M/S SREE DURGA DISTRIBUTORS

v.

STATE OF KARNATAKA

APRIL 30, 2007

[S.H. KAPADIA AND B. SUDERSHAN REDDY, JJ.]

Karnataka Value Added Tax Act, 2003—First Schedule, Entry 5—Nil rate of duty—Entitlement of—For 'dog feed' and 'cat feed' —Held: On interpretation of Entry 5, it is evident that Dog and Cat feed do not fall under Entry 5—Hence not entitled to Nil rate of duty—Interpretation of Statutes.

The question for consideration in the present appeal was whether 'dog feed' and 'cat feed' sold by the appellant- assessee attracted Nil rate of duty under Entry 5 of First Schedule of the Karnataka Value Added Tax Act 2003.

Dismissing the appeal, the Court

HELD: Entry 5 of the First Schedule to Karnataka Value Added Tax Act, 2003 shows that animal feed and fed supplements is one category. It is after the expression "animal feed and feed supplements" that the Legislature has inserted the comma, therefore, animal feed and feed supplements constitute one class of products, they do not constitute two separate classes. Further, the expression "animal feed and feed supplements" is not only followed by the comma, it is followed by the word 'namely', which indicates that the items mentioned after the word 'namely' like 'poultry feed', 'cattle feed', 'pig feed', 'fish feed' etc. are specific instances of animal feed and feed supplements, which would fall in Entry 5 . That list is exhaustive. In that list, the Legislature has not included 'dog feed/cat feed' therefore, the products of the appellant do not fall under Entry 5 of the First Schedule of the Act. The Legislature intended to provide for Nil rate of duty to specified items mentioned in Entry 5.Dog and Cat feed are not mentioned in those items.

[Para 5 and 6] [1040-A, B; 1041-F]

Vidyacharan Shukla **v.** *Khubchand Baghel and Ors.,* **AIR (1964) SC 1099, distinguished.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2274 of 2007.

A From the Final Judgment and Order dated 18.11.2006 of the High Court of Karnataka at Bangalore in S.T.A. No. 18 of 2006.

S.K. Bagaria, R.V. Prasad, Praveen Kumar and Chandra Shekhar Mulherkar for the Appellant.

B Sanjay R. Hedge, Vikrant Yadav, Amit Kumar Chawla and Ramesh S. Jadhav for the Respondent.

The Judgment of the Court was delivered by

KAPADIA, J. 1. Leave granted.

C

2. A short question which arises for determination in this civil appeal is whether 'dog feed' and 'cat feed' sold by the appellant-assessee attracts Nil rate of duty under Entry 5 of First Schedule of the Karnataka Value Added Tax Act, 2003 (hereinafter referred to as "the Act"). The said entry was inserted *vide* Karnataka Act No. 27/05 with effect from 7.6.2005.

D

3. We quote hereinbelow Entry 5 of First Schedule of the Act:

> "5. Animal feed and feed supplements, namely, processed commodity sold as poultry feed, cattle feed, pig feed, fish feed, fish meal, prawn feed, shrimp feed and feed supplements and mineral mixture
> E concentrates, intended for use as feed supplements including de-oiled cake and wheat bran."

4. According to the appellant, dog feed and cat feed are the products which would fall in the category of animal feed under Entry 5. According to the appellant, Entry 5 deals with animal feed, feed supplements, namely,
F processed commodity sold as poultry feed, cattle feed, pig feed, fish feed, fish feed, fish meal, prawn feed, shrimp feed, feed supplements and mineral mixtures. According to the appellant, the words; poultry feed, cattle feed, and pig feed etc. are the specific instances of food supplements. According to the appellant, the word 'namely' after the words 'feed supplements' in Entry 5 shows that
G the Legislature intended the words 'feed supplements' to be confined to poultry feed, cattle feed, pig feed, fish feed, fish meal, prawn feed and shrimp feed. In other words, according to the appellant, animal feed and feed supplements are two expressions in Entry 5 which should be read disjunctively and not conjunctively. It is submitted that each of the aforesaid three categories of goods covered by Entry 5 is quite complete and independent in itself. That,
H meaning of the expression "and" appearing between first category and second

category and between second category and third category is that in addition to first category, goods of second category and third category are also covered by the said entry. The aforesaid three categories of goods are all for feeding the animals and these have all been put under the said entry. Since the entry covered three categories of goods, in between each category the expression "and" was used to make it clear that in addition to first category, second category is also covered and in addition to second category, third category is also covered. The word "and" has been used in the sense of "also" or "as well as". It is further submitted that each of the three parts of Entry 5 mentioned above are quite independent of each other. Each part is complete by itself and is capable of operating independently. Thus, for instance, the first part covering animal feed is a complete and stand alone item capable of operating independently. Similar is the position in respect of second part and third part of the entry. None of these three parts depend upon each other in any way. It is further submitted that the punctuation mark "comma" (,) has been used in the said Entry 5 in-between different items covered by each individual category. Thus, the second category covers "feed supplements, namely, processed commodity sold as poultry feed, cattle feed, pig feed, fish feed, fish meal, prawn feed, shrimp feed and there is a comma preceding and after the word "namely" which qualifies the expression "feed supplements". With reference to use of expression "namely" in Entry 5 and its effect, the submissions is: that the said expression "namely" has been used in the second category of goods covered by the entry. It has been used after "feed supplements" and its effect is that feed supplements covered by the entry are processed commodity sold as poultry feed, cattle feed, pig feed, fish feed, fish meal, prawn feed and shrimp feed; that the said word "namely" does not in any way qualify or relate to the goods of first category and third category. Animal feed is covered by first category and it is a stand alone item and this category is quite independent and capable of operating by itself and independently. That, if the expression "namely" is held to qualify even "animal feed" covered by first category, then all conditions and restrictions mentioned in the entry for the goods of second category will also become applicable to animal feed. In that event, the scope of the expression "animal feed" will also be curtailed substantially to confine it to processed commodity alone and that too for some named animals only. Animal feed may be of different types and varieties. Frozen variety of animal feed is often limited to raw meat or sea food where little or no preparation is needed. It is further submitted that there is no warrant or justification for reading the entry in such a way so as to limit or restrict the scope and ambit of the first category which is a stand alone category covering "animal feed". The said expression "animal feed" as used

A B C D E F G H

A in the entry is totally unqualified and unrestricted and it covers all types and varieties of animal feed.

5. We do not find any merit in the arguments. The above quoted Entry 5 shows that animal feed and feed supplements is one category. It is after the expression "animal feed and feed supplements" that the Legislature has inserted B the comma, therefore, animal feed and feed supplements constitute one class of products, they do not constitute two separate classes. Further, the expression "animal feed and feed supplements" is not only followed by the comma, it is followed by the word 'namely', which indicates that the items mentioned after the word 'namely' like poultry feed, cattle feed, pig feed, fish feed etc. are C specific instances of animal feed and feed supplements, which would fall in Entry 5. That list is exhaustive. In that list, the Legislature has not included dog feed/cat feed, therefore, the products of the appellant do not fall under Entry 5 of the First Schedule of the Act. In our view, the basic premise on which the arguments of the assessee proceeds is that Entry 5 covers three categories of goods, namely, animal feed, feed supplements and feed D supplements and mineral mixtures. This premise is wrong. A bare reading of the said entry indicates 'animal feed and feed supplements' as constituting one category. They are not two separate categories. The punctuation mark "comma" has been used expressly after the words "animal feed and feed supplements", which indicates that the Legislature intended to classify these E two items as one class/category. Further, the Legislature intended to restrict that category by confining that category to processed commodity alone and that too for certain named animals. In the present case, we are concerned with cat feed and dog feed. Cat feed carries a fishy smell on account of processing. However, cat feed though processed is not put in Entry 5. Similarly, dog feed is also excluded from Entry 5. In the circumstances, we do not find any merit F in the arguments advanced on behalf of the assessee.

6. Before concluding, we may refer to the judgment of this Court in the case of *Vidyacharan Shukla* v. *Khubchand Baghel and Ors.*, reported in AIR (1964) SC 1099 on which reliance has been placed by the assessee. In that case Section 29(2) of the Limitation Act, 1908 came for interpretation. One of G the questions which arose for determination in that case was whether Section 29(2) would apply to a case where there was a difference in the period of limitation prescribed by the Representation of the People Act, 1951 ("RP Act") and the Limitation Act, 1908. We quote hereinbelow Section 29(2) of the Limitation Act, 1908:

H

"Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the first schedule, the provisions of section 3 shall apply, as if such period were prescribed therefor in that schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law "

(emphasis supplied)

It was held that RP Act, 1951 was a special law. It was held that the period of limitation prescribed under the RP Act, 1951 was different from the period prescribed under the Limitation Act. The question before this Court was whether for the purposes of computing the period of thirty days prescribed under Section 116-A(3) of the RP Act, 1951, the provisions of Section 12 of the Limitation Act, 1908 could be invoked. It was held that Section 29(2) of the Limitation Act, 1908 would apply even to a case where the period prescribed under the special law differed from the period prescribed under the Limitation Act (see para 23). Alternatively, even on construction of Section 29(2) it was held that there was no rule of grammatical construction which required an interpretation that if sentences complete by themselves are connected by a conjunction, namely, the word 'and', the second sentence must be held to limit the first sentence. In our view, the said judgment has no application. In the present case, the word 'and' in Entry 5 is placed between the words "animal feed" and "feed supplements" followed by a punctuation mark "comma". Therefore, we are not concerned with a case where two sentences are sought to be connected. We are concerned with specific category of goods. The word 'and' is placed by the Legislature between two types of goods, namely, animal feed and feed supplements. The punctuation mark, after categorizing "animal feed and feed supplements", as one class, is very important. The Legislature intended, therefore, to put "animal feed and feed supplements" in one category. The Legislature intended to provide for Nil rate of duty to specified items mentioned in Entry 5. Dog and Cat feed are not mentioned in those items. Therefore, the above judgment of this Court has no application to the present case.

7. For the above reasons, we do not find any infirmity in the impugned judgment of the High Court and accordingly, we dismiss this civil appeal with no order as to costs.

K.K.T. Appeal dismissed.