



2022:APHC:34405

HIGH COURT OF ANDHRA PRADESH
MONDAY ,THE TWENTY SIXTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY TWO

PRSENT

THE HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR
THE HONOURABLE SRI JUSTICE A V RAVINDRA BABU
WRIT PETITION NO: 1566 OF 2021

Between:

1. M/s. Srija Surgicals, rep. by its Proprietrix, Mrs. M. Rajani Kumari, Door No.76-5-34/1, Lakkakula Ramarao Street, Near Raju Neuro Hospital, Rajahmundry-533 103.

...PETITIONER(S)

AND:

1. Deputy Commissioner (CT), Kakinada.
2. Commercial Tax Officer, Aryapuram Circle, Rajahmundry.
3. State of Andhra Pradesh, rep. by its Principal Secretary to Government, Revenue (CT-II) Department, Secretariat, Velagapudi, Amaravathi, Guntur District.

...RESPONDENTS

Counsel for the Petitioner(s): KARTHIK RAMANA PUTTAMREDDY

Counsel for the Respondents: GP FOR COMMERCIAL TAX

The Court made the following: ORDER



THE HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HONOURABLE SRI JUSTICE A.V.RAVINDRA BABU
WRIT PETITION No.1566 of 2021

ORDER:- *(Per Hon'ble Sri Justice C.Praveen Kumar)*

1) The present Writ Petition came to filed seeking issuance of a Writ of *Certiorari* calling for records and for quashing the impugned Order of the 1st Respondent, dated 28.10.2020, in R.F.No.31/2018-19, insofar as levying tax on sale of Orthopaedic and fracture appliances, instead of granting exemption under Entry 2 of Schedule-I of the AP Value Added Tax Act, 2005 [**AP VAT Act**], as contrary to law.

2) The facts, in brief, are as under:

a) The Petitioner herein is a dealer on the rolls of the 2nd Respondent, dealing in Orthopaedic and fracture appliances. For the assessment years April, 2012 to March, 2016, the 2nd Respondent, upon conducting audit, passed an Order, dated 29.10.2016, levying tax of Rs.10,138/-. However, the 1st Respondent, who is the territorial Deputy Commissioner found fault with the assessment made by the 2nd Respondent and issued a



Revision show-cause notice, dated 21.06.2018, under Section 32(2) of the AP VAT Act, *inter alia* stating that during verification of VAT audit file, it was observed that the assessee declared output turnover both under exempted sales and taxable sales at the rate of 5%, while filing the VAT 200 monthly returns, and as the commodity 'surgical implants' is liable to tax at the rate of 5% under Schedule IV to the AP VAT Act, 1) declared part of the turnover under exempted sales which is not in order; 2) this resulted in non-levy of tax of Rs.4,92,643/- for the years from 2012-13 to 2015-16; 3) it was further noticed from the VAT turnover ledger of the dealer for the year 2016-17 that the dealer declared output turnover of Rs.31,17,922/- under exempted sales during the said year, resulting in non-levy of tax of Rs.1,55,896/- at the rate of 5% on a turnover of Rs.31,17,922/-. Accordingly, assessment finalized by the Audit Officer was found to be prejudicial to the Government Revenue and, as such, the total tax of Rs.6,48,539/- was proposed for revision of assessment and eventually the Petitioner was requested to file written objections.



- b) Petitioner filed its objections contending that there is no dispute about its liability to tax on the surgical goods purchased by it either at 5% or 14.5%, but claimed that the Orthopaedic and fracture appliances are used as artificial joints, hearing aids, wheel chairs for invalid, braille type writers etc., which are 'surgical implants' and as such claimed that the goods fall under Entry 2 of Schedule I of the Act and therefore exempt from tax liability.
- c) The 1st Respondent, after examining the contentions raised by the dealer with reference to documentary evidence filed, passed an Order revising the assessment, dated 28.10.2020, confirming the proposed levy of tax of Rs.4,92,643/- in addition to tax already levied by the Audit Officer for the years 2012-13 to 2015-16 under AP VAT Act and withdrawing the revision of assessment in respect of Rs.1,55,896/- for the year 2016-17 under AP VAT Act, 2005, since it was not subject matter of assessment made by the 2nd Respondent.



d) Aggrieved by the said Order, the present Writ Petition came to be filed.

3) The case of the Petitioner in the instant case, as per the averments made in the affidavit filed in support of the Writ Petition is that, while surgical goods purchased by the Petitioner are liable to tax either at 5% or 14.5%, however, there cannot be levy of tax on orthopaedic and fracture appliances to be used by handicapped persons, as per Entry 2 of Schedule I of the AP VAT Act and therefore they are exempt from liability. The averments also show that the vendors of the Petitioner also did not charge any VAT, on a premise that they are exempt from VAT and that they fall under Entry 2 of Schedule I of the AP VAT Act. It is further stated that even the Petitioner did not charge any VAT on sale of the said goods. Petitioner also relied upon Advance Ruling in Dhanvantri Surgicals wherein it was held that the Orthopaedic splints and fracture appliances covered under HSN Code 9021.10.00 fall under Entry 2 of Schedule I of the Act.



4) Sri S. Dwarakanath, learned Senior Counsel appearing for the Petitioner, while reiterating the averments made in the affidavit filed in support of writ petition, mainly submits that Orthopaedic or fracture appliances dealt with by the dealer and which are shown in the Annexure are exempt from tax.

5) (i) Learned Government Pleader opposed the same contending that the Articles referred to in the Annexure, can by no stretch of imagination be subscribed as Orthopaedic or fracture appliances. According to him, these instruments are used as Orthopaedic aids mainly to treat bone related injuries and ailments which are commonly sold across the counter. He referred to Entry 111 of IV schedule of AP VAT Act to contend that all the items sold would fall under the said entry. In other words, his argument appears to be that the aids and implants used by handicapped persons falling under Entry 2 of I Schedule are not specified in the schedule, more so when the word 'handicapped person' is not defined under the AP VAT Act. He further submits that the instruments, which aid a person, who is totally handicapped, may get the benefit under the AP VAT Act. According to him, since the word 'handicapped' is not defined anywhere in the Act,



borrowing the same from a Central enactment cannot be found fault with. He further submits that the Advance Ruling relied upon by the Petitioner does not apply to the case on hand as it deals with devices which are used to medicate or reduce the painful condition in foot region of the legs of human beings.

(ii) Learned Government Pleader strenuously contends that a reading of Entry 2 of Schedule-I would clearly disclose that the exemption can be granted only if the instruments are used by handicapped persons and according to him the list of articles in respect of which exemption is sought are not only used by handicapped persons but also by non handicapped persons or persons suffering with some discomfort. Under those circumstances, he submits that if exemption is sought to be given to every instrument used by everyone, the purpose for which exemption is granted would get defeated.

6) The same is opposed by learned Senior Counsel contending that the meaning of the word 'handicapped' has to be taken, as used in general parlance and not in strict terms. He placed on record the judgment of the Hon'ble Supreme Court in ***Commissioner of Central Excise, New Delhi V.***



Connaught Plaza Restaurant Private Limited, New Delhi

[(2012) 13 SCC 639] and **State of Andhra Pradesh V. Linde**

India Limited [(2020) 16 SCC 335], in support of his plea.

7) Before proceeding further, it would be appropriate to refer to the list of items on which exemption are sought to be claimed.

1. AB Binder
2. Ankle Binder
3. Anklet
4. Arm Sling
5. Back rest
6. Bandage
7. Belt
8. Brace
9. Buck pully
10. Cervical Coller
11. Cervical Pillow
12. Coller Firm Dencity
13. Commode Stool, Chair, Pot
14. Crutches
15. Duomed
16. Elbow support
17. Facial clips
18. Finger cot
19. Foot & skin traction
20. Frog splint
21. Hard coller
22. Heel cushion
23. Hinged knee cap
24. Insole



25. Knee brace
26. Knee cap
27. O grip
28. Pelvic rods
29. Quadripod
30. Shoulder pully
31. Splint
32. Stick
33. Stockings
34. Tennis elbow
35. V grip
36. Walker
37. Wrist brace

8) Entry 2 of I Schedule, which is now sought to be invoked to claim exemption from tax reads thus: *'Aids and implements used by handicapped persons'*.

9) The question now is, *who can be described as 'handicapped persons' and what are those instruments which can be called as aids and implements used by handicapped persons?*

10) It is not in dispute that the word 'handicapped' is not defined anywhere in AP VAT Act. For this reason, the 1st Respondent borrowed the meaning of the word 'handicap' from 'The Persons with Disabilities (Equal opportunities, protection of right and full participation) Act, 1995, enacted



by Government of India and also enforced by the Government of Andhra Pradesh since 1996.

11) But, however, the learned Counsel for the Petitioner would contend that, the Assessing Authority erred in borrowing the meaning of the word 'handicapped' from enactment, which would be contrary to the law laid down by the Hon'ble Apex Court. According to him, the meaning which received in ordinary parlance or as understood by people conversant with the subject matter, should be taken into consideration.

12) The same is opposed by the learned Government Pleader for Commercial Tax, stating that if such a liberal interpretation is given to the meaning of "handicapped", it would defeat the purpose for which the exemption is given. In other words, he would submit that, a perusal of articles, for which exemption is sought would show that, the Petitioner is claiming exemption from payment of tax even in respect of stick, which is used not only by totally disabled person but also normal individual or an old-aged person.



13) Keeping in view the arguments advanced, it is now to be seen, *as to what the word “handicapped” would mean.*

14) In ***M/s. Inox Air Products Limited V. The Assistant Commissioner (CT)-IX, Enforcement Wing, Hyderabad and Others¹***, a Division Bench of the composite High Court observed that, *‘in incorporating items in sales tax statutes, whose primary object is to raise revenue and for which to classify diverse products, articles and substances, resort should be not to the scientific and technical meaning of a substance but to their popular meaning, i.e., the meaning attached to these expressions by those dealing in them’*. It has been held that, *‘the words used in the entries must be construed not in any technical sense nor from the scientific point of view but as understood in common parlance. The words and expressions should be construed in the sense in which they are understood in the trade by the dealer and the consumer. The reason is that it is they who are concerned with it, and it is the sense in which they understand it which constitutes the definitive index of legislative intention.’*

¹ (2015) 2 ALD 307 (DB)



15) In **National Mineral Development Corpn. Ltd. V. State of M.P.**², it has been held that, *‘the words, having a special meaning in the context of a particular field of art or science, ought to be understood in that sense.’* Further, in **Commnr. Of Central Excise, New Delhi V. Connaught Plaza Restaurant (P) Ltd.**³, the Hon’ble Supreme Court after referring to **Dunlop India Ltd. Vs. Union of India & Ors**⁴, **Shri Bharuch Coconut Trading Co. and Ors. Vs. Municipal Corporation of the City of Ahmedabad & Ors**⁵, **Indian Aluminium Cables Ltd. Vs. Union of India & Ors**⁶, and hosts of other cases observed that, *‘in the absence of a statutory definition in precise terms; words, entries and items in taxing, statutes must be construed in terms of their commercial or trade understanding, or according to their popular meaning. In other words they have to be constructed in the sense that the people conversant with the subject-matter of the statute, would attribute to it. Resort to rigid interpretation in terms of scientific and technical meanings should be avoided in*

² (2004) 6 SCC 281

³ 2012 (286) E.L.T. 321 (S.C.)

⁴ (1976) 2 SCC 241

⁵ 1992 Suppl.(1) SCC 298

⁶ (1985) 3 SCC 284



such circumstances. This, however, is by no means an absolute rule.'

16) In the ***State of A.P. V. Linde India Limited***⁷, the Apex Court was dealing with an issue namely as to whether “Nitrous Oxide” and “Medical Oxygen” fall within the meaning of “drug” under Section 3(b)(i) of Drugs and Cosmetics Act, 1940, and consequently fall under Entry 88 of Schedule IV of Act. Dealing with the same, the Apex Court in para 18 and 19 observed as under:

“18. Similarly, Craies on Statute Law states:

“One of the basic principles of interpretation of Statutes is to construe them according to plain, literal and grammatical meaning of the words. If that is contrary to, or inconsistent with, any express intention or declared purpose of the Statute, or if it would involve any absurdity, repugnancy or inconsistency, the grammatical sense must then be modified, extended or abridged, so far as to avoid such an inconvenience, but no further. The onus of showing that the words do not mean what they say lies heavily on the party who alleges it. He must advance something which clearly shows that the grammatical construction would be repugnant to the intention of the Act or lead to some manifest absurdity.”

⁷ (2020) 16 Supreme Court Cases 335



19. *The words of a statute should be first understood in their natural, ordinary or popular sense and phrases and sentences should be construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context, or in the object of the statute to suggest the contrary. Where a word has a secondary meaning, the assessment is whether the natural, ordinary or popular meaning flows from the context in which the word has been employed. In such cases, the distinction disappears and courts must adopt the meaning which flows as a matter of plain interpretation and the context in which the word appears.*”

17) In ***Maheswari Fish Seed Farm V. T. Nadu Electricity Board and Ors.***⁸, it was observed as under:

“6. *It is settled rule of interpretation that the words not defined in a statute are to be understood in their natural, ordinary or popular sense. According to Justice Frankfurter, "After all, legislation, when not expressed in technical terms, is addressed to common run of men, and is, therefore, to be understood according to sense of the thing, as the ordinary man has a right to rely on ordinary words addressed." (Wilma E. Addison v. Holly Hill Fruit Products, 322 US 607). In determining, therefore, whether a particular import is included within the ordinary meaning of a given word, one may have regard to the answer which everyone conversant with the word and the subject-matter of statute and to whom the legislation is addressed, will give if the problem were put*

⁸ MANU/SC/0356/2004



to him. (*Principles of Statutory Interpretation by Justice G.P. Singh, Ninth Edition, 2004, p.95.*)”

18) From the judgments referred to above, it is clear that in the absence of a statutory definition, the words, entries and items in taxing statutes must be construed in terms of their commercial or trade understanding or according to their popular meaning.

19) In the instant case, the revisional authority took the help of Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participating Act, 1995, to come to a conclusion as to what “handicapped” would mean, which deals with only disability. Dealing with the terms disability, impairment and handicap, the World Health Organization observed that these three terms are used while discussing disability conditions but convey three different meanings. The World Health Organization, in their *international classification of Impairment, Disability, and Handicap*, provided the following meaning to these three words:-

- a) **Impairment** – any loss or abnormality of psychological, physiological or anatomical structure or function.
- b) **Disability** – any restriction or lack of ability to perform an activity in the manner or within the range considered normal for a human being.



c) **Handicap** – *the result when an individual with an impairment cannot fulfill a normal life role.*

20) Based on the above, it has to be understood that “handicap” is not a characteristic of a person, rather a description of relationship between the person and environment. An example to understand the three terms:-

“A person who is born blind (the impairment) is unable to read printed material, which is how most information is widely disseminated (the disability). If this person is prevented from attending school or applying for a job because of this impairment and disability, this is a handicap. This person may be able to perform the daily activity (reading) using some type of assistive technology to overcome this handicap. By attributing the handicap to the environment as opposed to an individual, the emphasis is placed on using AT to produce functional outcomes as opposed to focusing on functional limitations.”

21) Oxford dictionary defines “Handicapped” as:- a permanent physical or mental condition that makes it difficult to do some things that most other people can do.

22) Collins dictionary refer to the meaning of “Handicapped” as someone who is handicapped has a physical or mental disability that prevents them living a totally normal life.

23) Therefore, “Handicapped” would mean, when an individual with loss or abnormality of psychological, physiological or anatomical structure or functions, lacks



ability to perform an activity in the manner or within the range considered normal for a human being / cannot fulfill a normal life role. It is also observed that the term “Handicap” is now usually considered offensive and proper word would be "disability” or “disabled”.

24) A perusal of the list of items, on which exemptions are sought, at first blush gave an impression that all the items would be used by disabled persons, but a close perusal of the same proved to be otherwise. There are some items which are used to overcome temporary discomfort in day-to-day functions and some of items are used as an aid in overcoming temporary disability. In other words, an individual who is not handicapped, would be using some of the items to get over a discomfort, which is neither permanent nor does the said discomfort makes an individual “handicapped”. For example, bandage, belt, cervical collar, tennis elbow, stockings or stick to name a few, are not items used exclusively by handicapped or disabled person, but are used by normal individual to avoid discomfort or get over temporary inconvenience / discomfort. If the yardstick, as urged by the Counsel for the Petitioner is adopted, then every item sold in medical/surgical shop has to



be given the benefit which could not have been the purport of the Legislation. Therefore, only such of those aids or implements which are exclusively used by permanently disabled/handicapped person can be granted relief / exemption from tax.

25) For the aforesaid reasons, the Writ Petition is **disposed of** setting aside the Order under challenge and the matter is remanded back to the first Respondent [Assessing Authority], who shall deal with the matter, afresh, keeping in view the findings arrived at hereinabove, and pass orders in accordance with law after giving an opportunity of hearing to the Petitioner. No order as to costs.

26) As a sequel, interlocutory applications, if any, pending shall stand closed.

C. PRAVEEN KUMAR, J

A.V.RAVINDRA BABU, J

Date: 26.09.2022
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HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HONOURABLE SRI JUSTICE A.V.RAVINDRA BABU

WRIT PETITION No.1566 of 2021
(Per Hon'ble Sri Justice C. Praveen Kumar)

Dt. 26.09.2022

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