State of Uttar Pradesh and Another

Vs

M/S. Kores (India) Ltd.

Civil Appeal No. 1773 of 1971

(H.R. Khanna, Jaswant Singh JJ)

18.10.1976

JUDGMENT

JASWANT SINGH, J. -

1. This appeal by certificate which is directed against the judgment and order dated February 20, 1970, passed by the High Court of Judicature at Allahabad in Writ Petition 2943 of 1969 raises two interesting question viz. (1) whether carbon paper is paper falling within the purview of the word 'paper' as used in serial No. 2 of notification ST-3124/X-1012 (4)-1964 dated July 1, 1966, issued by the Governor of Uttar Pradesh in exercise of the power vested in him under Section 3-A of the U. P. Sales Tax Act, 1948 (U. P. Act XV of 1948) so as to be liable to sales tax at the point and at the rate specified in the schedule to the notification and (2) whether ribbon is an accessory or a part of the typewriter.

2. It appears that the respondent which is a company incorporated under the Indian Companies Act dealing in carbon paper, typewriter, ribbon, stapler machines and stapler pins, despatches the said goods from its head office at Bombay to its branch office at Kanpur wherefrom sales thereof are effected in the State of Uttar Pradesh. During the course of the assessment proceedings for the assessment year 1956-57, the respondent claimed that carbon paper not being paper falling within the ambit of entry 2 of the schedule to the aforesaid notification but a specialised article used for copying purposes its turnover had to be assessed at the rate of 2 per cent prescribed for unclassified goods and not at the rate of 6 paise per rupee i.e. 6% prescribed in the aforesaid notification. The respondent further claimed that ribbon being an accessory and not a part of the type-writer, its turnover could not be subjected to sales tax at the rate of 10% prescribed inter alia for typewriters and parts thereof by notification ST-1738/X-1012-1963 dated June 1, 1963. The Sales Tax Officer, (Section IV), Kanpur, did not accede to the contentions of the respondent and holding that carbon paper remained paper even after going through certain chemical processes and that ribbon was a part of the typewriter, taxed the turnover of carbon paper for the period commencing from July 1, 1966, to the end of March, 1967 at 6% and that of ribbon at 10%. He, however, taxed the turnover of carbon paper for the period April 1, 1966 to June 30, 1966 at 2%. The validity and correctness of this order in so far as it related to the levy of tax on carbon paper at 6% and ribbon at 10% was challenged by the respondent by means of the aforesaid writ petition before the High Court at Allahabad which by its aforesaid judgment and order allowed the same and quashed the levy. Hence this appeal.

3. Appearing in support of the appeal, Mr. Manchanda has assailed the reasoning and approach of the High Court and has vehemently urged that carbon paper does not lose its character as paper even after being subjected to chemical processes and that ribbon is not an accessory but an essential part

of the typewriter. We have carefully considered the submissions made by Mr. Manchanda but find ourselves unable to accept the same.

4. It is well settled that a word which is not defined in an enactment has to be understood in its popular and commercial sense with reference to the context in which it occurs.

5. In Attorney-General v. Winstanley ((1831) 2 Dow and Clark 302 : (1901) 6 ER 740), Lord Tenterden stated as follows :

> Now, when we look at the words of an Act of Parliament, which are not applied to any particular science or art, we are to construe them as they are understood in common language.

6. In Grenfell v. Commissioners of Inland Revenue ((1876) 1 EX D 242, 248), Pollock, J. pointed out :

> As to the construction of the Stamp Act, I think it was very properly urged that the statute is not to be construed according to the strict or technical meaning of the language contained in it, but that it is to be, construed in its popular sense, meaning, of course, by the words 'popular sense' that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it.

7. The word 'paper' admittedly not having been defined either in the U.P. Sales Tax Act, 1948 or the rules made thereunder, it has to be understood according to the aforesaid well-established canon of construction in the sense in which persons dealing in and using the article understand it. It is, therefore, necessary to know what is paper as commonly or generally understood. The said word which is derived from the name of reedy plant papyrus and grows abundantly along the Nile river in Egypt is explained in The Shorter Oxford English Dictionary (volume 2) (Third Edition) as a substance composed of fibers 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.

8. In Encyclopedia Britannica, (Volume 13), (15th Edition) 'paper' has been defined as the basic material used for written communication and the dissemination of information.

9. In the Unabridged Edition of The Random House Dictionary of the English Language, the word 'paper' has been defined as a substance made from rags, straw, wood, or other fibrous material, usually in thin sheets, used to bear writing or printing or for wrapping things, decorating walls etc.

10. From the above definitions, it is clear that in popular parlance, the word 'paper' is understood as meaning a substance which is used for bearing writing, or printing, or for packing, or for packing, or for drawing on, or for decorating, or covering the walls. Now carbon paper which is manufactured by coating the tissue paper with a thermosetting ink (made to a liquid consistency) based mainly on wax, non-drying oils, pigments and dyes by means of a suitable coating roller and equalising rod and then passing it through chilled rolls cannot be used for the aforesaid purposes but is used according to The Random House Dictionary of the English Language between two sheets of plain paper in order to reproduce on the lower sheet that which is written or typed on the upper sheet i.e. making replicas or carbon copies cannot properly be described as paper.

11. It will be well at this stage to refer to a few decisions which confirm our view.

12. In Kilburn & Co. Ltd. v. C.S.T., U.P., Lucknow ((1973) 31 STC 625 (All), a bench of Allahabad High Court while examining the very same entry in the notification with which we are concerned in the instant case and holding that "Ammonia paper and ferro paper used for obtaining prints and sketches of site plans are not paper as understood generally and, therefore, will not come within the expression 'paper other than handmade paper' as used in notification ST-3124/X-1024/X-1012 (4) dated July 1, 1966, issued under Section 3-A of the U.P. Sales Tax Act, 1948" observed :

> The word 'paper' has not been defined in the Act or the Rules, and, as such, it has to be given the meaning, which it has in ordinary parlance. Paper, as understood in common parlance, is the paper which is used for printing, writing and packing purposes.

13. In Sree Rama Trading Company v. State of Kerala ((1971) 28 STC 469 (Ker), the High Court of Kerala after a good deal of research held that cellophane is not paper coming within entry 42 in the First Schedule to the Kerala General Sales Tax-Act, 1963, as it stood at the time relevant to the year 1966-67.

14. In State of Orissa v. Gestetner Duplicators (p) Ltd. ((1975) 33 STC 333 (Ori), the High Court of Orissa held that stencil paper was not paper within the meaning of Serial no. 7-A of the schedule to the notification issued by the State Government under the first proviso to Section 5(1) of the Orissa Sales Tax Act, 1947 and that sale of stencil paper was, therefore, not taxable at the rate of 7 per cent but is eligible to tax at the rate of 5 per cent.

15. In C.S.T., U.P. v. S. N. Brothers ((1973) 31 STC 302 : (1973) 3 SCC 496 : 1973 SCC (Tax) 254), this Court while upholding the decision of the Allahabad High Court which held that 'food colours', and 'syrup essences' are edible goods while 'dyes and colours and compositions thereof' and 'scents and perfumes' did not seem prima facie to connote that they are edible goods observed : [SCC pp. 500-501 : SCC (TAX) 258-259, para 5]

> The words 'dyes and colours' used in entry 10 and the words 'scents and perfumes' used in entry 37 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. Similarly, the words "food colours" and "syrup essences", which are descriptive of the class of goods the sales of which are to be taxed under the Act, have to be construed in the sense in which they are popularly understood by those who deal in them and who purchase and use them.

16. Bearing in mind the ratio of the abovementioned decisions, it is quite clear that the mere fact that the word 'paper' forms part of the denomination of a specialised article is not decisive of the question whether the article is paper as generally understood. The word 'paper' in the common parlance or in the commercial sense means paper which is used for printing, writing or packing purposes. We are, therefore, clear of opinion that carbon paper is not paper as envisaged by entry 2 of the aforesaid notification.

17. Regarding ribbon also to which the above mentioned rule of construction equally applies, we have no manner of doubt that it is an accessory and not a part of the typewriter (unlike spool) though it may not be possible to use the latter without the former. Just as aviation petrol is not a part of the aeroplane nor diesel is a part of a bus in the same way, ribbon is not a part of the typewriter though it may not be possible to type out any matter without it.

18. The very same question with which we are here confronted came up for decision before the High Court of Mysore in State of Mysore v. Kores (India) Ltd. ((1970) 26 STC 87 (Mys) Where it was held :

> Whether a typewriter ribbon is a part of a typewriter is to be considered in the light of what is meant by a typewriter in the commercial sense. Typewriters are being sold in the market without the typewriter ribbons and therefore typewriter ribbon is not an essential part of a typewriter so as to attract tax as per entry 18 of the Second Schedule to the Mysore Sales Tax Act, 1957.

19. For the foregoing reasons, we do not find any force in this appeal which is dismissed but in the circumstances of the case without any order as to costs.

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