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Court : Karnataka

Decided On : Feb-11-1991

Reported in : [1991]83STC209(Kar)

Judge : K. Shivashankar Bhat and;R. Ramakrishna, JJ.

Appeal No. : Writ Petitions Nos. 8529 to 8535, 9583, 9584 and 14409 of 1988, 2455 to 2457 of 1987 and 2182, 2183

Appellant : Suvasini Beedies Pvt. Ltd.

Respondent : Additional Commercial Tax Officer, Iii Circle, Mangalore and Another

Advocate for Def. : H.L. Dattu, Government Advocate

Advocate for Pet/Ap. : V.C. Ramabhadran, ;G. Sarangan, ;E.R. Indrakumar and ;Aital, Advs.

Judgement :

K. Shivashankar Bhat, J.

1. In all these writ petitions the main contention pertains to the scope of entry 2 in Schedule to the Karnataka Tax on Entry of Goods into Local Areas for

Consumption, Use or Sale Therein Act, 1979, as it stood substituted by the Karnataka Act 38 of 1984 (which amended the main Act with effect from April 1, 1983). The question is whether tobacco just rolled with the leaves, before it is appropriately heated to become the final product as a beedi, also is a beedi or a 'like tobacco product' referred to in the said entry. For the sake of convenience this beedi is referred to as 'raw beedi'. The respondents sought to levy entry tax on the entry of these goods into the local areas, and hence these writ petitions. During the pendency of these writ petitions, assessment orders were completed as permitted by this Court and consequently, the petitioners have amended the writ petitions by filing appropriate applications. Two periods are involved - (i) January 1, 1983 to December 31, 1983 and (ii) January 1, 1984 to December 31, 1984. The manufacturing process of the beedi is explained by the petitioners therein. The petitioners supply the tobacco and the beedi leaves to the contractor, who in turn distribute them to the sub-contractors and workers. The tobacco pieces are rolled in the beedi leaves and each beedi is yarned around. These are raw beedies; they are collected back by the petitioners and heated appropriately to remove the moisture and impart flavour to the beedi. The beedies collected from the workers/contractors will have moisture, since, the leaves used for rolling are soft and moisty. If these raw beedies are not heated, they would develop fungus very soon and the beedies cannot be smoked; further unheated beedies would not have any flavour, taste, etc., which make the beedi smokable. The raw beedies collected from the workers through contractor are thereafter, heated in appropriate chambers, very early. These beedi rollers (workmen) reside outside the local areas and engage themselves in the work mostly in their respective houses.

2. Petitioners assert :

'In the course of the business, the petitioner supplies beedi tobacco to various beedi rolling contractors outside Bantwal local area for the purposes of rolling beedi tobacco into raw beedies. Before being so supplied to beedi rolling contractors, the tobacco brought into Bantwal local area is merely stored in transit at the said place for a while before its eventual despatch to places outside the said local area for the purposes of rolling. The rolled raw beedies are afterwards brought into Bantwal local area by the petitioner. It is submitted that such raw

beedies contain moisture and capable of producing fungus. Nobody consumes or smokes such 'raw beedies'. The raw beedies, as such are not marketed and the same are not available in any market. These are totally unfit for human consumption. The raw beedies so brought into Bantwal local area are afterwards duly heated in the heating chambers inside the Bantwal local area at the petitioner's premises. Therefore, the entire raw beedies entering the local area are heated, labelled and wrapped inside Bantwal local area and after payment of excise duty, the finished beedies are sold and despatched to places outside the Dakshina Kannada District substantially and to a small extent to places like Hindupur and Rayadurga in Andhra Pradesh. All such despatches are evidenced by the documents such as delivery notes in form 30 and no part of the finished beedies are sold within the Bantwal local area or even in the Dakshina Kannada District.'

3. A few more facts brought out in I.A. No. II for amendment of the pleading after the assessment orders, are :

'The raw beedies are totally unfit for smoking or human consumption. Before rolling the beedi leaves have necessarily to be soaked or sprinkled with water and got piled up and covered by a fully soaked cloth or gunny. It is so done in order to soften and mellow the leaves and make them flexible and fit for rolling, as otherwise the leaves are likely to be broken while rolling. The tobacco is thereafter stretched on the soaked beedi leaves and rolled and yarn twisted at the tapering and when they are so rolled and yarn twisted they become raw beedies and these raw beedies simply rolled and yarn twisted as stated above enter the local area from outside or are received from within the local area from outside or are received from within the local area contractors. These raw beedies at the time of entry into the local area from outside and even thereafter remain wet or drenched since the leaves were soaked with water before rolling. Such raw beedies are unfit for human consumption and susceptible for formation of fungus therein unless they are heated in our heating chamber within 24 hours of rolling, as otherwise due to moisture content of the leaves the tobacco contained therein would be spoiled. It is a health hazard to smoke raw beedies before heating and nobody consumers or smokes the raw beedies. A most significant aspect to be noted in this behalf is that

raw beedies are not at all marketed. Raw beedies are not available in the market for sale or purchase.'

4. The petitioners had produced before the assessing authority samples of (i) a bundle of raw beedies rolled and (ii) a bundle of heated, labelled with brand name and excise duty paid beedies, along with a letter dated July 20, 1988 (annexure D in W.P. Nos. 9583 and 9584 of 1988).

5. The assessing authority, in his order (annexure K) states :

'The dealer in order to bring some force to his contentions has produced the samples of labelled beedies and unlabelled or khulla beedies along with affidavit of some persons who did not appear before me. I have verified the samples and I find no distinction between unlabelled or khulla beedies as per Central Excise Department and labelled beedies. My enquiries reveal that the beedi rollers do not buy the beedies for their own consumption. They smoke the beedies rolled by them before subjecting the same to heating process or labelling. The heating is done for the purpose of preservation, flavour, taste, maintenance of quality, etc., and labelling is done for the purpose of distinction of the manufacturer's products, quality, goodwill, etc., reasons and marketability. That does not mean that there is no market for khulla, unlabelled or raw beedies or by whatever name they are called.'

6. Again, -

'The dealer of these khulla beedies maintains record in register known as L4, for excise purpose. The manufacturers of beedies and their staff also consume the raw beedies and for the difference in stock pay excise duty in their monthly returns. Thus the raw beedies consumed or smoked by rollers and other staff including the owners of beedi factories are consumable before labelling and smoking the same is not a health hazard as claimed by the dealer.'

7. Therefore, the authority concluded that, -

'The raw beedies attract entry tax as there is no such commodity as raw beedies, they are beedies in common parlance. They are known as khulla beedies, by

excise authority. They are available in market for sale. Poor people patronise being their consumers or smokers. They are cheap because no excise duty is paid on them as they are exempt when produced up to 20 lakhs in number. They are probably heated by exposure to the sun as stated by some dealers, they are not labelled with expensive labels. Neither they have got brand name, etc. Nevertheless they re beedies with all their quality, nicotine content, etc., and they have their own market patronise and customers.'

8. Petitioners have pointed out that the above observations are incorrect, because, petitioner along with their objections to the proposition notices had supplied samples of finished beedies and raw beedies; but assessing authority has considered khulla beedies as raw beedies. This is clear from the above observations of the assessing authority. Petitioners have pointed out that beedies after being heated are bundled and labelled before marketing. Each manufacturer has his own brand name on the label. But there are a few who sell loose beedies which are not labelled; these beedies are finished smokable beedies, but not bundled up and rolled; such beedies are referred as khulla beedies, popularly. This peculiarity of a khulla beedi has not been noticed by the assessing authority.

9. We think, the assessing authority erred in his observation when he says raw beedies are smoked by a few; he has mistaken the raw beedies as khulla beedies. Raw beedies are not marketed at all; it will be a health hazard to smoke them in view of the moisture affecting the tobacco. If not heated after rolling these raw beedies would be subjected to natural decay. This part of the assessing authority's finding has to be ignored as entirely mistaken; he has equated khulla beedies with the raw beedies. Therefore, we proceed to decided the question involved here on the basis that khulla beedies are finished products, after being heated appropriately, beyond the state of raw beedies. Raw beedies are non-smokable.

10. The question, primarily, is whether a raw beedi is a beedi for the purpose of entry 2 of the Schedule to the Act. Petitioners seriously deny the claim of the Revenue that reference to the word 'beedi' in the entry would include all forms of a beedi, such as a raw beedi.

11. An article which is the subject of taxation is understood by its popular meaning. This is now well-settled. Sales tax laws emanate from entry 54 of List II of the Seventh Schedule to the Constitution, which empower the State Legislature to levy 'taxes on the sale or purchase of goods other than newspaper'. The words used in sales tax legislation to understand the subject of the levy, and test applied to identify the goods is, as to how and in what manner the particular word is regarded in common parlance, according to the sense of ordinary traders and merchants. The test is to find out how, those who are conversant with the subject-matter with which the law is dealing, would attribute the meaning.

12. Since levy of entry tax is on goods brought into a local area 'for use, consumption or sale', the subject of tax has to be identified with reference to the sense in which who generally and normally bring in the goods for these purpose. By and large the goods are brought into a local area by traders and merchants (or even manufacturers). Therefore, test applicable will be the same as applied for purposes of sales tax law.

13. In Deputy Commissioner of Sales Tax v. G. S. Pai & Co. : [1980]1SCR938 , the principle was reiterated thus at (page 59 of STC; 612 of AIR) :

'Now there is one cardinal rule of interpretation which has always to be borne in mind while interpreting entries in sales tax legislation and it is that the words used in the entries must be construed not in any technical sense nor from the scientific point of view but as understood in common parlance. We must give the words used by the Legislature their popular sense meaning 'that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it'.'

14. Raw beedi is a phrase used for the sake of convenience in these proceedings, to described the article in a semi-finished state; it comes out at a stage earlier to the final product after being appropriately heated. 'Beedi' is an article of common use, smoked mostly by poorer section of the people. Without hesitation one can say that none would accept a 'raw beedi' as a 'beedi'. The contention of the Revenue that raw beedi is a taxable subject under entry 2 of the Schedule to the Act is, therefore unacceptable. Tobacco products like beedi, cigarette, zarda, etc.,

are use din view of their flavour, taste and other feelings imparted by them. Beedi is a product which comes out only after appropriate heating, and different brands of beedies have their own taste and flavour because of the difference in the temperature imparted while heating.

15. A few other contentions are required to be considered now. Mr. Indrakumar's first contention was based on the concept of 'goods'. Since section 3 of the Act levies tax on the entry of the 'scheduled goods', it was contended that, a thing which is not 'goods' would not be the subject of the levy; alternatively, the learned counsel contended that item 2 of the Schedule to the Act enumerates 'tobacco product like beedies, etc.' and therefore if a thing is not a 'product' at all, it cannot be a tobacco product. In other words, a thing which has undergone a full process of production can be called as a product and not a semi-finished thing or an article. Several decisions were cited to urge that only finished products are goods. In *Union Carbide India Ltd. v. union of India* [1987] 64 STC 444; AIR 1986 SC 1987 (at para 6 of AIR; page 447 of STC) the Supreme Court held that to attract excise duty the article manufactured must be capable of sale to a consumer and that it should be something which can ordinarily come to the market to be bought and sold. The learned counsel highlighted the state of production at which the raw beedi is obtained, in the process of manufacturing the ultimate finished product, popularly referred to as beedi. According to the learned Government Advocate, the meaning of 'goods' is very wide and has to be understood in the context of entry 52 of List II of the Seventy Schedule to the Constitution, since the Act levies tax on entry of goods. As per article 366(12) 'goods' includes all materials, commodities and articles; the definition of 'goods' under section 2(7) of the Sales of Goods Act is again quite wide. "Goods' means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be served before sale or under the contract of sale. 'The raw beedi is a material, commodity or an article; since it can be owned or prescribed, it cannot be denied that it is an 'article'; the words used in a legislative entry like entry 52 are to be liberally and broadly understood so as not to restrict the scope of taxing power of the State. The concept of 'goods' under the Central Excise Act is more restricted, because it is a law traced to entry 84 of List 1 of the Seventy Schedule to the

Constitution, whereunder, 'duties of excise on tobacco and other goods manufactured or produced in India' are leviable by law. The goods are, goods manufactured or produced, which necessarily mean, a finished product and not a product or article which has undergone a part of the manufacturing process or part of the production activity. The Union Carbide India Ltd.'s case : [1987]165ITR1(SC) , was referred to emphasise this proposition. The contention raised by the appellant before the Supreme Court in the said case was, that the 'aluminium cans' produced by the appellant cannot be described as 'goods' for the purposes of excise duty as they are not marketable and are prepared entirely by the appellant for the flashlights manufactured by it. This was accepted; in doing so, the Supreme Court held (at page 1098 of AIR; 447 of STC) :

'It does seem to us that in order to attract excise duty the article manufactured must be capable of sale to a consumer. Entry 84 of List I of Schedule VII to the Constitution specifically speaks of 'duties of excise on tobacco and other goods manufactured or produced in India ...' and it is now well-accepted that excise duty is an indirect tax in which the burden of the imposition is passed on to the ultimate consumer. In that context, the expression 'goods manufactured or produced' must refer to articles which are capable of being sold to a consumer.'

16. The proposition advanced by the learned Government Advocate is quite commendable and the reasoning is attractive. However, for the purposes of these writ petitions it is not necessary to consider the question whether the State Legislature is competent to levy entry tax only on a finished product having a market, that is, whether, it should be a commercial commodity. We have to decide the meaning of the word 'beedi' and whether, the 'raw beedi' is a commodity like beedi, cigarette, etc.

17. The learned Government Advocate also pointed out that tax is on 'entry of goods into a local area for consumption, use or sale therein' and an article brought into a local area for any 'use' or 'consumption' or 'sale' can be considered as goods, by applying the ratio of the Union Carbide India Ltd.'s case : [1987]165ITR1(SC) , just as language of entry 84 of List I was used to understand meaning of goods for purposes of Central Excise Act. The word 'use' has been

widely understood in taxation law; an intermediate product (which is an 'article'), a component part or any article 'used' in the manufacture of another product are considered as 'used' for this purpose. Similarly, the concept of 'consumption' also is quite wide. In *Burmah-Shell Oil Storage and Distributing Co. of India Ltd. v. Belgaum Borough Municipality* : AIR 1963 SC906 , the Supreme Court held :

'The word 'consumption' in its primary sense means the act of consuming and in ordinary parlance means the use of the article in a way which destroys, wastes or uses up that article. But in some legal contexts, the word 'consumption' has a wider meaning. It is not necessary that by the act of consumption the commodity must be destroyed or used up.'

18. *Anwarkhan Mehboob Co.'s case* : [1961]1SCR709 , was quoted by the Supreme Court in this regard. A few decisions on the meaning of 'use' were also cited.

19. Since it is not necessary to go into this question, it is unnecessary to express any opinion on these propositions urged by the learned counsel.

20. The alternative contention of Sri Indrakumar that the word 'product' in entry 2 of the Schedule is indicative of a finished product also need not be gone into, because the meaning of any word in such an entry has to be understood in the context and manner in which it is used. Here the relevant phrase is tobacco product; but, the entry is not applicable to all kinds of tobacco products; entry covers only such of the tobacco products which are like beedi, cigarette, cigar, zarda, etc. The principle applicable to understand the meaning of a word appearing in collection with other words, as stated by Gajendragadkar, J. (as he then was), for the Supreme Court in *State of Bombay v. Hospital Mazdoor Sabha* : (1960)ILLJ251SC , is :

'..... 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 a less general. The same rule is thus interpreted in 'words and phrases' (Vol. XIV. p. 207) :

'Associated words, take their meaning from one another under the doctrine of *noscitur a sociis*, the philosophy of which is that the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it; such doctrine is broader than the maxim *eiusdem generis*'. In fact the latter maxim 'is only an illustration or specific application of the broader maxim *noscitur a sociis*.'

21. An analogous principle is that when general words follow particular and specific words of the same nature, the general words must be confined to the things of the same kind as those specified. But the specific words must form a distinct genus or category - (vide : *Kavalappara Kottarathil Kochuni v. States of Madras and Kerala* : [1960]3SCR887).

22. The contention urged was that, the tobacco product to fall within entry 2 of the Schedule should have the likeness of other specified articles (beedi, cigarette, cigar, zarda, etc.). The likeness has to be drawn from all theses enumerated articles; in other words, something which is common in all those articles should be found in the other unspecified articles to be covered by the general word, 'etc.'

23. There is considerable force in this contention. Earlier to the present state of affairs, the relevant entry was worded only as 'tobacco product'. Any 'tobacco product' would have fallen within the entry. The present entry tries to identify the tobacco products, by providing a standard for identification. There should exist some common feature in all the articles that could be likened to the specified articles. There are two factors which are common - (i) the raw material being tobacco for all the articles; (ii) the articles are consumed or used for their flavour, either by smoking, chewing or inhaling (snuffing). A pleasure is derived or habit formed by their consumption. If the first factor is the reason for attracting the entry, the wording of the entry would have been confined to 'tobacco product'. The second factor seems to be the relevant factor and the substantial basis to attract an article or commodity into the entry. A tobacco product which is consumed by way of smoking, chewing, inhaling, etc., is the product which is sought to be brought into the relevant entry of the Schedule to the Act. The purpose of confining the tobacco product which has the likeness of articles specified, cannot be anything else.

24. The learned Government Advocate contended that any article which resembles any of the specified articles such as beedi, cigarette, zarda, etc., would be covered by the entry; according to him, physical resemblance to any of such an article attracts the description as 'like' beedi or cigarette, etc. We don't think so. Likeness is to be qualitative and not physical. Intention is not to bring in any kind of tobacco roll, by stating that it is like a cigarette or cigar. As a tobacco product, the article sought to be brought into the category of other articles specified, should have a similar characteristic and this characteristic, can nothing but, its quality as an article of enjoyment (i.e., smoking, chewing, inhaling, etc.). Raw beedi would not fall in line with the category of goods specified in entry 2, as a 'like', tobacco product, at all. For purposes of this entry, all that contains tobacco, is not a tobacco product.

25. Mr. Dattu's valiant efforts to sustain the levy of tax, did not stop here. The learned counsel referred to the residuary entry in the Schedule whereby all raw materials, component parts, inputs, etc., were roped into the net of taxation. The learned counsel contended that raw beedies at least will be raw materials or input falling within this entry. We cannot entertain this contention, since, it was not the case found by the assessing authorities. Further, the question whether the petitioners are industrial units as stated in the explanation to the entry, to attract the levy, is a matter of investigation. According to the petitioner, they are not governed by the Factories Act and the definition of 'factory' in the said Act is inapplicable to them.

26. We don't express any opinion on this question. In case proceedings can be initiated afresh, by resort to the said entry, under the Act, it is left to the Revenue to do so.

27. In one of the writ petitions, a further question against taxing the entry of packing material/container, referred as 'bardhan' is raised. 'Bardhan' is another name for 'gunny bag'; bunny bags are exempted under the Act; consequently, the petitioners are right in this contention that these are outside the scope of the levy.

28. Consequently, these writ petitions are allowed; the impugned orders of assessments to the extent of the levying of taxes on the entry of raw beedies and

bardhan are set aside.

29. Rule made absolute in all the writ petitions. No costs.

11-2-1991 :

Learned counsel for the petitioners submitted that by virtue of the interim order of this Court some amounts have been paid by way of tax during the pendency of these writ petitions. Since the writ petitions are allowed, it is more appropriate that the respondents should refund the same. However, the respondents are granted three months time to refund the amounts paid during the pendency of these writ petitions or in furtherance of the impugned orders.

14-2-1991 :

For being spoken to :

While disposing of this batch of writ petitions we omitted to refer to another contention pertaining to the taxability of the entry of the beedi leaves under entry 16B of the Schedule. Several contentions have been urged by the learned counsel for the petitioners; since these questions are most appropriately to be decided by the assessing authorities, having regard to the factual aspect, we have not expressed any opinion. Assessing authorities are directed to consider the question in the light of the contentions raised by the petitioners. It is ordered accordingly.

30. Writ petitions allowed.

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