

SUPREME COURT OF INDIA

State of Kerala

Vs.

V. Padmanabhan

(S. P. Bharucha, N. Santosh Hedge and Ruma Pal, JJ.)

C.A.Nos. 4606-07 of 1998

03.02.2000

ORDER

S.P. BHARUCHA, J.

1. Does the refill of a ball point pen fall within Entry 135 of the First Schedule to the Kerala General Sales Tax Act, 1963? The Entry reads: "Pens, pencils and fountain pens".
2. The authorities and the Tribunal took the view that the refill fell outside the scope of the said Entry, but the High Court, in a tax revision case filed against the order of the Tribunal, took a different view.
3. According to the Tribunal, the refill was a part of the ball point pen. It could not by itself be regarded as a pen, however, pivotal it might be to the ball point pen. It recorded that in common and commercial parlance, a pen and its refill were different commodities with distinct and independent identities.

4. The High Court found this view erroneous. It held that the body or cover of the ball point pen was there only to beautify the refill and make it more attractive in appearance. It was the refill which made writing possible and it alone was the writing device.

5. We must not immediately that there is no evidence on the record before us as to how a refill is regarded by the public or in commercial parlance, but we have used ball point pens for long enough to be able to give an authoritative opinion. As we see it, the ball point refill is the substitute for the ink that is filled from time to time in a fountain pen and it provides the ball or nib thereof. While the refill can write, it is not intended to be used, and cannot conveniently be used, for that purpose without being first inserted in the ball point pen. We do not think, therefore, that the High Court was right in overturning the view taken by the Tribunal that the refill fell outside the scope of the said Entry.

6. The appeals are allowed. The order under appeal is set aside and the order of the Tribunal is restored.

7. No order as to costs.

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8. Following the judgment delivered in C.A. Nos. 4606-4607/98, the appeal is allowed. The order of the High Court and the Tribunal are set aside.

9. No order as to costs.