since the legislature had not made sale of the very article brought by a person, a condition for treating him as a dealer.

30. In another decision of the Supreme Court relied upon by the petitioner, namely, *the Director of Supplies and Disposals, Calcutta v. Member, Board of Revenue, West Bengal* [1967] 20 STC 398 Justice Shah, held on facts of that case, that the Director of Disposals carried on an organised course of activity with a profit-motive in selling the surplus war equipment by auctions held from time to time, but as per the opinion of the majority, it was held by the court that the appellant in that case did not carry on business of selling goods and was not a dealer.

31. The argument of Sri Dattu on the first question is that the meaning of the term, 'use' should be understood as 'utilization' in bringing-forth a different commodity or production of services by the utilization thereof. He draws sustenance for these propositions in the observations made by the Supreme Court in *Anwarkhan Mehboob Co. v. State of Bombay* : [1961]1SCR709 , and also paragraph 21 in *Burmah-Shell case* : AIR 1963 SC906 .

32. In *Burmah-Shell case* : AIR 1963 SC906 , the Supreme Court was dealing with the interpretation of the terms 'consumption', 'use', or 'sale' appearing in section 73(1)(iv) of the Bombay Municipal Boroughs Act. Explaining the different shades of meaning of 'consumption and use' in that context, the Supreme Court held that the goods must be regarded as having been brought for purposes of consumption when a person brings them either for his own use or consumption or to put them in

the way of others in the area, who are to use and consume.

33. In the light of this interpretation, their Lordships further held that the act of sale is also an act in the process of consumption, i.e., the sale is merely putting the goods in the way of use or consumption.

34. Hidayatullah, J., (as he then was), who rendered the judgment in that case examined the connotation of the expression, 'consumption, use or sale' in the light of entry 52, List II of the Seventh Schedule to the Constitution. The contention of the appellant before the Supreme Court, namely, the Burmah-Shell Oil Company, who had a depot in Belgaum for distribution of petroleum and its products was, that the goods brought by the company inside the local area and sold to its customers and dealers, did not attract the levy of octroi since, by the said sale, the goods were not consumed and used and hence not liable to octroi under the Bombay Municipal Boroughs Act before it was amended by the Bombay Act 35 of 1954.

35. Rejecting this contention, the Supreme Court held, the act of sale was also one of the processes or modes of consumption. Though the word, 'sale' was introduced in the Bombay Municipal Act in the year 1954, the expression, 'consumption' or 'use' has a wider meaning and 'sale' within the local area should be understood as consumption by the customer, either directly or by the dealer who puts the goods for use of others after effecting the sale. Elaborating this principle against the appellant and for the reasons stated by their Lordships in paragraphs 21 and 22, the court rejected the appeal and confirmed the levy of octroi on the goods brought into the local area, (a) to be consumed by itself or sale to the consumers direct or (b) by sale to dealers, who in their turn, sold the goods to the consumers within the municipal area. The taxable event, according to the ruling of the Supreme Court, was the entry of goods to the local area which are meant to reach the ultimate user or consumer in the area. It makes no difference whether the goods brought into the local area is for the purpose of consumption by the person who brings them for his own use or consumption or whether they are put in the way of others in the area for their use and consumption. The act of sale was, therefore, held to be merely a means of putting the goods in the way of use

or consumption.

36. Their Lordships also explained further that the word 'use' need not always be understood as 'used-up' in the process. The goods brought into the local area may be retained without either being used or consumed in this context referred to the observations made by the Supreme Court in an earlier decision in *Anwarkhan Mehboob Co. case* : [1961]1SCR709 , in which the meaning of the term 'consumption' occurring in article 286(1) of the Constitution came up for consideration. Their Lordships held that 'consumption' occurring in the said article means 'utilization thereof'.

37. The Supreme Court has summed up in paragraph 21 in *Burmah-Shell case* : AIR 1963 SC906 thus :

'(i) the taxable event is the entry of goods which are meant to reach the ultimate user or consumer in the area;

(ii) the goods must be regarded as having been brought in for purposes of consumption when a person brings them either for his own use or consumption, or to put them in the way of others in the area, who are to use and consume.'

38. 'Consumption' as explained by the Supreme Court in *Anwarkhan's case* : [1961]1SCR709 consists in the act of taking such advantage of the commodities and services produced as constituting the utilization thereof.

39. Relying upon these decisions, Sri Dattu has argued that the petition must fail on the first point, namely, as to the interpretation of the charging section and the levy of entry tax on the industrial machinery and has justified the show-cause notice issued in these cases as valid.

40. Replying to the arguments of the learned counsel for the petitioner on the second point, namely, that the petitioner cannot be treated as a dealer for the purpose of the Act and is not liable to be taxed on the machinery brought within the local area for his own use, Sri Dattu has argued that this contention has to be rejected in view of the scheme of the Act and its object and in the light of the decisions of the Supreme Court on this point.

41. Dealing with the scheme of the Act, he has referred, at the outset, to the charging section under which levy tax is levied on the value of the scheduled goods entering the local area.

42. Section 3, sub-section (ii) refers to the persons liable to pay entry tax.

43. Section 4 requires every dealer in the scheduled goods to get himself registered under the Act.

44. By Act 38 of 1984, section 4 was amended to include a dealer who buys or receives scheduled goods and who is doing business in local area.

45. In the light of the above provisions, it was argued that the dealer who buys or receives the scheduled goods, albeit, for his own use, is to be construed as a dealer for purpose of the Act.

46. Replying to the arguments of the petitioner that in order to be a dealer, he should be carrying on business of buying and selling and supplying or distributing the goods referred to in the Schedule, the learned Government Pleader has met this argument with reference to some of the decided cases of the Supreme Court.

47. At the outset, he has relied upon a decision reported in [1964] 15 STC 644 (State of Andhra Pradesh v. Abdul Bakshi and Bros.).

48. In Abdul Bakshi's case [1964] 15 STC 644 the Supreme Court gave an elaborate connotation of the expression 'business' in the context of the levy of tax on the price of tanning bark bought by the dealer for consumption in his tannery. That was a case in which tax was sought to be levied on the price of tanning bark, which was purchased by the dealer in the course of his business of tanning hides and skins. The question that arose was : whether the dealer was liable to pay tax on the price of the tanning bark

49. The Supreme Court disagreed with the view of the High Court and held that the expression 'business' though extensively used is a word of indefinite import, the dealer had purchased the tanning bark for the purpose of using it in his tanning business and that therefore he was a dealer in tanning bark and was thus liable to

pay tax on the price of the tanning bark.

50. Reversing the view of the High Court, the Supreme Court observed thus :

'But to be a dealer a person need not follow the activity of buying, selling and supplying the same commodity. Mere buying for personal consumption, i.e., without a profit-motive, will not make a person dealer within the meaning of the Act, but a person who consumes a commodity bought by him in the course of his trade, or use in manufacturing another commodity for sale, would be regarded as a dealer. The legislature has not made sale of the very article bought by a person a condition for treating him as a dealer : the definition merely requires that the buying of the commodity mentioned in rule 5(2) must be in the course of business, i.e., must be for sale or use with a view to make profit out of the integrated activity of buying and disposal. The commodity may itself be converted into another salable commodity, or it may be used as an ingredient or in aid of a manufacturing process leading to the production of such salable commodity.'

51. The other decision relied upon by the learned Government Pleader is that of *Salar Jung Sugar Mills v. State of Mysore* : [1972]2SCR228 . Dealing with the definition of 'dealer' in the K.S.T. Act the Supreme Court held (See : para 45), that the purchase of sugarcane which was meant for manufacture of sugar and not for resale, was exigible to purchase tax. The Supreme Court ruled that 'if a person carried on business of buying or selling a commodity it is not necessary that he should sell the same commodity to become a dealer'. It was further observed, 'the commodity may be converted into another salable commodity or it may be used as an ingredient in the manufacture of a commodity'.

52. Applying the definition of 'dealer' to such a transaction the Supreme Court further held that the factories which bough sugarcane could be said to carry on business of buying and selling the sugarcane and the factories therefore are dealers within the meaning of the Mysore Sales Tax Act. This enunciation by the Supreme Court is reiteration of the principle laid down by the Supreme Court in *Abdul Bakshi's case* : [1964]7SCR664 .

53. The learned Government Pleader has finally placed reliance on the Full Bench decision of this Court reported in : AIR1980 Kant92 (Govindanaik, G. K. v. West Patent Press Co. Ltd.), on the question whether the said decision of the Supreme Court in Ram Lal's case (Civil Appeal No. 869 of 1966 decided on 3rd April, 1969), rendered by the three-Judges should yield place to the decision rendered by five-Judges of the Supreme Court in both *Burmah-Shell* case : AIR 1963 SC906 and *Anwarkhan Mehboob Co.* case : [1961]1SCR709 .

54. On a resume of the decisions relied upon by the learned counsel for the petitioner and the learned Government Pleader, the conclusions that emerge on application of the law to the facts of the present cases are as follows :

(i) In Ram Lal's case (Civil Appeal No. 869 of 1966 decided on 3rd April, 1969), the Supreme Court did not lay down any categorical ratio, but remanded the case to the High Court for recording further evidence on the question whether the entry of the wool belonging to the appellants into the limits of the Notified Area Committee, Faridabad was with the object of converting it into a different commercial commodity. The Supreme Court also left open the question whether mere dyeing of the wool converted it into a different commercial commodity

Therefore, the observations of the Supreme Court made in the context of the facts of that case should be understood in the light of the decisions of the Supreme Court in *Burmah-Shell* : AIR 1963 SC906 and *Anwarkhan's* cases : [1961]1SCR709 . Reliance on Ram Lal's case (Civil Appeal No. 869 of 1966 decided on 3rd April, 1969 - Supreme Court) by the petitioner is, therefore, misplaced.

(ii) the connotation of the expression, 'consumption', 'use' or 'sale' as explained by the Supreme Court in the above-mentioned cases should prevail and should govern the interpretation of these terms used in the Karnataka Entry Tax Act also.

To sum up, in the light of the ratio laid down by the Supreme Court in the above-mentioned decisions, the terms, 'use' need not always be understood as 'used-up'.

(iii) the decisions of the Supreme Court in Raipur Manufacturing Company : [1967]1SCR618 and the Director of Supplies and Disposals [1967] 20 STC 398 only laid down and explained when an activity can be construed as business and in both the cases the said conclusion was based on the particular facts. Those decisions, therefore, do not help in deciding the question that arises for decision in these cases nor do they support the petitioner's contentions.

(iv) so far as the second point as the definition of 'dealer' is concerned, the contention of the petitioner has to be rejected in view of what was stated by the Supreme Court in Abdul Bakshi's case : [1964]7SCR664 , wherein it was held, a commodity may be used as an ingredient or in aid of manufacturing process leading to the production of another salable commodity and one need not sell the very article to become a dealer.

55. For the reasons stated above, I hold the industrial machinery which is one of the scheduled goods is exigible to levy under the Karnataka Entry Tax Act, and the writ petitions are accordingly dismissed.

56. Writ petitions dismissed.