(2008) 11 VST 903

Andhra Pradesh High Court

Case No: Writ Petition No''s. 2309, 2316 and 2323 of 2004

Oil and Natural Gas Corpn. Ltd.		APPELLANT
	Vs	
Government of Andhra Pradesh and Others		RESPONDENT

Date of Decision: Sept. 3, 2004

Acts Referred:

- Andhra Pradesh Tax on Entry of Goods into Local Areas Act, 2001 - Section 2(1), 3, 3(1)

Citation: (2008) 11 VST 903

Hon'ble Judges: P.S. Narayana, J; Bilal Nazki, J

Bench: Division Bench

Advocate: E. Manohar for Kakaravenkata Rao, for the Appellant; Special Government Pleader for Commercial Taxes, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Bilal Nazki, J.
The main question to be resolved in these writ petitions is, whether the oil well cement class "G" (HSR type) is cement so as to attract liability of tax under the Andhra Pradesh Tax on Entry of Goods into Local Areas Act, 2001 (hereinafter referred to as "the Act"). Facts are taken from W. P. No. 2316 of 2004.

Writ Petition No. 2316 of 2004.

2. The contention of the petitioner is that the petitioner-corporation operates in Krishna-Godavari basin in East, West and Krishna Districts of Andhra Pradesh. It is a Central Government Company engaged in exploration and production of oil and natural gas. For the purpose of drilling oil wells, different types of mud chemicals are required to be used and one of the chemicals used is called "oil well cement class "G" (HSR type)". Though the word "cement" is used as part of the name of this chemical, it has no

connection or similarity whatsoever with the ordinary cement, which is used in constructions. The oil well cement is not useful to anybody, except for the companies like ONGC, involved in drilling of oil wells. The petitioners are importing this from Tamil Nadu from a manufacturer.

3. It is contended that in terms of Section 3 of the Act, tax can be levied on entry of the notified goods into any local area of Andhra Pradesh, for sale or consumption. The goods notified on May 3, 2001 were--(1) high speed diesel oil (2) LDO, (3) Furnace Oil (4) Cement. The rate of tax for cement was 16 per cent. In the year 2002, by G.O.Ms. No. 552, dated September 12, 2002 published on September 23, 2002, oil well cement had been notified and tax was levied at 4 per cent. Since oil well cement was notified for the first time by G.O.Ms. No. 552, it is contended that prior to that date, i.e., September 23, 2002 no tax was payable on import of oil well cement. But the Commercial Tax Officer, Rajahmundry, passed a provisional assessment order, dated April 12, 2002 assessing the petitioner under the provisions of the Act and levied tax at 16 per cent on the value of 600 metric tonnes of oil well cement imported by petitioner from June, 2001 to January, 2002 and demanded from the petitioner Rs. 30,76,467 towards the tax. Aggrieved of that order, petitioner filed an appeal and during pendency of the appeal, G.O.Ms. No. 552, dated September 12, 2002 was issued and in view of this notification, the Appellate Deputy Commissioner, on December 24, 2002 disposed of the appeal filed by the petitioner, by setting aside the provisional assessment order passed by the Commercial Tax Officer, Rajahmundry, holding that oil well cement was liable to tax at 4 per cent with effect from notification in G.O.Ms. No. 552, dated September 12, 2002. He remanded the matter back to the assessing authority to make final assessment in terms of G.O.Ms. No. 552, dated September 12, 2002. Appeal was filed before the Tribunal, which is pending. In the meantime, it appears that the respondent No. 3 passed final orders in pursuance of the order of remand and the petitioners have approached this Court by way of writ petition against the order of third respondent, dated January 9, 2004 and consequential notice, dated November 20, 2003 proposing to assess and levy entry tax on the oil well cement class "G" (HSR type) imported by the petitioner during the year 2002-03 at 16 per cent on a quantity of 3405.85 metric tonnes imported from April 30, 2001 to September 11, 2002 and at 4 per cent from September 12, 2002 to March 31, 2003 and has called upon the petitioner to file written statement of objections against the proposed assessment and levy. Petitioner submitted his objections on December 24, 2003. However, the respondent No. 3 passed impugned order, levying tax of Rs. 21,38,860 on the oil well cement imported by the petitioner from April 30, 2001 to September 11, 2002 and calculated the same at 16 per cent. He also imposed Rs. 48,784 at 4 per cent from September 12, 2002 to March 31, 2003.

4. The learned Senior Counsel had, during the arguments, confined his attack only to the tax levied at 16 per cent for the period from April 30, 2001 to September 11, 2002. The oil well cement class "G" (HSR type) during that period, according to him, was not exigible to tax.

5. Now, in order to appreciate the argument of the learned Senior Counsel, provisions of Section 3 of the Act will have to be gone into as it is the charging section. It reads as under:

3. Levy and collection of tax.--(1)(a) There shall be levied and collected a tax on the entry of the notified goods into any local area for sale, consumption or use therein. The goods and the rates at which, the same shall be subjected to tax shall be notified by the Government. The tax shall be on the value of the goods as defined in Clause (n) of Sub-section (1) of Section 2 and different rates may be prescribed for different goods or different classes of goods or different categories of persons in the local area ;

(b) the tax shall be payable by the importer in such manner and within such time as may be prescribed;

(c) the rate of tax to be notified by the Government in respect of any commodity shall not exceed the rate specified for that commodity under the Andhra Pradesh General Sales Tax Act, 1957 (Act VI of 1957) or the notifications issued thereunder:

Provided that the tax payable by the importer under this Act shall be reduced by the amount of tax paid, if any, under the law relating to general sales tax in force in the Union Territory or State, in which the goods are purchased....

6. Sub-section (1) of Section 3 makes it clear that the goods and rates at which the same shall be subject to tax, shall be notified by the Government, which would otherwise mean that if a goods was not notified in terms of Section 3, that could not be taxed. So, the argument goes that cement was included in G.O.Ms. No. 308, issued on May 3, 2001 but the goods in which the petitioner was dealing, namely, oil well cement class "G" (HSR type) would not fall under the category of cement.

7. Learned Counsel for respondents however, contended that cement would include all forms of cement and all types of cements carry 16 per cent of tax on import into the territory of Andhra Pradesh.

8. The learned Counsel for the petitioner submits that the Government subsequently passed G.O.Ms. No. 552 on September 12, 2002, categorising oil well cement class "G" (HSR type) as a different commodity would itself show that the oil well cement was not essentially cement as understood in common parlance. He further submits that the requirements for ordinary portland cement even for manufacture, are different than the oil well cement. He also contends that the usage of oil well cement is altogether different than the usage of ordinary portland cement. Whereas ordinary portland cement can be used for constructions of buildings and houses, it cannot be used for drilling operations as burning material at high temperature ranging from 85 degree centigrade to 115 degree centigrade. The oil well cement is used under the working pressure of 7,500 psi to 15,000 psi, mixing with other chemicals, which is at all not conceivable as far as ordinary portland cement is concerned. The learned Counsel has placed on record the statement showing

the difference between the oil well cement and ordinary portland cement as differentiated by ISI. This statement is reproduced:

Sl. No.	Description	Unit	Requirement for oil well cement	Requirement for o portland cem
1.	Specifications		As per API (American Petroleum Institute) Specifications 10 A.	As per IS: 269/19 amended time to ti
2.	Usage		In Drilling operations as bonding material at High temperature ranging from 85 Deg. C to 115 Deg. C and I working pressure 7,500 psi to 15,000 psi mixing with other Mud chemicals.	In construction o ng, houses, etc.,
3.	Chemical composition		...	
(i)	Sulphur Trioxide	%	3.00 Maximum	Sulphuric anhydric maximum
(ii)	Loss in ignition	%	3.00 Maximum	4.0 % maximum
(iii)	Insoluble residue	%	0.75% maximum	4.0 % maximum
(iv)	Magnesium oxide	%	6.00 Maximum	Magnesia 6.0 % max
(v)	Tricalcium silicate	%	48.00 min 65.00 max	...
(vi)	Tetra calcium aluminoferrite + twice the tricalcium aluminate	%	24.00 max	
4.	Physical properties:			
(i)	Free water5.90 max content			
(ii)	Compression strength 8 hrs. curing time at atmos. pressure and			Compressive streng Units requirement 3 days Mpa 27 Max 7 days Mpa 37 Max 28 days Mpa 53 Max.
(a)	52 Deg. Centi grade pressure 5160 PSI raised in 28 minutes (Section No. 5 API spec.10)	Min-ute	90 minimum 120 maximum	

	(b) Max consistency at 15030 minutes string.	Bc	20 Maxm	
5.	Specific surface	M2/ kg	...	225 min. kg
6.	Soundness			
	(i) Le-chatlier expansion	Mm	...	10 max.
	(ii) Autoclave expansion	%	...	0.8 maximum
7.	L.S.F.		...	0.80-1.02
8.	A.M.		...	0.66 min.
9.	Chlorides(Cl-)	%	...	0.10 max.
10.	Sp. Test procedures, Test equipments.		As per API Sp. 10A.	As per IS: 269/19
11.	Buyers in A.P.		ONGC only for drilling operations.	All the individua ctors who are cons buildings/house, e

9. The statement shows the difference between two cements in their composition and usage. However, the learned Counsel for respondents submits that the difference in usage and composition would not matter in cases of interpretations to a particular entry for the purpose of charging of tax at a particular rate. He refers to the following judgments:

(1) Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh, . In para 6 See at page 473 of 1967 9 STC the Supreme Court held:

The result emerging from these decisions is that while construing the word "coal" in entry 1 of Part III of Schedule II, the test that would be applied is what would be the meaning which persons dealing with coal and consumers purchasing it as fuel would give to that word. A sales tax statute, being one levying a tax on goods, must, in absence of a technical term or a term of science or art, be presumed to have used an ordinary term as coal according to the meaning ascribed to it in common parlance. Viewed from that angle both a merchant dealing in coal and a consumer wanting to purchase it would regard coal not in its geological sense but in the sense as ordinarily understood and would include "charcoal" in the term "coal". It is only when the question of the kind or variety of coal would arise that a distinction would be made between coal and charcoal; otherwise, both of them would in ordinary parlance as also in their commercial sense be spoken as coal.

(2) Minerals and Metals Trading Corporation of India, Ltd. Vs. Union of India (UOI) and Others, . In para 9, the Supreme Court held:

Apart from all this it must be remembered that in interpreting items in taxing statutes resort should be had not to the scientific or technical meaning but to the meaning attached to them by those dealing in them in their commercial sense....

(3) Dunlop India Ltd. and Madras Rubber Factory Ltd. Vs. Union of India (UOI) and Others, . The Supreme Court held:

It is well-established that in interpreting the meaning of words in a taxing statute, the acceptation of a particular word by the trade and its popular meaning should commend itself to the authority.

10. The learned Counsel for the petitioner however submits that all these judgments were considered recently by the Supreme Court in a similar case reported in Associated Cement Co. Ltd. v. State of Madhya Pradesh 2006 144 STC 95 : 2004 1 DT (NRC) 19 : 2004 2 RC 958. The controversy in this case was, whether refractory cement was cement so as to attract liability of export tax. After considering the composition and the uses of refractory cement, the court came to the conclusion that refractory cement was different than ordinary portland cement, but having noted the judgments referred to above and also having noted the law laid down by Lord Esher in Unwin v. Hanson 1891 2 QB 115, it concluded by saying, "Therefore, it has to be understood in the same way as understood in common parlance". The paragraph it quoted from Esher Bench is reproduced below:

If an Act is directed to dealing with matters affecting everybody generally, the words used have the meaning attached to them in the common and ordinary use of language. If the Act is one passed with reference to a particular trade, business, or transaction and words are used which everybody conversant with that trade, business or transaction, knows and understands to have a particular meaning in it, then the words are to be construed as having that particular meaning, though it may differ from the common or ordinary meaning of the words.

We would only add that there should be material to enter appropriate finding in the case. The material may be either oral or documentary evidence.

11. The Supreme Court further said:

...Cement is exclusively used as a building material and is a commodity of everyday use. Therefore, we have to go only by the popular or commercial meaning of the term. The main property of the refractory is that it can withstand very high temperature, corrosion and abrasion. Cement is used for building roads, bridges and dams, etc., and also by common people for building residential or commercial, buildings. Anyone buying cement for building purpose would under no circumstance buy refractory. Similarly a mason or a supervisor would under no circumstance use refractory material in making a normal construction. The refractory is used for entirely different purpose, namely, for furnaces, linings and for insulation. A dealer would not supply refractory to anyone wanting to buy cement. In Cemento Corporation Ltd. Vs. Collector Central Excise, , it has been held that it is axiomatic that if the product is not cement but can be used for some purposes like cement, such product is not cement. We are, therefore, of the opinion that refractory material produced by the appellant does not fall within the entry "all types of cement" and consequently it is not exigible to levy of export tax.

12. Following the principles laid down by the judgment of the Supreme Court, as we have seen from the statement furnished to us and also from the correspondence between the petitioners and the respondents, we have no doubt in our mind that the oil well cement class "G" (HSR type) is understood as a different commodity than ordinary portland cement in common usage and parlance. In order to substantiate this finding further, some of the correspondence in this connection may have to be referred to. One of the communications placed before us along with the reply affidavit filed by the petitioner, is a communication written by Sri N. Ramesh Kumar, IAS, Commissioner of Commercial Taxes, Andhra Pradesh, to the Principal Secretary to the Government. It appears that a representation had been made before him against levy of tax at 4 per cent after G.O.Ms. No. 552 had been issued. While forwarding the representation to the Government, the Commissioner had stated:

It is true that this special category of cement is exclusively purchased by only ONGC. There is no manufacturer of this cement in A.P. The original intention is to levy entry tax only in respect of cement, ordinarily used in the construction activity. It was not intended to tax this special type of cement used in offshore oil rigs. In view of the assistance rendered by ONGC for developing various bridges in the State and this being special category of cement with an exclusive use, I am to request the Government to kindly exempt oil well cement class "G" (HSR type) from the levy of entry tax under the A. P. Tax on Entry of Goods into Local Areas Act, 2001 with retrospective effect from September, 2001.

13. The paragraph from the communication is only reproduced to come to a conclusion that oil well cement is altogether a different commodity than the ordinary portland cement and this type of cement in Andhra Pradesh, is not produced at all and this type of cement is only used by the petitioners in Andhra Pradesh whereas it is common knowledge that the ordinary cement is used by almost everybody, therefore oil well cement could not be understood to be included in entry relating to the cement.

14. For the reasons given hereinabove, we allow writ petition No. 2316 of 2004 and hold that the petitioner was not exigible to entry tax in terms of Andhra Pradesh Tax on Entry of Goods into Local Areas Act, 2001 from April 30, 2001 to September 11, 2002 but is however exigible to tax at 4 per cent subsequent to September 12, 2002 when oil well cement was specifically included in the notification issued u/s 3 of the Act.

Writ Petition No. 2323 of 2004

15. This writ petition pertains to period from May 2, 2001 to March 31, 2002. This petition is also allowed in view of the orders in W.P. No. 2316 of 2004.

Writ Petition No. 2309 of 2004

16. No orders are needed to be passed in this writ petition, as it has not been pressed by the learned Senior Counsel, and accordingly it is dismissed. In the result, Writ Petitions Nos. 2316 and 2323 of 2004 are allowed and writ petition No. 2309 of 2004 is dismissed. No costs. That rule nisi has been made absolute as above.