

(1989) 01 KL CK 0069

High Court Of Kerala

Case No: T.R.C. No. 121 of 1988

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

APPELLANT

Vs

K. Mohammed

RESPONDENT

Date of Decision: Jan. 11, 1989

Acts Referred:

- Kerala General Sales Tax Act, 1963 - Entry 157

Citation: (1989) 74 STC 210

Hon'ble Judges: K.S. Paripoornan, J; K.A. Nayar, J

Bench: Division Bench

Advocate: N.N.D. Pillai, Government Pleader, for the Appellant;

Final Decision: Dismissed

Judgement

K.A. Nayar, J.

The tax revision case is against the order of the Sales Tax Appellate Tribunal in Tribunal Appeal No. 8 of 1987, filed by the Deputy Commissioner of Sales Tax (Law). The main question that arises for consideration is whether "air-gun" is "arm" for the purpose of entry 157 of the First Schedule to the Kerala General Sales Tax Act, 1963. The said entry reads "all arms including rifles, revolvers, pistols and ammunitions for the same."

2. The respondent is a dealer in stationery and allied goods at Calicut. During the assessment year 1983-84, the respondent returned a taxable turnover of Rs. 2,45,712 which was enhanced in assessment to Rs. 2,47,780. The only question raised by the assessee in the appeal before the Sales Tax Appellate Tribunal related to the rate of tax that could be applied to air-gun and pellets. The assessing officer brought to tax the said items at the rate of 20 per cent holding that they fall under item 157 of the First Schedule to the Kerala General Sales Tax Act, 1963 which reads

as "all arms including rifles, revolvers, pistols and ammunitions for the same" taxable at the rate of 20 per cent. The Appellate Assistant Commissioner upheld the conclusion. On appeal the Appellate Tribunal held that the item dealt with by the assessee cannot be classified under entry 157 aforesaid. Aggrieved by the decision of the Appellate Tribunal, the State has come up by way of tax revision.

3. It is well known principle that if the definition of a particular expression is not given in the statute, it must be understood in its popular or common sense, that is, in the sense how the expression is used every day by those who use or deal with those rules. [See *United Offset Process Pvt. Ltd. v. Asst. Collector of Customs, Bombay* JT 1988 (4) SC 198 , [Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad](#) , *His Majesty the King v. Planters Nut and Chocolate Company Ltd.* 1951 CLR (Ex) 122, *Two Hundred Chests of Tea Smith Claimant (1824)* 6 L Ed 128, [State of West Bengal and Others Vs. Washi Ahmed and Others](#) , [Porritts and Spencer \(Asia\) Ltd. Vs. State of Haryana](#), and other decisions reported in [Indo International Industries Vs. Commissioner of Sales Tax, Uttar Pradesh](#), and [P.A. Thillai Chidambara Nadar Vs. Addl. Appellate Asstt. Commissioner, Madurai and Another](#), .] It was also held in the decision reported in [Saroj Aggarwal Vs. Commissioner of Income Tax, U.P.](#), that facts should be viewed in the natural perspective and no hyper technicality should be imported.

4. The word "arms" must be understood to mean weapons of offence. For the purpose of deciding whether any instrument falls within the category of arms, it is immaterial what the name, shape or size of the instrument is; it is material to determine whether or not the instrument is possessed for the purpose of offence or defence. Implements of ordinary domestic use such as an axe or knife cannot fall within the meaning of the expression "arms". It is the intention of the manufacturer, not of the possessor of the implement as to the use to which it is put, which is determinative.

The purpose for which the implement is primarily intended is the criterion to determine whether the implement in question is arms or not. Air-guns which are not adapted for use with explosive substance and which have been classified as toys will not come within the meaning of arms.

5. But in [Commissioner of Sales Tax Vs. Madan Sons](#), it was held by a learned single Judge that khukri which is used as a cutting, stabbing instrument like a sword, would be an "arm" and would fall under the entry "all arms including rifles, revolvers, pistols and ammunition for the same" in entry 1 of Notification No. ST-1738/X-1012-1963 dated 1st June, 1963, issued under the U.P. Sales Tax Act, 1948. This decision will not help the department as in this case there is no finding that the air-guns are used for fighting or used as defensive or offensive or the like. The Tribunal, on the other hand, observed that they have also seen a sample of the item produced and were satisfied that the assessee is not a dealer in arms.

6. The next decision referred to by the [Agarwal Brothers Vs. Commissioner of Sales Tax](#), After referring to the decision reported in [Commissioner of Sales Tax Vs. Madan Sons](#), wherein it has been held :

The word "arm" is not a term of art and has to be understood in its popular sense. According to Oxford English Dictionary, the word "arm" means "(1) Defensive and offensive outfit for war; things used in fighting; (2) instrument of offence used in war, "weapons". The phrase "in arms", according to this dictionary, means "armed; furnished with weapons, sword in hand, prepared to fight". The dictionary meaning indicates that every weapon would be "an arm" and that "swords" are arms. Like a sword which is used as a cutting or stabbing instrument, khukri also serves the same purpose. They would also answer the description of a weapon which, according to Concise Oxford Dictionary, means "material thing designed or used or usable as an instrument for inflicting bodily harm, e.g., gun, bomb, rifle, sword, spear..."

the learned Judge observed that :

It has been held in that case that the word "arms" means a weapon, which is capable of inflicting bodily injuries. Air-guns are certainly capable of doing so. The order passed by the revising authority must, therefore, be upheld.

There is no discussion at all in the abovesaid judgment. The decision says that air-guns are as weapon capable of inflicting bodily injuries and, therefore, it is "arm" within the meaning of the entry. On a perusal of the said decision and the earlier decision, it will be seen that the learned Judge relied upon the dictionary meaning of the word "arm". With great respect, we cannot agree with the reasoning or conclusion. All implements which can inflict injury cannot be characterised as arms within the meaning of the expression contained in the entry. It is well settled that in order to ascertain the correct meaning of a fiscal entry, reference to a dictionary is apt to be somewhat delusive guide as it gives all the different shades of meaning. [See Collector of Central Excise, Kanpur v. Krishna Carbon Paper Company JT 1988 (4) SC 762.] Their Lordships also observed in the said judgment that it is a well-settled principle of construction, as mentioned before, that where the word has a scientific or technical meaning and also an ordinary meaning according to common parlance, it is in the latter sense that in a taxing statute the word must be held to have been used. This principle is well settled by a long line of decisions of Canadian, American, Australian and Indian cases. Pollock, J., pointed out in Grenfell v. Inland Revenue Commissioners (1876) 1 Ex D 242 that if a statute contains language which is capable of being construed in a popular sense, such a statute is not to be construed according to the strict or technical meaning of the language contained in it, but is to be construed in its popular sense, meaning, by the words "popular sense" that which people conversant with the subject-matter with which the statute is dealing would attribute to it. The ordinary words in every day use are, therefore, to be construed according to their popular sense. Going by these

decisions we have no hesitation in holding that "arms" and ammunition enumerated in entry 157 of the First Schedule will not take in air-guns and pellets. In common parlance when a dealer in arms is referred to, the people will not understand a dealer in air-guns. In the case in question the respondent is only a dealer in stationery and allied goods and he sells along with other things, air-guns and pellets also as toy items. Such a person in ordinary parlance cannot be referred to as a dealer in arms.

7. In the tax revision case, the petitioner also refers to the clarification issued by the Government u/s 59A. Since such a clarification will not bind a quasi-judicial authority, the point rightly is not pressed before us.

We, therefore, confirm the order of the Tribunal and dismiss the revision.