

Jayajeevan and Co. Vs. Additional Commercial Tax Officer, I Circle, Belgaum

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Court : Karnataka

Decided On : Sep-14-1990

Reported in : [1991]81STC102(Kar)

Judge : K.B. Navadgi and ;M.P. Chandrakantaraj Urs JJ.

Appeal No. : S.T.R.P. Nos. 81 to 83 of 1990

Appellant : Jayajeevan and Co.

Respondent : Additional Commercial Tax Officer, I Circle, Belgaum

Advocate for Pet/Ap. : B.P. Gandhi, Adv.

Judgement :

M.P. Chandrakantaraj Urs, J.

1. The only question raise in these S.T.R.Ps. is that pipe made out of polyethylene is not an article made out of plastic or polythene or polyvinyl chloride mentioned in entry 110 of the Second Schedule as it was at the relevant time, i.e., for the assessment years 1979-80, 1980-81 and 1981-82 and as such it was not exigible to tax under that entry.

2. In order to support that argument, the learned counsel Sri B. P. Gandhi placed reliance on the decision of the Supreme Court in the case of Atul Glass Industries (P.) Ltd. v. Collector of Central Excise [1986] 63 STC 322 and commended to our

acceptance that unless it was demonstrable that polyethylene was plastic, the pipes made out of that material and sold to customers by the assessee could not be brought to tax under entry 110 as it stood then.

3. The Supreme Court in the aforementioned case of Atul Glass Industries (P.) Ltd. [1986] 63 STC 322, dealing with the expression 'glass' and 'glassware' occurring as an entry under the Central Excises and Salt Act, 1944, ruled that expression did not include glass mirrors, wind screens, rear screens and door screens manufactured for motor vehicles. Similarly, the parts and accessories of motor vehicle did not include such screens when that expression was brought into being by an amendment. In other words, the test commonly applied to ascertain whether marketable products fall within a specified entry in the First Schedule to the Central Excises and Salt Act, 1944, or similar taxing statutes, was how the product was product was identified by the class or section of people dealing with or using the product.

4. If we apply that test, the purchase of the pipe which is not cement pipe or a iron pipe or a brass pipe but one which is made of synthetic substance which has semblance to plastic or polythene or polyvinyl chloride will be covered by that entry.

5. It is not uncommon that many of these chemical combinations of polythene, plastic and polyvinyl chloride substance go under specific manufacturers' brand name and as such it cannot be said that because of those names are not included in the taxing statute in the Schedule, it was meant to be excluded though made out of that substance.

6. Entry 110 provides for articles made out of plastic, polythene or polyvinyl chloride to be brought under tax. Such pipe made out of such substance, is an article is not in doubt at all. Therefore, the learned counsel contended that it is a particular variety of plastic which is not mentioned, which according to him will render it not exigible to tax under entry 110. We are unable to agree with that view which is not the test suggested by the Supreme Court in the aforementioned decision for the common user of plastics. We must apply the test of common parlance in the trade and see what the shop keeper offers on demand of the

customer of purchaser. If that is so understood, then the pipe made made out of polyethylene is also a plastic pipe in common parlance.

7. Mr. Gandhi also submitted that in view of our above order, some time be given for the assessee to pay the entire amount from the date of demand. We are also told that demand is already made by the assessing authority. We give two months' time from today to satisfy the demand made for the relevant assessment years.

These petitions are therefore, dismissed, subject to the time granted.

8. Petition dismissed.

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