Lingaraj Poly Sacks Vs. Additional Entry Tax Officer and Another

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Court : Karnataka

Decided On : Jul-25-1997

Reported in : AIR1998Kant306; [1998]109STC516(Kar)

Judge : Tirath S. Thakur, J.

Appeal No. : Writ Petition No. 8388 of 1990

Appellant : Lingaraj Poly Sacks

Respondent : Additional Entry Tax Officer and Another

Advocate for Def. : K.M. Shivayogiswamy, Government Pleader

Advocate for Pet/Ap. : S.G. Shivaram for ;M/s. Vasan Associates, Advs.

Judgement :
ORDER

Tirath S. Thakur, J.

1. The petitioner, a registered dealer under the Karnataka Tax on Entry of Goods into Local Areas for Consumption, Use or Sale Therein Act, 1979 causes entry of what are known as high density polythene woven sacks in the local area of Arasikere in the Hassan District. These sacks, it appears, are used by the State Forest, Agriculture and Horticulture Departments for raising seedlings. For the assessment period April 1, 1986 to December 31, 1986 the assessing authority

has by its order dated 27th of December, 1989 levied entry tax at the rate of 1 per cent on the total turnover of the petitioner on the sacks imported by it into the local area. Aggrieved, the petitioner has filed the present writ petition assailing the validity of the order as also the demand notice issued on the basis thereof.

2. Counsel for the petitioner argued that HDPE punched woven sacks imported by the petitioner into the local area aforementioned did not fall under entry 16-A of the Act as the same do not answer the description of 'packing material' covered by the said entry. He urged that while woven sacks brought into the local area by the petitioner could be treated as bags, yet such bags having been punched with holes were incapable of being used for any packing purpose and were exclusively meant for raising seedlings. The said use, argued the learned counsel, did not amount to using the bags for 'packing purposes' so as to bring them within the purview of entry 16-A to attract the levy of entry tax on their import into the local area. Entry 16-A of the Act as it stood during the relevant period as under :

'16-A. Packing materials, namely :

(i) fibre board cases, paper boxes, folding cartons, paper bags, carrier bags and board boxes, corrugated board boxes, and the like;

(ii) tin plate containers (cans and boxes), aluminium foil, collapsible tubes, steel and aluminium drums and crates, and the like;

(iii) plastic films, bottles, pots (excluding country-made earthen pots), jars, bags and cushioning material, and the like;

(iv) wooden boxes, crates, casks and containers and the like;

(v) glass bottles, jars and carboys and the like;'

3. A plain reading of the above would show that the entry deals with packing materials, but since expression is not defined by the Act, the same shall have to be understood in the sense it is described in its dictionary meaning. Webster's Dictionary defines the word 'pack' as under :

'Pack, means to put together compactly in a box, trunk, etc., for carrying or storing or to fill for carrying or storing.'

4. So also in the Oxford English Dictionary, the word 'packing' has been defined thus :

'Packing means putting together compactly as for transport, preservation or sale.'

5. It would therefore appear that when things are put together in a compact manner for being stored or carried, the same can be said to be packed. What is however important to note is that the packing of the articles or things may vary from article to article depending upon the nature of the article and the mode of packing found suitable for the same. There may be articles, which can be packed in paper or carrier bags. There may be others, which can be packed more properly in aluminium foils including glass bottles and containers such as jars, etc. Similarly, there may be articles, which may be more conveniently packed in gunny bags while some others may be capable of being packed only in wooden boxes or containers and the like. What is significant is to bear in mind that the packing or packing material utilised for packing an article would vary from article to article, so that it is not necessary that a particular type of packing may be useful for all kinds of articles. In the case of seedlings whether the same are grown, stored or carried, the only possible mode of packing or at least the most convenient mode of packing may be to pack the seedlings at the roots along with the mud surrounding the same. The stem or the leaves of the seedling or the plant may be incapable of being packed securely without being damaged. That being so, it is not possible to hold that HDPE punched hole sacks used for growing, storing or carrying seedlings are not being used for purposes of packing such seedlings.

6. That apart the expression bags appearing in item 6-A(iii) is wide enough to include bags, which may because of the use to which the same are put have been punched with holes. Just because the bags supplied by the petitioner have been punched with holes to let the water flow out for the healthy growth and survival of the seedling would not mean that the sack or the bag has ceased to be sack or a bag within the meaning of entry 16-A. It is also noteworthy that the expression 'packing material' has not been exhaustively described in the entry. This is

apparent from the fact that at end of each category of the packing material under sub-clauses (i) to (vi), the expression 'and the like' has been used by the Legislature. This only shows that the description of the packing material given in these sub-clauses is only enumerative and not exhaustive in nature. In State of Gujarat v. Kishor Timber [1991] 83 STC 370 (Guj) reliance whereupon was placed by the counsel for the petitioner, the question that arose for consideration was whether wooden pallets manufactured by the assessee could be deemed to be packing material for purpose of entry 12 of the Gujarat Sales Tax Act, 1969. The court held that whether an article is ordinarily used as a packing material or not would depend upon the accepted use or the use to which it is put by the buyer of such an article. If it can be shown that a class of buyers normally uses the given article as a packing material, there is no reason why such an article should not be regarded as a packing material. The said decision therefore does not lend any support to the petitioner for it is not in dispute that the sacks in questions are used for purposes of not only growing but for purposes of carrying and storing the seedlings by persons who produce the same. The use of HDPE sacks for purposes of carrying or storing the seedlings and plants apart from growing them has not been disputed by the petitioner. What was argued was that the process of growing or carrying the seedlings in such bags does not amount to packing the plants in the same. I have not been able to persuade myself to accept that line of reasoning for as observed earlier, the nature of the packing or the nature of the packing material used for a particular article largely depends upon the nature of the article itself. In the case of seedlings and plants, the only possible method by which the same can be packed with a reasonable care for their safety is to pack them in bags or earthen pots. It is significant to note that earthen pots have been excluded from the purview of entry 16-A as is clear from item No. (iii) thereof. It follows that even when countrymade earthen pots may also be used like the sacks in question as packing material, the Legislature has in its wisdom excluded such earthen pots from the levy of entry tax under the Act.

7. In the totality of the above circumstances, therefore, I see no error of law or jurisdiction in the order passed by the assessing authority to warrant interference. There is no merit in this writ petition, which fails and is accordingly dismissed but in the circumstances without any orders as to costs.

8. Writ petition dismissed.