

State of Orissa Vs. Polytech International

State of Orissa Vs. Polytech International

SooperKanoon Citation : sooperkanoon.com/528330

Court : Orissa

Decided On : Jun-22-1976

Reported in : 42(1976)CLT792; [1976]38STC125(Orissa)

Judge : R.N. Misra and ;N.K. Das, JJ.

Appeal No. : S.J.C. No. 13 of 1975

Appellant : State of Orissa

Respondent : Polytech International

Advocate for Def. : B. Agarwalla, Adv.

Advocate for Pet/Ap. : The Standing Counsel (S.T.)

Judgement :

R.N. Misra, J.

1. At the instance of the State of Orissa, the Member, Sales Tax Tribunal, has stated this case and referred the following question for opinion of the court :

Whether, on the facts and in the circumstances of the case, the Member, Sales Tax Tribunal, is justified in directing assessment of tax on the turnover of polythene goods at the rate of five per cent instead of seven per cent as per serial No. 7-C of the schedule of taxable goods ?

2. The assessee is a registered dealer under the Orissa Sales Tax Act (hereinafter referred to as the 'Act') and carries on business in polythene bags and other plastic goods. The assessee has calculated his tax liability at the rate of five per cent of the turnover. The Sales Tax Officer demanded tax at the rate of seven per cent.

3. The assessee challenged the extra liability by preferring an appeal before the Assistant Commissioner on the footing that polythene bags were not covered by the notification for higher rate of tax and were liable at the general rate. The appeal having been dismissed, the assessee preferred a second appeal to the Tribunal. Before the Tribunal, it was contended on behalf of the assessee that under the provisions of Section 5(1) of the Act, the tax payable is at the rate of five per cent of the taxable turnover.

Under the first proviso, the State Government has been authorised to vary the rate of tax and in exercise of such power, by Notification No. 33927-F. dated 30th December, 1957, the rate of tax for specified commodities has either been lowered or enhanced. Under serial No. 7-C, plastic, celluloid, bakelite goods and goods made of similar substance, plastic sheets and fabrics and articles made of such sheets or fabrics have been notified to be exigible to tax at the rate of seven per cent of the turnover. According to the assessee, polythene bags are not covered by this notification and, therefore, the turnover is exigible to tax at the general rate of five per cent while, according to the taxing department, polythene bags are plastic articles and, therefore, the turnover thereof is liable to tax at the enhanced rate of seven per cent. The Tribunal came to hold that polythene bags were not plastic goods or articles made of similar substance. Therefore, it accepted the assessee's stand that the sale turnover of polythene bags was taxable at the rate of five per cent.

4. The short question for consideration in this case is whether polythene goods are plastic articles. In the case of *State of Orissa v. Orissa Fisheries Development Corporation Ltd* [1976] 37 S.T.C. 25, we examined at considerable length the case of 'plastic' and 'nylon'. Adopting the commercial meaning attributable to the terms, we came to hold that 'nylon' was not 'plastic'. At page 31 of the Reports, we

observed:

Admittedly, both plastics and nylon are synthetic products. To the scientist engaged in experiments in his laboratory, plastic and nylon would very often appear to be essentially one product. Plastic by its very quality of being pliable would admit of various combinations. Nylon as a synthetic material would also admit of composition. It would not, however, be appropriate to carry the idea of the scientist into the words for getting their true meaning. In the commercial field, plastic and nylon have definite connotations and on account of the fact that they are alike products or are drawn from essentially the same class of articles, there is no overlapping in the understanding of the words. Plastic articles convey a sense of hard material such as toys, slippers, trays, cups and saucers, frames and the like. Now is the world of plastics and it would be embarrassingly difficult for us to give a catalogue of plastic goods in the market. Nylon on the other hand is taken as a part of the textile world and is understood either as the twine or thread of the fabric made out of it. Undoubtedly, the imaginative manufacturer with the assistance of the scientific knowledge available to him makes a hundred and one uses of nylon today, but essentially in the commercial field, nylon belongs to the textile group while plastics belong to a non-textile section. This is a broad distinctive feature between the two and a man in the trade or the consumer seeking to buy them in the market does not make any confusion. To him the difference is dear. Plastic is 'plastic' and nylon is 'nylon'. He does not bear in mind the scientific basis -- the fact that 'nylon' is drawn from plastic, and 'plastic' is a common term covering nylon and hundred and one articles within it. We are required, following the guideline indicated by the Supreme Court in the cases referred to above, to attach a common parlance meaning and to understand the term in its commercial sense. In that sense, 'nylon' (both twine and fabric) is different from 'plastic goods'. Therefore, nylon-ware or twine would not be covered by the term 'plastic'....

The position here, however, is different. Polythene is essentially plastic-based. A reference made to the Encyclopedia Americana, Vol. XXII (1961 Edition), shows that polythene is a chemical product made basically out of plastic. Ordinarily, plastic bags are sold in the market. The manufacturers by making various

chemical compositions make different commodities with a view to capturing the market. Plastic, as already stated, is a pliable commodity and with admixtures is available for manufacture of different goods. Polythene bags appear to be a commodity of that type. Essentially, therefore, polythene material comes under the broad head of plastic and, when the description of goods in the notification is 'goods made of similar substance', the words are wide enough to take similar products. In our view, therefore, polythene came within the notification and, accordingly, would be exigible to the higher rate of tax.

5. Our answer to the question referred to us, therefore, is:

On the facts and in the circumstances of the case, the Member, Sales Tax Tribunal, was not justified in directing assessment of tax on the turnover of polythene goods at the rate of five per cent instead of seven per cent.

It would be appropriate that we make no direction for costs in the facts and circumstances of the case.

N.K. Das, J.

6. I agree

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com