

**State of Orissa Vs. Gestetner Duplicators (P.) Ltd.**

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**Court :** Orissa

**Decided On :** Jan-15-1974

**Reported in :** 40(1974)CLT437; [1974]33STC333(Orissa)

**Judge :** R.N. Misra ;and B.K. Ray, JJ.

**Appeal No. :** S.J.C. No. 240 of 1972

**Appellant :** State of Orissa

**Respondent :** Gestetner Duplicators (P.) Ltd.

**Advocate for Def. :** N. Bhattacharya, Adv.

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

**Judgement :**

**R.N. Misra, J.**

1. This is a reference made under Section 24(1) of the Orissa Sales Tax Act, 1947 (hereinafter referred to as the Act), by the Additional Sales Tax Tribunal, Orissa, at the instance of the State of the following questions for determination of this court:

(1) Whether stencil paper is paper as specified in serial No. 7-A of the schedule as notified by the State Government from time to time in exercise of the powers conferred by the first proviso to Sub-section (1) of Section 5 of the Orissa Sales

Tax Act, 1947?

(2) Whether, on the facts and in the circumstances of the case, the learned Member, Additional Sales Tax Tribunal, Orissa, is justified in holding that the stencil paper should be taxed at 5 per cent under the Orissa Sales Tax Act, 1947?

The assessee deals in duplicating machines, duplicating paper and stencil paper, etc. The dispute is as to whether stencil paper is paper as provided under serial No. 7-A of the appropriate Government notification. Serial No. 7-A reads as follows:

Paper including all kinds of pasteboard, millboard, straw-board, cardboard, blotting-papers, newsprint, cartridge paper, packing paper, paper registers, notebooks, exercise books, envelopes, labels, letter pads, writing tables and fiat files made out of paper.

The rate of sales tax prescribed for these materials is 7 per cent. According to the State, stencil paper comes within this category. According to the assessee, stencil paper is an item not included in any of the specified items and, therefore, the rate of tax under the Act is 5 per cent.

3. Paper has admittedly no definition under the statute or in any sister legislation and, therefore, must be given the meaning attributed to the word in common parlance. The Shorter Oxford Dictionary says that paper is 'a substance composed of fibres interlaced into a compact web, made from linen and cotton rags, straw, wood, certain grasses, etc., which are macerated into a pulp, dried, and pressed; it is used for writing, printing, or drawing on, for wrapping things in, for covering the interior of walls, etc. Also applied to other substances used for writing upon,....' Stencil is said to be a piece of thin sheet metal, leather, paper or the like, having a pattern perforated or cut out, through which a pigment may be applied to a surface to be marked or decorated (Webster's Universal Dictionary). Corpus Juris Secundum, Vol. 82, page 1052, gives meaning to 'stencil' by saying:

A thin plate or sheet of any substance in which a figure, letter or pattern is formed by cutting completely through the plate.

As it appears, stencil consists of various organic chemical compounds including nitro-cellulose fibres in order to give it a thin sheet like form. In order to use this for the purpose of duplicating, it has to be cut either by a typewriter or by a stylus pen so as to remove the chemicals from the places where the stroke is made. It is indeed not a substitute of paper in the ordinary sense. The test to be used to find out whether stencil is paper is available from the decision of the Supreme Court in Commissioner of Sales Tax v. S.N. Brothers [1973] 31 S.T.C. 302 (S.C.). Dealing with the words 'dyes and colours' used in entry No. 10 and the words 'scents and perfumes' used in entry No. 37 under the U.P. Sales Tax Act of 1948, the Supreme Court said:

They have to be construed 'in their own context' and in the sense, as ordinarily understood and attributed to these words by people usually conversant with and dealing in such goods.

3. We have been shown two decisions of the Allahabad High Court which are relevant. In Kores (India) Ltd. v. State of Uttar Pradesh [1970] 26 S.T.C. 126, the Allahabad High Court was called upon to find out whether carbon-paper would be paper. The court found that carbon-paper was not paper by saying:

When carbon-paper is sold, it is not sold as tissue paper but as a material whose value and significance lies entirely in the chemical coating spread thereon. In the ordinary sense 'paper' refers generally to the material used for writing, printing or wrapping. Carbon-paper, in our opinion, cannot be considered in that sense.

In Kilburn and Co. Ltd. v. Commissioner of Sales Tax [1973] 31 S.T.C. 625, the point for consideration was whether ammonia paper and ferro paper came within the category of paper. The court came to hold that such stuff was not paper. The learned Judges placed reliance on a decision of the Kerala High Court in Sree Rama Trading Company v. State of Kerala [1971] 28 S.T.C. 469, where cellophane was found not to be paper.

4. Keeping the true test that is usually applied in deciding a dispute of this type we are of the view that stencil paper is not paper within the meaning of serial No. 7-A of the notification. Therefore, the higher rate of tax at 7 per cent is not applicable to

sale of stencil paper. Sale of it is exigible to tax at the rate of 5 per cent under the Act. Our answers to the questions referred, therefore, shall be:

(1) Stencil paper is not paper as specified in serial No. 7-A of the schedule as notified by the State Government.

(2) The learned Member, Additional Sales Tax Tribunal, was justified in holding that stencil paper should be taxed at 5 per cent under the Orissa Sales Tax Act.

We make no order as to costs of the reference.

**B.K. Ray, J.**

5. I agree.

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