COMMISSIONER OF TRADE TAX, U.P. A

v.

M/S. KARTOS INTERNATIONAL ETC.

(Civil Appeal Nos.2983-2988 of 2011)

APRIL 6, 2011 B

[DR. MUKUNDAKAM SHARMA AND ANIL R. DAVE, JJ.]

Uttar Pradesh Trade Tax Act, 1948: Notification dated 10.4.2000 – Exemption under – Scientific and biological equipments/instruments used mainly by biological scientists for research purpose – The said articles manufactured and sold to hospitals, medical colleges, advance research institutions and laboratories – Held: The equipments would not be entitled to benefit of exemption under the said Notification – These equipments fall in the category of "Biological Instruments" and are outside the purview of "Biology instruments" which are to be used by students in schools and colleges – All the goods mentioned in the entry of notification relate to articles used for study of life science in schools and colleges, such as, maps, educational charts, scientific mathematical survey, mechanical drawing and biology instruments and apparatus – All of them belong to one class as they are the tools for learning biology and other life science – Applying the doctrine of Nositur a Sociis *and also on considering the intention of the Government for issuing the notification granting exemption for learning life science, it is established that no exemption was desired for the articles manufactured and sold by the assessee but it was meant exclusively for use by the students of schools and colleges – Doctrines/Principles.* C D E F G

Doctrines/Principles: Nositur a Sociis – Meaning of.

Tax/Taxation: Classification of goods – Basis of – Held:

A *The classification of any commodity cannot be made on its scientific and technical meaning – It is only the common parlance meaning of the term which should be taken into consideration for the purpose of determining the tax liability – Uttar Pradesh Trade Tax Act, 1948.*

B **The assessee-respondent was engaged in the manufacture and sale of various "scientific and biological equipments/instruments which were used mainly by biological scientists for research purposes for which the assessee was duly registered under the provisions of** C **U.P. Trade Tax Act, 1948 as well as the Central Sales Tax Act, 1956. The articles manufactured and sold by the respondent were Biological Safety Cabinets; Laminar Flow Cabinets; Fume Hoods; Air Showers; Operation Theatre Modules; Air Curtains; Air Conditioner Modules;** D **Clean Tents; Clean Room Garments; Pass Boxes; Air Handling, Filter etc. These articles were sold by the respondent to Hospitals, Medical Colleges, Advance Research Institutions and Laboratories.**

The question which arose for consideration in the E **instant appeals filed by the Revenue was whether the scientific and biological instruments/equipments manufactured by the assessee were entitled to exemption under notification no.1166 dated 10.4.2000.**

F **Allowing the appeals, the Court**

HELD: 1. The fact that the assessee himself never treated the goods as exempted goods and treated them as taxable goods under Section 3-A (1)(C) of the U.P Trade Tax Act as unclassified goods and charged full rate G **of tax would make it clear that even the assessee was aware of the fact that the goods did not fall within ambit of the notification dated 10.4.2000. [Para 20] [272-H; 273-A-B]**

H **2.1. The Hindi version of the Notification dated**

10.4.2000 is "Jeev Vigyan Sammandhi Upkaranikayen Aur Sanyantra". That means the instruments which are used for the study of Life Science (Jeev Vigyan) by students in educational institutions. The various articles manufactured and sold by the respondent were not meant for teaching Life Science (Jeev Vigyan). They were meant for Hospital, Medical Colleges and Research Laboratories which may fall in the category of "Biological Instruments" and are outside the purview of "Biology Instruments" to be used by the students in educational institutions. The classification of any commodity cannot be made on its scientific and technical meaning. It is only the common parlance meaning of the term which should be taken into consideration for the purpose of determining the tax liability. [Paras 22, 23] [273-D-G]

Maharashtra University of Health Sciences v. Satchikitsa Prasarak Mandal **(2010) 3 SCC 786;** *Ramavatar Budhaiprasad v. Asstt. STO* **AIR 1961 SC 1325;** *Hansraj Gordhandas v. H.H. Dave, Asst. Collector of Central Excise and Customs* **AIR 1970 SC 755 – relied on.**

2.2. There is a vast difference between Biology Instruments and Biological Instruments. The term "Biology Instruments" refers to those instruments which are used in the education of Biology as a subject in the educational institutions. It refers to a limited range of instruments confined for their use in study of Jeev Vigyan only. But the words "Biological Instruments" should be interpreted in a broader sense, and it includes various articles which are supplied to hospitals and medical colleges for various purposes including research. The word "Biological Instrument" is a general word with its utility where wide scale applications including the goods as manufactured by the assessee/respondent are taken. Government Notification dated 10.4.2000 refers to words "Biology Instruments". This means that only such articles as meant for education institution for the study of Jeev

A Vigyan such as Maps Chart, Instrument Boxes, etc., are included in the said notification. Biological Instruments are outside the ambit of the said Notification. [Paras 22, 27] [273-E-F; 276-D-F]

B 3. Nositur a Sociis means that when two words are capable of being analogously defined, then they take colour from each other. The term ejusdem generis is a facet of Nositur a Sociis. The said principle means that the general words following certain specific words would take colour from the specific words. All these goods C which are mentioned in the entry of notification dated 10.04.2000 relate to articles used for study of life science in schools and colleges, such as, maps, educational charts, scientific mathematical survey, mechanical drawing and biology instruments and apparatus. All of D them belong to one class as they are the tools by using which a student would and could learn life science. In the said manner, the doctrine of Nositur a Sociis would be applicable to the facts of the instant case. The earlier entry on the same subject used in notification dated 20.05.1976 E was "Maps, Educational Charts, Instruments Boxes, Educational Globes and instruments, such as instruments used in Mechanical drawings and Biology used by Students." The said entry came to be amended subsequently and the entry vide notification dated F 10.04.2000 was inserted granting exemption to the sales of Maps, Educational Charts, Instruments Boxes, Educational Globes and Scientific Mathematical Survey, Mechanical Drawings and Biology Instruments and apparatus. All these items are used by the students G studying in schools and colleges. A glance at the items manufactured and sold by the respondent would establish that what was exempted under notification dated 10.04.2000 were basic items to learn the Life Science and which were instruments and apparatus for H learning Biology and other Life Science. Therefore, on

applicability of the said doctrine and also on considering the intention of the Government for issuing the said notification granting exemption for learning Life Science, it is established that no exemption was desired for the articles manufactured and sold by the respondent but it was meant exclusively for articles used by the students of schools and colleges. The exclusion of the word "students" in the subsequent notification would not in any manner materially change the intention for which such notification is issued. In the instant case, the goods manufactured and sold by the assessee were not meant for Educational institutions but were meant for Research Laboratories. Therefore, the commodities in question are not covered by the said notification dated 10.4.2000, and are not entitled for exemption. [Paras 29-33, 35, 37] [276-H; 277-A-H; 278-A-F; 279-A-B]

M/S Pradeep Agarbatties v. State of Punjab and Others **1997 8 SCC 511 – referred to.**

Case Law Reference:

(2010) 3 SCC 786	**relied on**	**Para 24**
AIR 1961 SC 1325	**relied on**	**Para 25**
AIR 1970 SC 755	**relied on**	**Para 26**
1997 8 SCC 511	**referred to**	**Para 36**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2983-2988 of 2011.

From the Judgment & Order dated 25.05.2009 of the High Court of Judicature at Allahabad in Trade Tax Revision Nos. 329, 330, 331, 332, 333 & 334 of 2007.

Sunil Gupta, Shail Kr. Dwivedi, AAG, Gunnam Venkateswara Rao, Manoj Kumar Dwivedi, Ardendumauli Kr. Prasad for the Appellant.

A Kavin Gulati, Rashmi Singh, T. Mahipal for the Respondent.

The Judgment of the Court was delivered by

DR. MUKUNDAKAM SHARMA, J. 1. Leave granted.

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2. The present appeals are filed against the impugned judgment and order dated 25.5.2009 in TTR No. 329/2007 & TTR No. 330/2007 & TTR No. 331/2007 & TTR No. 332/2007 & TTR No. 333/2007 & TTR No. 334/2007 passed by the High C Court whereby the High Court allowed the Trade Tax Revision filed by the respondent and reversed the order passed by the Trade Tax Tribunal, UP (Noida Bench).

3. The issue that falls for our consideration in the present appeals is whether scientific and biological instruments/ D equipments manufactured and sold by the respondent/ assessee would be entitled to get exemption from payment of tax under the UP Trade Tax Act, 1948 (for short "the UP Act") as well as the Central Sales Tax Act, 1956 (for short "the Central Act") in view of the notifications No. 1166 dated E 10.4.2000. The aforesaid issue was the only issue which was decided by the Tribunal in favour of the respondent – assessee and therefore in this appeal we are required to answer and decide the said issue, which is framed by us.

F 4. In order to answer the aforesaid issue which arises for our consideration, it would be necessary to set out some facts leading to filing of the present appeals.

5. The assessee/respondent is a proprietorship firm, which is engaged in the manufacture and sales of various "scientific G and biological equipments/instruments, which are used mainly by biological scientists for research purposes for which the assessee is duly registered under the provisions of U.P. Act as well as the Central Act. The assessee/respondent was issued a notice by the assessing authority and the assessee

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appeared before the assessing authority and claimed that the goods sold by it are exempted from tax in view of the notification no. 1166 dated 10.4.2000 and also claimed relief on account of Inter-State sales made to various government organisations and institutions against the Forms 3D and D.

6. The Assessing Authority, after examining the accounts and details, issued a show cause notice to the assessee proposing to make the best judgment assessment on the basis of an inference that the assessee had effected sales at concessional rate of tax to various organizations against the declaration of form 3D and form D even though the said organizations were not the Government organisations and no benefits of concessional rate of tax could have been claimed by the assessee. The assessing authority further took a view that the goods sold by the assessee are not covered by the notification No. 1166 dated 10.4.2000 and hence the goods of the assessee were liable to be taxed at the rate of 10% as unclassified goods.

7. The assessee replied to the show cause notice and stated that the goods sold by the assessee are fully covered by the notification no. 1166 dated 10.4.2000 and that the assessee had charged and deposited tax at concessional rate on the Intra-State sales as well as Inter-State sales made to various Government Organizations and institutions but claimed that it was exempted under the said notification also.

8. The explanation as submitted by the assessee was not accepted by the assessing authority and assessment orders were passed on 20.2.2004, 17.3.2005 and 30.3.2005 for the Assessment Year 2001-2002, 2002-2003 and 1998-1999 respectively and the tax was levied under the UP Act and also under the Central Act. The Assessing Authority has accepted books of accounts of the assessee as well as declared turnover but rejected the benefits of declaration Form 3-D/D and on the Intra-State/ inter-state sales made to the Central/ State Government organizations and also treated the goods as

A unclassified goods, declining it to grant benefit of exemption under notification no.1166 dated 10.4.2000 holding that the assessee is not entitled to get exemption under the aforesaid notification.

B 9. Thereafter, appeals were filed before the Joint Commissioner (Appeals) and by its common order dated 31.12.2005, the Joint Commissioner (Appeals) dismissed both the appeals holding that the equipment manufactured and sold by the respondent are used as instruments in the research laboratories for maintaining the environment free from bacteria, C and therefore, the respondents are not entitled to claim exemption.

10. The Assessee/Respondent filed appeals before the Trade Tax Tribunal, UP (Noida Bench) and the Tribunal by an D order dated 21.2.2007 dismissed the appeals filed by the assessee/respondent holding that only such articles are exempted from tax which are used for educating children such as maps, charts, instrumental box, educational globe, biology instruments, and not those used for research purposes.

E 11. Thereafter, a Trade Tax Revision under Section 11 of the Trade Tax Act, 1948 was filed by the Respondent before the High Court of Allahabad and the High Court by its impugned judgment and order upheld the contention of the assessee/ respondent and held that the assessee is entitled to the benefit F of notification No. 1166 dated 10.4.2000 holding that the description of the goods made in the notification has been clarified to be used by all the persons. While coming to such conclusions, reference was also made to the Hindi version of the notification dated 10.4.2000 holding that the same makes G it clear that the exemption has been granted to the instrument which has been used.

12. The aforesaid findings and conclusions arrived at by the High Court are under challenge in these appeals on which H we heard the learned counsel appearing for the parties.

13. Learned counsel appearing for the appellant submitted that the words "biology instruments" necessarily mean the instruments, which are used by the students in educational institutions, more particularly, in schools and colleges and not in research institutions. It was also submitted that each word of the notification must be distinctly read to take colour from the preceding words by applying the principle of ejusdem generis. Next submission was that the equipments manufactured by the assessee could not be clubbed with other items as mentioned in the notification as the goods manufactured by the assessee are not similar or identical as that of the goods mentioned in the notification. It was also contended that the words "biology" instruments and apparatus are confined to the items used in the study of science of physical life in respect of plants and animals in school and colleges but the goods in question supplied by the respondent are used in laboratories and research institute.

14. It was further submitted that the assessee himself never treated the goods in question as "exempted goods" but treated them as "taxable goods" under Section 3-A(1)(C) of the U.P. Act as unclassified goods and the assessee charged full rate of tax as is evident from the various cash memos, which are on record and also claimed concessional rate of tax against the Form 3D (U.P. Act) and Form D (Central Act).

15. It was further submitted that the plain language of the notification is to be read for the purpose of understanding its language and the common parlance meaning or the popular sense meaning should be preferred over the technical or scientific meaning of the items and since the goods manufactured by the assessee are not being used for the study of biology, the same is not entitled for exemption from tax. Reliance was also placed by the counsel for the appellant on the Hindi version of the notification, which classifies it as relatable to life science (Jeev Biology) taught in schools and colleges.

A 16. Learned counsel appearing for the respondent, however, refuted the aforesaid contentions of the appellant and submitted that the equipments and instruments which are being manufactured by the assessee/respondent are mainly used for providing a safe environment for scientific experiments and B research work and also they are used for the safety of scientists who are engaged in micro-biological research, diagnostic laboratories, hospitals and operation theatres. According to the counsel these equipments are used by persons, who undertake research work on high risk diseases like T.B, Hepatitis B, who C are prone to get it and are at a higher risk of being infected by agents/ bacteria which they handle and therefore, the surroundings where such research work is being undertaken requires to be made free from contamination to prevent, reduce or eliminate the risk of spread of infectious disease. He urged that the main purpose of these equipments is to provide D bacteria/dust free i.e bio-clean environment in the working chamber to prevent the risk of infections and the same are entitled for exemption.

17. It was further submitted that the word "biology" and E "biological" are not different from each other and are interchangeable.

18. It was also submitted on behalf of the respondent that the entry also contains the word "maps" and "survey instruments and apparatus". The maps are used by the school students F alone, however, these apparatus are also used by the numerous people including geologists. It was contended that the notification does not only include the word biology instruments and apparatus, but also includes scientific instruments.

G 19. On the basis of the submissions made by the learned counsel appearing for the parties, we have perused the records.

20. The fact that the assessee himself never treated the

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goods as exempted goods and treated them as taxable goods under Section 3-A(1)(C) of the U.P Act as unclassified goods and charged full rate of tax makes it clear that even the assessee was aware of the fact that the goods does not fall within ambit of the notification dated 10.4.2000.

21. The other issue that came for consideration is whether there is a difference between the term "Biology Instruments" and "Biological Instruments". The term "Biology Instruments" refers to those instruments which are used in the education of Biology as a subject in the educational institutions. But the words "Biological Instruments" should be interpreted in a broader sense, and it includes various articles which are supplied to hospitals and medical colleges for various purposes including research.

22. The Hindi version of the Notification dated 10.4.2000 is "Jeev Vigyan Sammandhi Upkaranikayen Aur Sanyantra". That means the instruments which are used for the study of Life Science (Jeev Vigyan) by students in educational institutions. The various articles in question as manufactured and sold by the respondent are not meant for teaching Life Science (Jeev Vigyan) to be taught in educational institutions. The articles in question are meant for Hospital, Medical Colleges and Research Laboratories which may fall in the category of "Biological Instruments" and are outside the purview of "Biology Instruments" to be used by the students in educational institutions.

23. Moreover, classification of any commodity cannot be made on its scientific and technical meaning. It is only the common parlance meaning of the term which should be taken into consideration for the purpose of determining the tax liability. In the present case the commodities that have been grouped together are articles used in Education Institutions such as Maps Chart, Sketch Map, Instrument Box, Educational Globes etc.

A 24. This Court in the case of *Maharashtra University of Health Sciences Vs. Satchikitsa Prasarak Mandal* reported in (2010) 3 SCC 786 held as follows:-

"27. The Latin expression "ejusdem generis" which means
B "of the same kind or nature" is a principle of construction, meaning thereby when general words in a statutory text are flanked by restricted words, the meaning of the general words are taken to be restricted by implication with the meaning of the restricted words. This is a principle which
C arises "from the linguistic implication by which words having literally a wide meaning (when taken in isolation) are treated as reduced in scope by the verbal context". It may be regarded as an instance of ellipsis, or reliance on implication. This principle is presumed to apply unless there is some contrary indication [see Glanville Williams,
D The Origins and Logical Implications of the Ejusdem Generis Rule, 7 Conv (NS) 119].

34. It is also one of the cardinal canons of construction that no statute can be interpreted in such a
E way as to render a part of it otiose. It is, therefore, clear where there is a different legislative intent, as in this case, the principle of ejusdem generis cannot be applied to make a part of the definition completely redundant."

F 25. This Court in the case of *Ramavatar Budhaiprasad v. Asstt. STO* reported in AIR 1961 SC 1325 stated technical meaning of a commodity cannot be a basis for adjudicating the classification and held as follows

"3. .....Reliance was placed on the dictionary
G *meaning of the word "vegetable" as given in Shorter Oxford Dictionary where the word is defined as "of or pertaining to, comprised or consisting of, or derived, or obtained from plants or their parts".* But this word must be construed not in any technical sense nor from the botanical

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point of view but as understood in common parlance. It has not been defined in the Act and being a word of every day use it must be construed in its popular sense meaning "that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it". *It is to be construed as understood in common language; Craies on Statute Law, p. 153 (5th Edn.). It was so held in Planters Nut Chocolate Co. Ltd. v. The King 1. This interpretation was accepted by the High Court of Madhya Pradesh in Madhya Pradesh Pan Merchants' Association, Santra Market, Nagpur v. The State of Madhya Pradesh (Sales Tax Department) 2 where it was observed:*

"In our opinion, the word 'vegetables' cannot be given the comprehensive meaning the term bears in natural history and has not been given that meaning in taxing statutes before. The term 'vegetables' is to be understood as commonly understood denoting those 'classes of vegetable matter which are grown in kitchen gardens and are used for the table.'"

(emphasis supplied)

26. In *Hansraj Gordhandas Vs. H.H. Dave, Asst. Collector of Central Excise and Customs* reported in AIR 1970 SC 755, this Court held as follows:-

"It is well established that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the language of the notification. If the tax-payer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. If such intention can be gathered from the construction of the words of the notification or by necessary implication therefrom, the matter is different, but that is not the case here. In this

connection we may refer to the observations of Lord Watson in Salomon v. Salomon & Co. 1:

> "Intention of the legislature is a common but very slippery phrase, which, popularly understood may signify anything from intention embodied in positive enactment to speculative opinion as to what the legislature probably would have meant, although there has been an omission to enact it. In a Court of Law or Equity, what the Legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication."

27. It would also be relevant to mention here that there is a vast difference between Biology Instruments and Biological Instruments. The term Biology Instrument refers to a limited range of instruments confined for their use in study of Jeev Vigyan only. The word Biological Instrument is a general word with its utility where wide scale applications including the goods as manufactured by the assessee/respondent are taken. In the Government Notification dated 10.4.2000, the words Biology Instruments have been referred. This means that only such articles as meant for education institution for the study of Jeev Vigyan such as Maps Chart, Instrument Boxes, etc., are included in the notification in question. Biological Instruments are outside the ambit of the said Notification. The term "Biological Instruments" is the most general term, which comprises of goods manufactured and sold by the respondent. But such goods are certainly not Biology goods.

28. In the light of the aforesaid decisions of this Court we must analyse as to whether or not the principles of Nositur a Sociis or the principle of ejusdem generis could be said to be applicable on the facts of the present case.

29. Nositur a Sociis means that when two words are capable of being analogously defined, then they take colour

from each other. The term ejusdem generis is a facet of Nositur a Sociis. The aforesaid principle means that the general words following certain specific words would take colour from the specific words.

30. The counsel appearing for the appellant submitted that the aforesaid principles, particularly, the principle of Nositur a Sociis would be applicable to the facts of the present case. The counsel appearing for the respondent, however, submitted that the aforesaid principle would have no application to the facts of the present case as the words in the entry do not represent a homogenous class as maps, educational charts, scientific mathematical survey, mechanical drawing and biology instruments and apparatus, all belong to different categories of goods and they are not followed by any general words.

31. We are unable to accept the aforesaid stand of the counsel appearing for the respondents for all these goods which are mentioned in the aforesaid entry of the notification relate to articles used for study of life science in schools and colleges, such as, maps, educational charts, scientific mathematical survey, mechanical drawing and biology instruments and apparatus. All of them belong to one class as they are the tools by using which a student would and could learn life science. In the aforesaid manner the doctrine of Nositur a Sociis would be applicable to the facts of the present case.

32. At this stage reference could also be made to the earlier entry on the same subject which was used in the notification dated 20.05.1976. In the said notification the entry was in the following manner:

> "Maps, Educational Charts, Instruments Boxes, Educational Globes and instruments, such as instruments used in Mechanical drawings and Biology used by Students."

33. The aforesaid entry came to be amended subsequently

A and the entry vide notification dated 10.04.2000 was inserted granting exemption to the sales of Maps, Educational Charts, Instruments Boxes, Educational Globes and Scientific Mathematical Survey, Mechanical Drawings and Biology instruments and apparatus. All these items are used by the B students studying in schools and colleges.

34. The respondent on the other hand manufacture and sell the articles, such as, Bilogical Safety Cabinets; Laminar Flow Cabinets; Fume Hoods; Air Showers; Operation Theatre C Modules; Air Curtains; Air Conditioner Modules; Clean Tents; Clean Room Garments; Pass Boxes; Air Handling, Filter etc. These articles are manufactured and sold by the respondent to Hospitals, Medical Colleges, Advance Research Institutions and Laboratories.

D 35. A glance at the aforesaid items would establish that what is exempted under notification dated 10.04.2000 are basic items to learn the Life Science and which are instruments and apparatus for learning Biology and other Life Science. Therefore, on applicability of the aforesaid doctrine and also E on considering the intention of the Government for issuing the aforesaid notification granting exemption for learning Life Science it is established that no exemption was desired for the articles manufactured and sold by the respondent but it was meant exclusively for articles used by the students of schools F and colleges. The exclusion of the word students in the subsequent notification would not in any manner materially change the intention for which such notification is issued.

36. This Court in the case of *M/S Pradeep Agarbatties V. State of Punjab and Others* 1997 8 SCC 511, held that: -

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"Entries in the Schedule of sales tax and Excise Statues list some articles separately and some articles are grouped together, when they are grouped together each word in the entry draws colour from the other words, therein. This is H the principle of NOSITUR A SOCIIS."

37. In the present case, the goods manufactured and sold by the assessee are not meant for Educational Institutions but are meant for Research Laboratories. Hence the commodities in question are not covered by the said notification dated 10.4.2000, and are not entitled for exemption. A

38. In view of the aforesaid discussion and law laid down by the Supreme Court in earlier decisions, we are of the considered opinion that the appeals deserve to be allowed. Accordingly, the appeals are allowed. The order passed by the High Court is set aside and the order of the Tribunal is restored. B C

D.G. Appeals allowed.