

**Appplico Vs. State of Kerala**

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**Court :** Kerala

**Decided On :** Dec-14-1999

**Reported in :** [2000]118STC567(Ker)

**Judge :** Arijit Pasayat, C.J. and; K.S. Radhakrishnan, J.

**Acts :** Kerala General Sales Tax Act, 1963

**Appeal No. :** T.R.C. No. 401 of 1998

**Appellant :** Appplico

**Respondent :** State of Kerala

**Advocate for Def. :** V.V. Asokan, Special Government Pleader

**Advocate for Pet/Ap. :** K.B. Mohamed Kutty, Adv.

**Disposition :** Petition allowed

**Judgement :**

Arijit Pasayat, C.J.

1. The only question involved in this case filed under Section 41 of the Kerala General Sales Tax Act, 1963 (in short 'the Act') is which entry covers 'L.P.G. stove'. According to the Revenue, the entry is Sl. No. 182 of the First Schedule to the Act. According to the assessee, it is covered by Sl. No. 119. Not much factual

controversy is involved.

2. The Revenue authorities as well as the Kerala Sales Tax Appellate Tribunal, Additional Bench, Ernakulam (hereinafter referred to as 'the Tribunal') held that the appropriate entry is at Sl. No. 182.

3. Learned counsel for the assessee submitted that the approach of the authorities is erroneous. It was pointed out by him that for immediately succeeding year, the first appellate authority has taken a different view, and held that the rate of tax applicable is 8 per cent on the basis of entry at 119.

4. Learned counsel for the Revenue contended that each assessment year is different, assessment unit and view has been taken by the appellate authority for subsequent year cannot help the assessee.

5. In order to appreciate the rival submissions, it is necessary to set out the entries first. They read as follows :

Sl. No.	Description of goods	Point of levy	Rate of tax (percent)
(1)	(2)	(3)	(4)
182.	Stainless steel products	At the point of first sale in the State by a dealer who is liable to tax under section 5.	

10119.	All metallic products or articles made of iron or steel in combination with other metals other than those specified elsewhere in this Schedule or in the Second Schedule.	do.	8'
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According to the taxing authorities, the LPG stove sold by the assessee is mainly made of stainless steel. Though burner is made of brass, but the major portion of stove being body of stove which is made of stainless steel, entry at Sl. No. 182 be applicable. According to the assessing officer, both quantity wise and value wise, the predominant material is stainless steel. Tribunal did not make any elaborate analysis, but only observed that the material is mainly made of steel and, therefore, it is a steel product.

6. Predominant test can be applied with regard to the price, the proportion of the major metallic component and such other relevant factors. In fact in a controversy

of this nature common parlance test is a good guide. Expression 'common parlance' has a definite connotation. It means, identity of a commodity as understood by a common man or a person in the commercial field dealing with that product. As a necessary consequence of the principle that words are understood in their ordinary or natural meaning in relation to the subject-matter, in legislation relating to a particular trade, business, profession, art or science, words have a special meaning in that context are understood in that sense. Such a special meaning is called the technical meaning to distinguish it from the more common meaning that the word may have. Lord Jowitt, L.C., has stated the rule as follows :

'It is, I think, legitimate in construing a statute relating to a particular industry to give to the words used a special technical meaning if it can be established that at the date of the passing of the statute such special meaning was well understood and accepted by those conversant with the industry.'

As pointed by Lord Esher, M.R.:

'If the Act is one passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows and understands to have a particular meaning in it, then the words are to be construed as having that particular meaning.'

The same rule applies in construing the words in a taxing statute, which describes the goods that are liable to taxation. Supreme Court has consistently taken the view that in determining the meaning or connotation of words and expressions describing an article in a tariff schedule, one principle which is fairly well-settled is that those words and expressions should be construed in the sense in which they are understood in the trade by the dealer and the consumer. Reason is that it is they who are concerned with it, and it is the sense in which they understand it which constitutes the definitive index of legislative intention. Similar test is applied for determining when manufacture takes place or in other words whether an article after subjecting it to processing becomes a different article or remains the same. Question to be asked in such cases is : 'How is the product identified by the class or section of people dealing with or using the product It is generally by its functional character that the product is so identified'. If a word has acquired a

particular meaning in the trade or commercial circles that meaning becomes the popular meaning in the context and should normally be accepted.

7. It is to be noted that the burner and its attachments are the important parts of the stove. A stove can be put to use even without a body or a fixed metallic cover. The stainless steel body of the stove is only an accessory which gives more convenience, beauty and protection to the stove. Undisputedly, the burner, pipe and knob attached to the pipes are all made of either cast iron or brass or other alloys. Value wise undisputedly the burner stands at a higher footing, though the learned assessing officer recorded a finding that the value wise also the stainless steel component is more. It is a finding contrary to the accepted position. If the common parlance test is applied, a stove cannot be said to be a stainless steel product. The inevitable conclusion, therefore, is that the entry applicable is Sl. No. 119 and not 182, as held by the taxing authority.

The revision is accordingly allowed.

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