SUPREME COURT OF INDIA

Dy. Commissioner Of Sales Tax (Law), Board Of Revenue (Taxes), Ernakulam

Vs.

Bharat Petroleum Corporation Ltd., Madras

(A Ahmadi, S V Manohar and K Venkataswami JJ.)

31.10.1996

ORDER

1. Special leave granted in S.L.P. (C) No. 11472 of 1988.

2. In this group of. appeals the question which arises for consideration is whether "special boiling point spirit" and "shell hexane" are liable to be assessed at single point under Schedule I of the Kerala General Sales Tax Act, 1963, or on multi-point scheme of taxation under Section 5(1)(ii) of the said Act, read, in either case, with the provisions of Section 5(1) of the Act. There was no dispute before the authorities below that special boiling point spirit and shell hexane were dangerous petroleum products having their flashing point below 24.4 degrees centigrade. Section 5 is the charging section and Clause (1) thereof reads as under:

5. Levy of tax on sale or purchase of goods.-(1) Every dealer (other than a casual trader or agent of a non-resident dealer) whose total turnover for a year is not less than twenty-five thousand rupees and every casual trader or agent of a non-resident dealer, whatever be his total turnover for the year, shall pay tax on his taxable turnover for that year,-

(i) in the case of goods specified in the First or Second Schedule, at the rates and only at the points specified against such goods in the said Schedules; and

(ii) in the case of other goods, at the rate of four per cent at all points of sale.

3. Section 2 which contains the definition clause defines "motor spirit" in Clause (xv) to mean any substance which by itself or in admixture with other substances is ordinarily used directly or indirectly to provide reasonably efficient fuel for automotive or stationary internal combustion engines and includes petrol, diesel oil and other internal combustion oils, but does not include kerosene, furnace oil, coal or charcoal and the definition of "petrol" in Clause (xvii) means dangerous petroleum having its flashing point below 24.4 degrees centigrade. We may also notice the definition of the term "petroleum" in Section 2(a) of the Petroleum Act and the definition of "flash point" in Section 2(c) thereof. "Petroleum" means any liquid hydrocarbon or mixture of hydrocarbons, and any inflammable mixture (liquid, viscous or solid) containing any liquid hydrocarbon and "flash point" of any petroleum means the lowest temperature at which it yields a

vapour which will give a momentary flash when ignited, determined in accordance with the provisions of Chapter II and the Rules made thereunder. In the First Schedule items 57A and 57B need to be noticed. Item 57A deals with motor spirit other than petrol and aviation gasoline. The levy so far as this item is concerned, is at the point of sale in the State by any oil company liable to tax under Section 5, except where the sale is by any oil company to another oil company and the rate of tax is 20 per cent. Item 57B deals with petrol other than naphtha and the point of levy is the same but with the rate of tax reduced to 15 per cent. The question is whether the substances in question fall within the terms of item 57B, i.e., whether they can be said to be petrol other than naphtha. As pointed out earlier, the definition of "petrol" in Section 2(xvii) means dangerous petroleum having its flashing point below 24.4 degrees centigrade. It was admitted that the substances in question were dangerous petroleum having their flashing points below 24.4 degrees centigrade. Ex facie they come within the definition of "petrol" in Section 2(xvii). The High Court, however, approached the question thus :

By the definition in Section 2(xv), petrol, except of the special brand caught by Section 2(xvii), is included within the concept of 'motor spirit'. But item 57A of Schedule I excepts petrol in the generic sense, other than what is specifically dealt with in item 57B. The result is all brands of petrol other than that covered by item 57B will go into the multiple scheme of taxation under Section 5(1)(ii). In other words, the reasonable way of harmonising the provisions by reading them together seems to be to say that petrol whose flashing point is above 24.4 degrees centigrade will go to the multi-point system of taxation under Section 5(1)(ii) and the special brand of petrol whose flashing point is below 24.4 degrees centigrade into Schedule I, item 57B, read with Section 5. This was the argument advanced by counsel for the revision-petitioner ; and, after careful consideration, we are of the opinion that the contention is sound and must be accepted.

4. The learned Counsel for the appellants contends that this approach of the High Court is fallacious. According to him, the view that item 57A of Schedule I excepts petrol in the generic sense, other than what is specifically dealt with in item 57B is not correct. He contends that what the court was required to consider was whether the substances in question which fell within the definition of "petrol" in Section 2(xvii) were covered by item 57B of the First Schedule which deals with petrol other than naphtha. Mr. T.L. Vishwanatha Iyer, who had appeared on behalf of the revision-petitioners in the High Court, also does not support the line of reasoning adopted by the High Court. He contends that what was argued before the High Court was that even petrol referred to in item 57B in the First Schedule meant only that petrol which was used for the purpose of providing reasonably efficient fuel for combustion engines and not every petrol falling within the definition of "petrol" in Section 2(xvii) of the Act. The High Court also took the view that all brands of petrol other than that covered by item 57B would go into the multiple taxation scheme under Section 5(1)(ii) meaning thereby that petrol with a flashing point above 24.4 degrees centigrade will go to the multiple-point system of taxation whereas the special brand of petrol whose flashing point is below 24.4 degrees centigrade would fall within item 57B in the First Schedule read with Section 5. We are not directly concerned with the question of the scope of item 57A in the First Schedule. Our inquiry is limited to the question of locating the type of petrol covered under item 57B of the First Schedule. The term "petrol" has been defined and ordinarily the same meaning must be given to that word wherever it appears unless the context demands otherwise. In the instant case, we find it difficult to agree with Mr. Iyer that in the context petrol in item 57B of the First Schedule must be understood' to exclude substances which do not provide a reasonably efficient fuel |for combustion engines. We are, therefore, of the opinion that the ultimate conclusion reached by the High Court that the brand of petrol having a flashing point below 24.4 degrees centigrade falls within item 57B

in Schedule I is correct. After reaching that conclusion we find it difficult to appreciate why the High Court allowed the assessees' revision and remanded the cases to the Tribunal. Presumably the High Court overlooked the fact that it was admitted that the substances in question fell within the definition of "petrol" under Section 2(xvii). Once the High Court found that they fell within item 57B in the First Schedule the levy on these substances would be in accordance with and at the rate stated in the said Schedule against the said item.

5. In the result, we allow these appeals, set aside the impugned orders of the High Court and hold that the substances in question, namely, "special boiling point spirit" and "shell hexane" would be liable to tax under item 57B in the First Schedule. There will be no order as to costs.