

Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam

Vs

M/S. G. S. Pai & Co.

Civil Appeal No. 2422 on 1978

(P.N. Bhagwati, V.D. Tulzapurkar, R.S. Pathak JJ)

15.10.1979

JUDGMENT

BHAGWATI, J. –

1. The questions of law which arise for determination in this appeal lie in a very narrow compass and do not present any difficulty in answering them. They are the usual type of questions that arise under the Sales Tax legislation, namely, whether a particular commodity sold or purchased by the assessee falls within one entry or another. The assessee always contends that it falls within an entry which attracts lesser rate of tax while the Revenue invariably seeks to bring it within the entry attracting a larger rate of tax.
2. Two questions arise here for consideration. One question is whether certain ornaments and other articles of gold purchased by the assessee with a view to melting them and making new ornaments or other articles out of the melted gold fall within Entry 56 in the First Schedule of the Kerala General Sales Tax Act, 1963 (hereinafter referred to as "the Act") Which reads "Bullion and Specie". If the ornaments and other articles of gold purchased by the assessee fall within this entry, the turnover of purchases of these goods would be liable to be taxed at the rate of 1 percent, while it would have to suffer tax at the rate of 3 percent if these goods do not fall within entry and are taxable under Section 5-A read with Section 5(1)(ii) of the Act. The other question relates to taxation of the turnover of G. I. Pipes effected by the assessee and it raises the point whether G. I. Pipes sold by the assessee fall within Entry 26-A in the First Schedule to the Act which reads "Water Supply and Sanitary Fittings". If they do not fall within this entry, the turnover of their sales would be liable to be taxed at the rate of 3 per cent under Section 5(1)(ii) of the Act, But if they do, then the rate of tax would be 7 per cent. The Sales Tax Officer, and in appeal the Appellate Assistant Commissioner, decided both the questions against the assessee and taxed the turnover of purchases of ornaments and other articles of gold at the rate of 3 per cent and the turnover of sales of G. I. Pipes at the rate of 7 per cent. The Tribunal, on further appeal by the assessee, disagreed with the view taken by the tax authorities and holding that the ornaments and other articles of gold purchased by the assessee were "Bullion and specie" within the meaning of Entry 56 and G. I. Pipes sold by the assessee were not covered by the expression "water supply and sanitary fittings" in Entry 26-A, taxed the assessee at the lesser rates as claimed by him. The Revenue thereupon took the matter by way of revision to the High Court, but the High Court also took the same view and affirmed the judgment of the Tribunal. This decision of the High Court is assailed in the present appeal preferred by the Revenue after obtaining special Leave from this Court.
3. We will first consider the question whether the ornaments and other articles of gold purchased by the assessee fall within the description of "Bullion and specie" given in Entry 56. There are two

expressions in this entry which require consideration; one is "bullion" and the other is "specie". Now there is one cardinal rule of interpretation which has always to be borne in mind while interpreting entries in Sales Tax legislation and it is that the words used in the entries must be constructed not in any technical sense nor from the scientific view but as understood in common parlance. We must give the words used by the legislature their popular-sense meaning "that sense which people conversant with the subject matter with which the statute is dealing would attribute to it". The word "bullion" must, therefore, be interpreted according to ordinary parlance and must be given a meaning which people conversant with this commodity would ascribe to it. Now it is obvious that "bullion" in its popular sense cannot include ornaments or other articles of gold. "Bullion" according to its plain ordinary meaning means gold or silver in the mass. It connotes gold or Silver regarded as raw material and it may be either in the form of raw gold or silver or ingots or bars of gold or silver. The shorter Oxford Dictionary gives the meaning of "bullion" as "gold or silver in the lump; also applied to coined or manufactured gold or silver considered as raw material". So also in Jowitt's Dictionary of English Law and Wharton's Law Lexicon we find that the following meaning is given for word "bullion" : "Uncoined gold and silver in the mass. These metals are called so, either when melted from the native ore and not perfectly refined or where they are perfectly refined, but melted down into bars or ingots, or into any unwrought body, of any degree of fineness". It would, therefore, be seen that ornaments and other articles of gold cannot be regarded as "bullion" because, even if old and antiquated, they are not raw or unwrought gold or gold in the mass, but they represent manufactured or finished products of gold. Nor do they come within the meaning of the expression "specie". The word "specie" has recognised meaning and according to Webster's New World Dictionary, it means "coin, as distinguished from paper money". The Law Dictionaries also gives the same meaning. Wharton's Law Lexicon and Jowitt's Dictionary of English Law state the meaning of "specie" as "metallic money" and in Black's Law Dictionary, it is described as "coin of the precious metals, of a certain weight and fineness, and bearing the stamp of the Government, denoting its value as currency" while Words and Phrases - Permanent Edition - Vol. 39-A also gives the same meaning. Therefore, according to common parlance, the word "specie" means any metallic coin which is used as currency and if that be the true meaning, it is obvious that ornaments and other articles of gold cannot be described as "specie". It would thus seem clear that the ornaments and other articles of gold purchased by the assessee do not fall within Entry 56 and they are, accordingly, liable to be taxed not at the lesser rate of 1 per cent applicable to "bullion and specie" but at the general rate of 3 per cent under Section 5-A read with Section 5(1)(ii) of the Act.

4. This takes us to the second question in regard to taxability of the turnover of sales of G. I. Pipes made by the assessee. The Revenue contended that G. I. Pipes fall within the description "water supply and sanitary fittings" in Entry 26-A so as to be exigible to tax at the higher rate of 7 per cent while the assessee contended that they are not covered by this expression and are, therefore, taxable only at the lesser rate of 3 per cent under Section 5(1)(ii) of the Act. The determination of this question turns on the true interpretation of the words "water supply and sanitary fittings". So far as the expression "sanitary fittings" is concerned, it has received judicial interpretation by this Court in *State of U. P. v. Indian Hume Pipe Ltd.* (39 STC 355 : (1977) 2 SCC 724 : 1977 SCC (Tax) 335), where it has been laid down that "sanitary fittings" according to the popular sense of the term mean such pipes or materials as are used in lavatories, urinals or bathrooms of private houses or public buildings. The G. I. Pipes sold by the assessee would, therefore, fall within the description of "sanitary fittings" only if it can be shown that the burden of so doing would be on the Revenue, that they were meant for use in lavatories, urinals or bathrooms. It does not appear that the attention of the assessee and the tax authorities was drawn to this aspect of the question and hence no material was brought on record which would throw light on the question as to what was the use for which G.

I. Pipes were meant. If the G. I. Pipes were heavy and intended to be laid underground for carrying supply of water from one place to another, they would obviously not be "sanitary fittings". This is however, a question which has not been considered by the Revenue authorities and the same would, therefore, have to be remanded to the Appellant Assistant Commissioner for the purpose of determining whether having regard to the meaning which this Court has placed on the expression "sanitary fittings", the G. I. Pipes sold by the assessee fall within that description.

5. But the Revenue contended that even if the G. I. Pipes are not "sanitary fittings" within the meaning of that expression, they would still fall within the description "water supply ... fittings". Now, it must be remembered that the category of goods in Entry 26-A is not described as "water supply pipes" but as "water supply and sanitary fittings". The use of the word "fittings" suggests that the expression is intended to refer to articles or things which are fitted or fixed to the floor or walls of a building and they may in a given case include even articles or materials fitted or fixed outside, provided they can be considered as attached or auxiliary to the building or part of it such as, for example, a pipe carrying faecal matter from the commode to the septic tank, but they cannot include pipes laid underground for carrying water supply. Moreover, the words "water supply ... fittings" do not occur in isolation, but they are used in juxtaposition of the words "sanitary fittings". The entire expressions "Water supply and sanitary fittings" is one single expression and the words "water supply ... fittings" must receive colour from the immediately following words "sanitary fittings". We are, therefore, of the view that the expression "water supply ... fittings" in the context in which it occurs means such pipes or materials as are meant for use for supply of water to or in lavatories, urinals or bathrooms of private houses or public buildings and they do not include heavy pipes which are laid underground as mains for carrying water supply from one area to place to another. Therefore, even for the purpose of determining whether G. I. Pipes sold by the assessee are "water supply ... fittings", it would have to be found as to what is the purpose for which they were meant to be used and since the question has not been approached from this point of view, we think it desirable that the case be sent back to the Appellate Assistant Commissioner for the purpose of determining whether, in the light of this meaning placed by us on the words "water supply ... fittings", the G.I. Pipes sold by the assessee could be said to be "water supply .... fittings".

6. We, therefore, allow the appeal, set aside the orders made by the High Court, the Tribunal and the Appellate Assistant Commissioner and hold that so far as the ornaments and other articles of gold purchased by the assessee are concerned, they were liable to be taxed at the general rate of 3 per cent under Section 5-A read with Section 5(1)(ii) of the Act and so far as G. I. Pipes sold by the assessee are concerned, we are remand the case to the Appellate Assistant Commissioner for the purpose of deciding on the basis of the existing material also such further material as may be adduced, whether G. I. Pipes sold by the assessee fall within the description "water supply and sanitary fittings" so as to be exigible to sales tax at the higher rate of 7 per cent under Entry 26-A.

7. There will be no order as to costs of the appeal.

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