M/s. Indo International Industries

Vs

Commissioner of Sales Tax, Uttar Pradesh

Civil Appeal No. 151 of 1981

(V.D. Tulzapurkar, E.S. Venkataramiah, A.N. Sen JJ)

25.03.1981

JUDGMENT

TULZAPURKAR, J. -

1. This appeal by special leave raises the questions whether hypodermic clinical syringes could be regarded as 'glass ware" under Entry 39 of the First Schedule to U. P. Sales Tax Act, 1948?

2. The facts giving rise to the question lie in a narrow compass. The appellant-firms (hereinafter called the 'assessee') manufactures and sells hypodermic clinical syringes. For the assessment year 1973-74 the assessee filed a return disclosing net U. P. sales of such syringes at Rs. 95, 065. The disclosed turnover was accepted by the Sales Tax officer, Sector III Muzaffarnagar, but as respect of their turnover of Rs. 91,513 up to November 30, 1973 should be regarded as a unclassified item and taxed at the rate of 31/2 per cent or at 4 per cent as "hospital equipment and apparatus" under Entry 44 of the First schedule to the Act and on the turnover or Rs. 3,552 for the period from December 1, 1973 or March 31, 1974 at the rate of 7 per cent as an unclassified item, The Sales Tax Officer, however, treated the syringes as" glass ware' and taxed the entire turnover of Rs. 95. 065 at the rate of 10 per cent under Entry 39 of the First Schedule. The said assessment was upheld in appeal by the Assistant Commissioner (Judicial), Sales Tax, Muzaffarnagar and also in revision by the Additional Judge (Revision). Sales Tax, Saharanpur on August 16, 1979. It is this view taken by the assessing authorities as well as by the Additional Judge in revision that is being challenged by the assessee before us in this appeal.

3. It may be stated that up to November 30, 1973 there were two competing entries in the First Schedule to the U. P. Sales Tax Act so far as the item in question is concerned, namely, Entry 39 which ran : "Glass wares other than hurricane lantern chimneys, optical lenses and bottles" and Entry 44 which ran : "Hospital equipment and apparatus" and for an item falling under the Former the rate of tax was 10 per cent while under the latter the rate of tax was 4 per cent and for an unclassified item the rate was 3 + per cent. From December 1, 1973 onwards Entry 44 was deleted and, therefore, if the clinical syringes did not fall within Entry 39 it became an unclassified item under Section 3-A(2-A) of the Act and the rate of tax was 7 per cent. In view of this position that obtained for the relevant periods during the assessment years 1973-74 the assessee had claimed before the assessing authorities that its turnover in respect of syringes for the period up to November 30, 1973 was liable to tax at 3+ per cent as an unclassified item or in the alternative at 4 per cent as "hospital equipment" under Entry 44 and its turnover for the period from December 1, 1973 to March 31, 1974 was liable to be taxed at 7 per cent as an unclassified item. But, negativing its contentions the entire turnover was held to be taxable at the rate of 10 per cent on the basis that clinical syringes fell within the expression "glass ware" occurring in Entry 39. Counsel for the

assessee contended before us that in the absence of any definition of "glass ware" in the Act that expression must be understood in the ordinary commercial parlance and not in any scientific and technical sense and if such test were applied to the instant case then clinical syringes manufactories and sold by the assessee could never be regarded as "glass ware". Counsel pointed out that the Revising Authority negatived the contention of the assessee in view of a decision of the Allahabad High Court in the case of C. S. T. v. S. S. R. syringes and Thermometers but urged that the contrary view taken by the Orissa High Court in the case of State of Orissa v. Janata Medical Stores that thermometers, lectometers, syringes eyeglasses, etc. do not come within the meaning of the expression "glass ware" in Entry 38 in the Schedule to the relevant Notification issued under the first proviso to Section 5(1) of the Orissa Sales Tax Act, 1947 was correct. In our view counsel's contention has considerable force and deserves acceptance.

4. It 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 expression used but to their populate meaning, that is to say, the meaning attached to them by those dealing in them. 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 in Ramavatar Budhaiprasad v. Assistant Sales Tax Officer, Akola the question was whether 'betel leaves' fell within item vegetable so as to earn exemption from sales tax and this Court held that word vegetable had not been defined in the Act, and that the same must be construed not in any technical sense nor from the botanical point of view but as understood in common parlance and so construed in denoted those classes of vegetable matter which are grown in kitchen garden and are used for the table and did not comprise betel level within it and, therefore, betel levels were not exempt from taxation. In C. S. T. v. Jaswant Singh Charan Singh the question was whether the item coal under Entry I of Part III of Second Schedule to Madhya Pradesh General Sales tax Act, 1958 included charcoal or not and this Court observed thus :

> Now, there can be no dispute that while coal is technically understood as a mineral product, charcoal is manufactured by human agency from products like wood and other things. But it is now well settled that while interpreting items in statutes like the Sales Tax Acts, resort should be had not to the scientific or the technical meaning of such terms but to their populate meaning or the meaning attached to them by those dealing in them, that is to say, to their commercial sense.

Viewing the question from the above angle this Court further observed that both a merchant dealing in coal and consumer wanting to purchase it would regard coal not in its geological sense but in the sense as ordinarily under stood and world include 'charcoal' in the term "coal", and held that 'charcoal' fell within the concerned Entry 1 of Part II of Schedule II of the Act.

5. Having regard to the aforesaid well settled test the question is whether clinical syringes could be regard as "glass ware" falling within Entry 39 of the First Schedule to the Act? It is true that the dictionary meaning of the Expression "glass ware" is "articles made of glass" (see WEBSTER'S NEW WORLD DICTIONARY). However, in commercial sense glass ware would never comprise articles like clinical syringes, thermometers, lectometers, and the like which have specialised significance and utility. In popular or commercial parlance a general merchant dealing in "glass ware" does not ordinarily deal in articles like clinical syringes, thermometers, medical stores or with the manufacturers thereof like the assessee. It is equally unlikely that consumer would ask for such

articles from a glass ware shop. In popular sense when one talks of glass ware such specialised articles like clinical syringes, thermometer, lectometers and the like do not come up to ones mind. Applying the aforesaid test, therefore, we are clearly of the view that the clinical syringes which the assessee manufactures and sells cannot be considered as "glass ware" falling within Entry 39 of the First Schedule of the Act.

6. In our opinion, the view taken by the Orissa High Court in State of Orissa v. Janata Medical Stores is correct and the view of the Allahabad High Court in C. S. T. v. S. S. R. Syringes and Thermometers is unsustainable.

7. In this view of the matter it is clear that the assessee's turnover up to November, 30, 1973 will fall under Entry 44 dealing with "hospital equipment" and the same would be table at the rate of 4 per cent and its turnover from December 1, 1973 to March 31, 1974 will be taxable at the rate of 7 per cent as an unclassified item and the assessment will have to be made accordingly.

8. In the result the appeal is allowed but there will be no order as to costs.

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