

State of Kerala Vs. Narayanan Nambiar

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Court : Kerala

Decided On : Jul-11-2003

Reported in : 2004(2)KLT186; (2008)11VST380(Ker)

Judge : G. Sivarajan and; Kurian Joseph, JJ.

Acts : Kerala General Sales Tax Act, 1963

Appeal No. : T.R.C. Nos. 61 and 358 etc. of 2001

Appellant : State of Kerala

Respondent : Narayanan Nambiar

Advocate for Def. : S.K. Devi,; M. Raj Mohan,; Santosh P. Abraham and;

Advocate for Pet/Ap. : Georgekutty Mathew, Government Pleader

Judgement :

1. The matter arises under the Kerala General Sales Tax Act, 1963 (for short 'the Act'). The State is the revision petitioner in all the four cases. The same assessee is the respondent in all the cases. The assessment years concerned are 1989-90 to 1992-93. The short question that arises for consideration in this case is as to whether 'disposable syringe' is a drug as contended by the assessee or 'plastic product' as contended by the revenue. This question has arisen only in the context of the rate of tax on 'disposable syringe'. If the contention of the revenue is

accepted the assessee is liable to pay a higher rate of tax (2% more) for all these years.

2. We have heard the learned Government Pleader for the petitioner and the learned counsel for the respondent-assessee. In order to appreciate the rival contentions it is necessary to refer to the entries as it stood at the relevant time. Though there is some change in the respective item numbers and in the rate of tax the wordings of the respective entries are substantially the same. Hence we are extracting only the two entries as it stood during the assessment year 1989-90.

Sl. No.

Description of goods

Point of levy

Rate of tax (per cent)

(1)

(2)

(3)

(4)

116.

Medicine

At the point of first sale in the

(i) Allopathic Medicines

State by a dealer who is liable to tax under S.5

(ii) Other medicines and drugs including Ayurvedic, Homoeopathic, Sidha and Unani preparations

do

6

(iii) Ayurvedic herbs

do

5

145.

Plastics and articles made of plastics including plastic pipes.

do

3

It is the contention of the assessee that he had treated disposable syringe as a 'drug' falling under entry 116 in view of the definition of 'drugs' in the Drugs and Cosmetics Act, 1940 and the Notification No. X.11014/8/88-DMS&PFA; dated 17.3.1938 issued under sub Clause (iv) of Clause (b) of Section 3 of the said Act which specifically provided that 'disposable hypodermic syringes' are drugs. The assessee had collected tax at the rate applicable to 'drugs' during the relevant assessment years and had remitted the same to the Government. The State wants the item disposable syringe to be assessed under item 145 of the First Schedule as article made of plastic.

3. Thus the only question to be decided is as to whether the disposable syringe dealt with by the assessee can be brought under entry 145 of the first schedule- 'plastics and articles made of plastics including plastic pipes'. The question as to whether 'hypodermic clinical syringes could be regarded as glassware under entry 39 of the First Schedule to the U.P. Sales Tax Act, 1948 came up for consideration before the Supreme Court in Indo International Industries v. Commissioner of

Sales Tax, Uttar Pradesh, (1981) 47 STC 359. The assessee's contention in that case was that clinical syringe should be regarded as an unclassified item or as 'hospital equipments and apparatus' under another entry. Here, it is to be noted that the assessment year concerned in that case was 1973-74. The entry relating to 'hospital equipments and apparatus' was deleted with effect from 1.12.1973. That is how the question arose as to whether clinical syringe is an unclassified item also arose in that case. The Sales Tax Officer has treated it as, 'glassware'. This view is accepted upto the High Court. The Supreme Court, with reference to its earlier decisions in *Ramavatar Budhai Prasad v. Assistant Sales Tax Officer, Akola*, (1961) 12 STC 236, which considered the question whether betel leaves is vegetable and in *Commissioner of Sales Tax, Madhya Pradesh v. Jaswanth Singh Charan Singh*, (1967) 19 STC 469 which considered the question whether 'coal' included charcoal observed that is well-settled that in interpreting items in statutes like the Excise Tax Acts or Sales Tax Acts, whose primary object is to raise revenue and for which purpose they classify diverse products, articles and substances, resort should be had not to the scientific and technical meaning of the terms or expressions used but to their popular meaning, that is to say the meaning attached to them by those dealing in them. It was also observed that if any term or expression has been defined in the enactment then it must be understood in the sense in which it is defined but in the absence of any definition being given in the enactment the meaning of the term in common parlance or commercial parlance has to be adopted.

4. The Supreme Court then noted the dictionary meaning of the expression glassware as 'articles made of glass' and observed that in commercial sense glassware would never comprise articles like clinical syringes, thermometers, lactometers and the like which have specialised significance and utility. The court noted that in commercial sense glassware would never comprise articles like clinical syringes, thermometers, etc. which has specialised significance. It was further observed that in popular or commercial parlance a general merchant dealing in 'glassware' does not ordinarily deal in articles like clinical syringes, thermometers, lactometers etc. which articles though made of glass, are normally available in medical stores or, with the manufacturers thereof like the, assessee. It is unlikely that a consumer would ask for such articles from a glassware shop. The

Supreme Court, applying above test, held that the clinical syringes manufactured and sold by the assessee in that case cannot be considered as 'glassware' falling within entry 39 of the First Schedule to the U.P. Sales Tax Act, 1943 and further observed that it fall under entry 44 dealing with 'hospital equipment'.

5. As already noted, the item dealt with by the assessee is disposable syringe. A general merchant dealing in plastic goods does not ordinarily deal in articles like disposable syringe. Though a part of the disposable syringe is made of plastics normally it is available only in a medical store or in a place where hospital equipments are sold. It is also not probable that a consumer would go to a plastic shop to purchase a disposable syringe. In the light of the decision of the Supreme Court discussed above, we have no doubt in our mind that disposable syringe dealt with by the assessee cannot be treated as an 'article of plastic' falling under entry 145 of the First Schedule to the Act.

6. Here, we note that the decision of the Supreme Court in Atul Glass Industries (P) Ltd. v. Collector of Central Excise, (1986) 63 STC 322, relied on by the Government Pleader also does not lay down a different proposition. In that case the question which arose for decision was as to whether 'glass mirror' will fall within the entry 'glass and glassware'. The Supreme Court in that case referred to the following observations made in Delhi Cloth and General Mills Co. Ltd. v. State of Rajasthan, (1980) 45 STC 256 (SC).

'In determining the meaning or connotation of words and expressions describing an article or commodity the turnover of which is taxed in a sales tax enactment, if there is one principle fairly well-settled it is that the words or expressions must be construed in the sense in which they, are understood in the trade, by the dealer and the consumer. It is they who are concerned with it and it is the sense in which they understand it that constitutes the definitive index of the legislative intention when the statute was enacted'.

The decision of the Supreme Court in Indo International Industries case supra was also referred. The Supreme Court observed that it is a matter of common experience that the identity of an article is associated with its primary function; it is only logical that it should be so; when a consumer buys an article, he buys it

because it performs a specific function for him; it is the functional character of the article which identifies it in the mind of the consumer.

Thus by applying the common parlance theory or by applying the functional test both laid down by the Supreme Court conclusion is irresistible that disposable syringe can never be treated as an article of plastic.

We do not find any merit in these revisions. They are accordingly dismissed.

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